During 2009 and 2010, Brazil held a public consultation seeking to draft legislation on internet governance. In 2011, in Uruguay, a public consultation was convened to seek input from citizens and stakeholders on the country’s policy for digital broadcast television. In the case of Brazil the initiative was led by the Ministry of Justice, working with the Ministry of Culture and the Centro de Tecnologia e Sociedade (Centre for Technology and Society—a civil society think tank). In Uruguay the consultation was initiated by the telecommunications department of the Ministry of Industry, Energy and Mining in cooperation with Fundación Comunica and a group of independent academics, but was quickly transformed when changes within the Ministry left the consultation with no formal connection with the government.

The two consultations were different in many ways. They differed considerably in terms of scale, for example. The Brazilian consultation was held over a total of three months, divided into two separate periods of 45 days each, and attracted over 2,000
contributions and significant media coverage. By contrast, the Uruguayan consultation lasted only 21 days, drew relatively few comments was given very little in-depth media coverage. They also took place in significantly different political and social contexts, for example Brazil has a decentralised federal system of government, while Uruguay’s is highly centralised.

What they had in common, however, was that they were online public consultations: understood here as internet-based systems used to support a government request for public input on a particular policy initiative and that facilitate multi-directional communication about the policy between and among government, citizens, and other stakeholders.

This paper analyses the two cases, with a focus on comparing the answers to the two questions guiding the research: (i) what similar impacts did the two experiences achieve, and (ii) what were the common challenges faced by the sponsors of both initiatives?

The paper begins with a brief overview of traditional public consultation tools, followed by the two case studies and finally we present some tentative conclusions and lessons learned.

**CONSULTATION TOOLS**

Public consultations are one of the key tools available to governments to make the drafting of legislation and policies more transparent, effective and efficient. Consultations are useful in improving the quality of public policies if they increase the quantity and improve the quality of information available to decision makers. Through consultation, policy makers can bring alternative viewpoints and expert knowledge into the discussion, and can also identify conflicting interests and solicit advice on how to balance them.

Consultations imply the active search for contributions from different stakeholders. They can be conducted in different
A background document produced by the OECD in 2006 describes five types of public consultation:

1. **Informal consultation** includes “all forms of discretionary, *ad hoc*, and unstandardised contacts” between policy makers and stakeholders, for example informal meetings, letters and telephone conversations. While this type of consultation can be flexible, fast and inexpensive, it lacks transparency and accountability.

2. **Circulation of policy proposals for public comment** is a consultation process that involves circulating concrete proposals in a more systematic and structured way than with informal consultations. Participation is usually limited to key recognised stakeholders to the exclusion of less-organised groups and the public at large.

3. **Public notice-and-comment** is a more structured, formal and inclusive consultation than circulation of policy proposals for public comment in that it involves the preparation and distribution of background information, including for example draft legislation, discussion papers about the problem being addressed, policy objectives, impact assessments and alternative solutions, as well as a request for written comment and input.

4. **Public hearings** are meetings at which interested parties and groups can comment in person. They are usually attached to a public notice-and-comment process and seek to make it even more accessible and even to enable some form of dialogue between and among policymakers, stakeholders and interested members of the public. Nevertheless, the OECD notes two limitations to public hearings: they are likely to be one-off events which may be inaccessible to some and thus require significant coordination, planning and resources to ensure access, and “the simultaneous presence of many groups and individuals with widely differing views can render a discussion of particularly complex or emotional issues impossible, limiting the ability of this strategy to generate empirical information.”

5. **Advisory bodies** can be *ad hoc* or permanent and may be established to provide technical advice or to negotiate interests. While there are many different types of bodies, they have two common features: they have a specific mandate (to provide expertise or seek consensus) and they include people from outside government.
ways, from telephone conversations with representatives of key interest groups, to structured public meetings aimed at involving wider sectors of the public. The OECD, for example, describes five traditional tools for policy consultation (see Box 1).

These different tools meet different objectives and could be used at different points during the policy-making process. Two of them—public notice-and-comment and public hearings—are designed to make public policy making accessible to a non-specialist, wider public, and are therefore particularly suited for policies on issues that will have a significant impact on society.

In practice, public hearings are almost always attached to a public notice-and-comment process. The online consultations presented in this chapter essentially combine these two tools, thus allowing for dialogue among policy makers, stakeholder groups, and members of the general public while avoiding many of the limitations of traditional consultations.

While the internet can be used, and is being used, in all of these types of consultation, the possibilities for interaction and collaboration offered by web 2.0 tools and applications could be especially useful for hosting public hearings, since they reduce costs while increasing opportunities for effective participation and eliminating some of the constraints of face-to-face meetings. Of equal importance is the fact that in online consultations, just as in traditional public notice-and-comment processes, a significant effort must be made to provide the public with background information that explains the objectives of the policies in question, identifies alternative solutions, and generally equips interested individuals and organisations with enough knowledge to understand the implications of the policies being discussed.

Based on the five categories of public consultation described in Box 1, we could conclude that the online consultations in both Brazil and Uruguay were similar to traditional public hearings. They were formal consultations, open to the general public, and were conducted early in the policy drafting process.
in order to contribute to the definition of positions and options. The distribution of background information and description of alternative solutions made them accessible to non-specialists. However, unlike traditional public hearings, the consultations assessed here were conducted online, thus freeing them from the physical and time constraints of conventional hearings.

Another feature shared by the Uruguayan and Brazilian cases is that both were processes initiated by governments seeking the involvement of civil society in public policy deliberation. This analytical categorisation should, in turn, be assessed in relation to the institutional and political framework in each case. In Uruguay, the process was initiated as a government proposal for a virtual public hearing. But this strategy rapidly deteriorated, as the state institution responsible (the telecommunications division of the Ministry of Industry, Energy and Mines) withdrew from its role as convener of the consultation, which created confusion among the target audience as to who was convening the process and for what purpose. By contrast, in Brazil, the continued support of government institutions led to much more coherent results. Thus, although both initiatives were launched on the basis of the same methodology, the outcomes were largely conditioned by the respective institutional and political contexts.

**BRAZIL: INSTITUTIONS MATTER**

**Introduction**

In the case of Brazil, research focused on the impact of web 2.0 technologies on the design of deliberative consultations on public policy. More specifically, it evaluated the impact of these technologies on how policy makers and citizens negotiate opportunities for deliberation for the drafting of legislation. As a case study we evaluated the *Marco Civil Regulatório* (*mcr*) project, an initiative sponsored by the Brazilian government
with the main objective of developing draft legislation on internet governance following two cycles of public consultation conducted in 2009 and 2010 with the aid of web 2.0 technologies. Generally speaking, the MCR project could be considered enormously successful. Defining what “success” means in terms of deliberative practices would require defining normative standards by which participation is evaluated, which is far from a settled matter. Nonetheless, considering that the MCR project was the first of its kind in Brazil, that around 2,000 contributions from the general public were received by the website during the consultation period, that later projects refer to it as a key reference point, and most importantly, that the project succeeded in translating the concerns received online into draft legislation to be sent to Congress, we can argue that the MCR project was indeed enormously successful.

The government’s decision to conduct a public consultation to make informed decisions was nothing new. In fact, public consultations are regulated in specific legislation (D4176/2000) in Brazil. What made the MCR project so innovative was not the government’s decision to run a public consultation on how to regulate the internet, but rather the decision to conduct it with the aid of the internet itself. Expanding the locus of debate from physical spaces (such as meeting rooms in the capital city of Brasilia) to an open and public URL, capable of hosting a policy debate online, is something that had never been tried before, according to the sources we interviewed.

Our interviewees recalled isolated cases where online technology had been used by the government to consult experts or average citizens, as well cases in which the government had considered conducting public debates online. Nevertheless, the MCR project is perceived as the pioneering experience of its kind, something so important that the interviewees describe it as an event that “upgraded” the way public consultations are conducted in the country. If we consider that since the MCR project ended, five similar projects have begun, this “upgrade” hypothesis might actually be accurate.
Main conclusion: Institutions matter

According to our research, when it comes to the importance of technology for policy consultation processes, institutions matter a great deal. This supports Blumler and Coleman’s (2009) argument that “for democratic participation to have a meaningful impact upon political outcomes there is a need for inclusive and accountable institutions that can provide a space for consequential interaction between citizens and their elected representatives.” Our findings suggest that web 2.0 technologies represent a very positive scenario as support tools for future policy-making efforts. However, without institutions backing, designing and moderating the use of web 2.0 technologies for this purpose, technology itself will only have a very limited scope for making real changes to existing legislation.

A central argument of this research is that without the direct support and commitment of government institutions (in this case, the Ministry of Justice and the Ministry of Culture), as well as the support provided by research institutions or think tank (in this case, the Centro de Tecnologia e Sociedade or Centre for Technology and Society at the Getúlio Vargas Foundation), the contributions made by the general public through web 2.0 tools would not have resulted in policy change. This is in line with Blumler and Coleman’s (2009) argument that top-down policy-making initiatives have greater chances of achieving real policy change than bottom-up initiatives do. In this regard, although we maintain that people do matter as well, our core argument is that understanding how online policy debate influences what governments do requires understanding the key role of institutions in sponsoring and moderating these policy debate forums.

Overview

This chapter is divided in three sections. The first section discusses how government institutions, technology and people interact to create a successful and stimulating online
policy debate forum. It suggests as hypotheses four contextual elements needed to start an online policy consultation forum, namely:

1. A government institution with a real interest in direct public participation
2. An active online community with a strong interest in the topic under discussion
3. An active research institution or think tank willing to bring its own expertise and influence to the project
4. A web 2.0 interface capable of engaging policy makers and citizens in a coherent narrative structure for deliberation.

These hypotheses are speculative, and further research is required to support them. Nonetheless, considering the novelty of the field of research and the quick pace of technological change, we argue that identifying fundamental issues related to online policy debate forums is key to this stage of research.

The second and third sections continue the evaluation of how technology and deliberation interact in online consultation projects, focusing on how policy makers decide what issues to submit to deliberation and how technology will be used to mediate deliberation. From different perspectives, both sections focus on five key decisions that policy makers have to make during the early stages of the policy-making process, namely:

- What policy issues should be open or closed to public deliberation
- What technologies to use or not use to mediate the debate
- How to frame the discussion by preparing and disseminating background documents, policy options, impact studies, and similar documents
- How and when to moderate contributions
- How to translate contributions into a properly formatted legal policy document.
**Methodology**

The data used in this research came from in-depth interviews conducted with public servants, academics and web designers responsible for planning and executing the mcr project. Interviewees were selected based on a two-round sampling procedure. We first identified potential contacts at the main institutions sponsoring the initiative. After two preliminary rounds of interviews with members of each of these institutions, a second list of names was compiled, including public servants at the Ministry of Culture (who engaged in the project later and were responsible for programming the project website), two public servants from the Ministry of Justice (who coordinated the overall project), and three contributors from the Centre for Technology and Society (the civil society research institution that co-authored the project with the Ministry of Justice).\(^1\) All interviews were semi-structured in-depth expert interviews, and were analysed based on a mixed-method approach to qualitative data analysis.

**Contextual elements of the MCR project**

The mcr project was a joint initiative of the Ministry of Justice (the project’s initiator)\(^2\) and the Centre for Technology and Society (cts, hosted by the Getúlio Vargas Foundation, a think tank based in Rio de Janeiro). Apart from these two organisations, the project also received direct support from the Ministry of Culture, indirect assistance from other governmental bodies (such as the Ministry of Foreign Affairs), and ad hoc contributions from civil society organisations and a number of internet rights activists. As such, the MCR project

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1 From the Ministry of Justice, Guilherme Almeida and Paulo Rená; from the “Centro de Tecnologia e Sociedade”, Carlos Affonso Pereira de Souza, Pedro Augusto Ferreira Francisco and Marília Maciel; from the Ministry of Culture, José Almeida Júnior.

2 More specifically, the Ministry of Justice’s Office of Legislative Affairs.
was a government initiative which, with the aid of an important think thank and of civil society, established itself as a one-of-a-kind online policy debate forum. As the CTS describes the initiative:

[The MCR was an event where] NGOs, universities, internet service providers, [...] private companies, law firms, law enforcement agencies, individuals, Brazilian embassies all over the world, and many other participants joined in an online public hearing. The participation of various stakeholder groups promoted a diversity of opinions and provided access to high-quality information and expert advice, all of which helped the government to draft a balanced bill.

The general objective of the MCR project was to draft a bill for an internet law to be submitted to a Congressional vote. The bill was intended to establish a set of legal principles and rights to guide future internet legislation in the country, and the entire consultation process was designed to be based on online collaborative practices. The project ran from October 2009 to May 2010, and resulted in an online forum where politicians, academics, artists, NGOs, companies, individuals and other stakeholders with an interest in the topic could post, debate and comment on the possible design of future internet legislation. The project made use of several web 2.0 tools (mainly a WordPress platform, Twitter, RSS feeds and blogs). It was divided into two rounds of discussion. During the first round, people were invited to comment on a “white paper” with a set of general ideas to broadly orient the draft legislation. During the second round, they were invited to comment on the draft legislation as formatted to be sent to Congress. As the interviewees describe the process, the first round tested a set of normative standards, pre-defined by those sponsoring the initiative, that were considered important to include in future legislation, while the second round focused on receiving feedback on the draft itself.
It is important to note that during both consultation periods, participants could comment only on pre-defined topics, said by the interviewees to focus on three areas of discussion: individual and collective rights (i.e., privacy, freedom of speech and access rights), principles related to intermediaries (i.e., net neutrality and civil liability), and governmental directives (i.e., openness, infrastructure and capacity building). Therefore, although the online consultation project was conceived as a collaborative practice – an initiative open to the general public to engage and share their opinions – citizens were basically invited to offer suggestions, but not to decide what topics were open for debate, nor on the actual wording of the final draft legislation.

According to the interviewees, the MCR project began in September 2009, when public servants from the Ministry of Justice invited policy experts from the CTS to design the online platform. Two months later, the website was launched and the first of two six week consultation periods began. The second six week consultation period ended in mid-2010, when the drafting of the bill was completed. During the two periods of consultation, over 2,000 contributions from individual users, governmental and non-governmental entities were received. Policy makers were responsible for gathering the comments and writing the final draft bill, which comprised 25 articles divided into five chapters concerning users’ rights and general principles for the regulation of the internet.

Analysing the interviews, we can see that the MCR project was based on three main tenets:

1. It aimed to design a piece of legislation based on solid judicial grounds, a legal text ready to be sent to Congressional hearings.

2. It aimed to create policies capable of securing existing and future individual rights over the internet.

3. It was intended from the start to be based on collaborative practices and public debate enabled by web 2.0 tools.
The interviewees repeatedly referred to the combination of these three tenets as key motivators behind the mcr online consultation initiative.

The main event mentioned by interviewees to justify the emergence of the mcr project was a bill known as the Lei Azeredo or Azeredo Law. This earlier draft legislation focused on regulating crimes over the internet, and was sent to the Chamber of Deputies (lower house of Congress) in 1999 (PL 84/99), and to the Senate in 2003 (PLS 89/03). The Azeredo Law was heavily criticised by cyber activists, think tanks, and particularly by the government of Luiz Inácio (Lula) da Silva (2002-2010), for seeking to legislate internet crimes in a context where civil rights on the internet had still not been defined. In fact, according to the people we interviewed, the alternative project’s name, “Marco Civil Regulatório” (“Civil Regulatory Framework”) was chosen precisely to clearly express their opposition to discussing criminal codes of conduct prior to securing civil rights and obligations related to internet use.

Analysing how the Azeredo Law was received in different policy communities in Brazil is key to understanding the context in which the mcr project was conceived. If we analyse the main reasons mentioned by the interviewees to explain why the mcr initiative emerged, we can identify four contextual elements that need to be taken into consideration:

1. The engagement of cyber activists around the social movement known as Mega Não (“Mega No”)
2. The activities undertaken by the cts in opposition to the Azeredo Law’s legal principles
3. The political agenda of the executive branch, which supported the definition of the internet as a social right

A shared understanding amongst policy makers that regulating a collaborative environment like the internet required the use of collaborative practices such as those found in the online world
From the very start, the Azeredo Law drew fierce criticism both inside and outside online discussion forums, but it was primarily after 2009, with the launch of the Mega Não blog by cyberactivist João Caribé, that social opposition to the bill gained a coherent voice. The Mega Não movement fuelled intense activism in blogs, Twitter and other social media that not only attracted even more online activists to the cause, but also received media coverage from niche national media, motivated protest marches in several Brazilian cities, and was a theme addressed at important internet-related events throughout that year.

The interviewees reported that the Mega Não movement played a key role in the overall success of the mcr project. It was individuals closely associated with the movement who were the first to contribute to the consultation through the comments section, they said. In addition, activists involved in Mega Não helped to publicise the mcr initiative by using their own Twitter hashtags and blog networks to comment on the initiative.

The interviewees also mentioned that, at first, cyberactivists were suspicious that their “bottom-up” movement would be overlooked by the “top-down” initiative they were being invited to join. Nonetheless, most Mega Não supporters gradually started to trust the mcr initiative as a real opportunity to push forward their own policy interests, which in turn attracted even more contributors and publicity for the mcr website.

Another key element mentioned by interviewees was the policy activism of cts. cts was already known nationally and internationally for its policy agenda in favour of open source software, Creative Commons licensing, and other issues associated with the links between technology, law and society. cts was also known for having published two reports criticising the Azeredo Law proposal, which increased its influence on government bodies, academics and cyberactivist networks.

According to interviewees from the Ministry of Justice, the cts’s public policy stances were amongst the main reasons
why it was invited to co-author the mcr project. The Ministry of Justice welcomed the participation of the cts, not only due to its opposition to the Azeredo Law, but also because of their shared ideas on designing online collaborative venues for policy making. For their part, interviewees from the cts said they welcomed the Ministry of Justice’s invitation because they perceived the initiative as an opportunity to push forward their own policy agenda, as well as a promising opportunity to influence politicians to promote policy debates based on collaborative online practices in the future.

Another key element mentioned by interviewees as decisive in launching the mcr project was the government’s support. President Lula’s speech at the 2009 International Free and Open Source Software Forum\(^3\) is considered the event that triggered the entire initiative. During his speech, the president explicitly opposed the Azeredo Law proposal, and called for an alternative bill that would protect civil rights on the internet. Lula’s speech, however, was far from an isolated event; it simply illustrated a broad agenda pushed forward by the incumbent government to understand the internet as a challenge to ways of thinking about social relations and governance.

As we can see, the conditions for designing the mcr were set: the actors were motivated, and the only thing that was missing was the “place” to hold the debate. The government was determined to conduct a public consultation, which is why the Ministry of Justice invited a civil society think tank to co-author the initiative. Civil society was also committed to a public debate, as had been made clear by the active engagement around the Mega Não movement. All that was needed was a place where government and citizens could meet, discuss and deliberate. Web 2.0 tools were used to create that “place”.

It should be noted that there had been experiences in the use of the internet in policy making prior to the Lula government.

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\(^3\) 10º Fórum Internacional de Software Livre, Porto Alegre, 24-27 March 2009.
As early as 1999 there had been pilot initiatives using IRC chat technology and blogs, for example. Nevertheless, the interviewees reported that after Lula took office in 2002, the use of the internet for policy development expanded considerably. Two internet-related projects implemented by the Ministry of Culture were mentioned as illustrative of this change of direction. The first, known as Pontos de Cultura, involved the allocation of government funding to local cultural centres for the provision of internet access to local communities. The second, CulturaDigital.Br, invited citizens to create and share their blogs and digital identities on a public and open-source WordPress-based platform in order to foster policy deliberation online.

The last contextual element mentioned by the interviewees was the emergence of new ways of linking law, society and technology. Due to the emergence of collaborative and network-based technology, interviewees considered it necessary to re-conceptualise how their institutions understood knowledge production. The cts, the Ministry of Justice and the Ministry of Culture had pioneered several experiments in previous years investigating alternative governance models based on technology. The cts, for example, had been influential in supporting the use of Creative Commons licensing; the Ministry of Justice and Ministry of Culture had piloted the portal CulturaDigital.Br, inviting cyberactivists and hackers to share their opinions online. Within this context, the interviewees welcomed the mcr project as an opportunity to try out alternatives to the traditional government-centred, closed-doors process of policy making. As one interviewee put it, the mcr initiative was a “movement of symbiosis between the way you define policy making and the object of policy regulation [...] and it is within this ‘happy marriage’ between these two elements that we defined what we aimed to achieve.”
The early stages of policy consultation

Although the *mcr* project officially started in late 2009, its origins date back at least 30 years. Public consultations are a common practice in democratic governance, because governments are expected to consult people before making decisions that affect them. In order to consult the public, a government must first design collaborative tools to engage citizens in policy making. In Brazil, regulations were established for public hearings back in the late 1980s, and they are now used as an administrative tool by all branches of government (Soares, 2002). We can also trace back to 1995 the first government institution specifically created to regulate the internet, the Brazilian Internet Steering Committee (cgi.br), which was also given the responsibility for designing new forms of public consultation. We can therefore argue that the Brazilian government has at least 30 years of experience in designing tools for collaborative practices, at least half of it based on some expertise in the use of web tools.

One way to understand how policy discussion forums are affected by web 2.0 tools would be to evaluate, once the public consultations are over, what answers citizens provided to the government and what uses the government made of these contributions. However, this analysis would have to be undertaken during later stages of policy making, and could not be applied in our research. Instead, this section focuses on earlier stages of deliberative processes, specifically evaluating how policy makers decided –before the public was invited to contribute online– what policy questions were open or closed to deliberation, and which technologies were used to mediate the debate.

In the case of the *mcr* project, understanding which policy issues were open or closed was straightforward: one page of the *mcr* website was used to list all topics open for discussion (e.g., civil

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4 CGI www.cgi.br/english
responsibility of internet users, freedom of expression, privacy and net neutrality) and another to list all topics closed to debate (e.g., copyright, data protection and child pornography).

Beyond defining which issues are open or closed for discussion in policy debates (i.e., defining what people will deliberate about), designing rules for policy debates also requires identifying and selecting tools to allow people and institutions to share their opinions with each other (i.e., deciding how people will deliberate). In “offline” policy forums, such as those regularly run by the Congress in public meeting rooms, policy makers have to decide how large the meeting venues need to be, what time and date they will take place, and how those in attendance can effectively share their opinions. In policy forums held online, similar decisions need to be made addressing other issues, such as how people will have access to the forum’s website, what coding language the website will be written in, how comments will be displayed online, and how people will post their opinions.

Due to the pioneering nature of online projects like the mcr initiative, we observed that designing rules to decide what people can debate over is a much simpler task than deciding how technology will be used for deliberation.

The interviewees reported that they made decisions on which issues to include based on several background research tools they had at hand: they identified policy issues already under discussion in other spheres of government, selecting topics that would increase the chances of obtaining support inside Congress, or that were likely to increase the project’s audience. Based on these analyses (which are the same as those used for “offline” policy consultations), policy makers had plenty of sources of input to strategically decide on what mix of policy issues was likely to increase the overall success of the project.

However, the same cannot be said when we analyse the decisions about how technology should be used for deliberation. As the interviewees repeatedly stressed, the mcr project was a
highly experimental and challenging initiative. They reported, for example, that they chose to use WordPress based on the open-source nature of this technology. This decision was also influenced by their personal expertise and experience in running blogs of their own, as well as their awareness of the Ministry of Culture’s CulturaDigital.Br initiative (which was later used to host the project website). The decision to create a comments section based on a “paragraph-by-paragraph” layout was inspired by their previous knowledge of The Public Index (a collaborative blog created at New York Law School to discuss Google Books’ policies), although they needed to make a number of adjustments before it met their needs. Even decisions on which technology choices to continue or discontinue were made on an ad hoc basis, in response to the feedback received. For example, the overall layout of the comments section received positive feedback, which led to the use of a similar but improved layout for the second phase of consultation. On the other hand, the use of a “thumbs up/thumbs down” voting system was removed shortly after implementation due to the negative feedback received from users.

Governments might opt to run public consultations fully “offline” (i.e., without the use of online tools) or decide to do it “online” (i.e., with the aid of internet tools), but either way, if governments want to hear what citizens have to say, some tools and technologies must be used (i.e. postal mail, public meetings, surveys) to enable the exchange of communication.

If we compare offline and online policy consultations, we can see that decisions made during the early stages of designing policy forums, about what to deliberate on, are similar for both. However, decisions that must be made regarding how the deliberations will be structured and moderated are not so similar.

The experimental and rapidly changing nature of initiatives such

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5 thepublicindex.org/introduction (accessed 29 March 2012)
as the MCR project do not mean that the decisions made by policy makers are based on random information gathered through fluctuating processes, but they do challenge the understanding of how well-established policy-making practices (such as mapping competing policy agendas before deciding on what policy agenda to adopt) interact with experimental practices of policy consultation and policy making using web 2.0 tools.

Best practices and discussion

Institutions matter: this was the key lesson that emerged from the MCR initiative. In this case, employing new ICT tools to expand citizen engagement in public policy making would not have been possible without the commitment and support of the Ministry of Justice and the CTS in designing and implementing methodologies for using technology for public consultation. In the executive summary of the 2003 OECD report on e-democracy (Macintosh 2003), Stephen Coleman raises three main lessons learned from the case studies analysed, which are also useful to summarise the lessons learned in the MCR initiative.

The first lesson is that “technology is an enabler not the solution. Integration with traditional, ‘offline’ tools for access to information, consultation and public participation in policy-making is needed to make the most of ICTs.” As we can see in the case of the MCR project, web 2.0 tools facilitated communication between policy makers and citizens, but they did not define the overall project. The interviewees believe, for example, that the impact of the project went beyond the limits of its web presence. They mentioned the number of journalists who requested interviews and who published articles on the topic. They also noted that they used the website to make copies of press clippings accessible online to everyone. Because they posted “everything”, including articles critical of the initiative, they feel they gained trust not only from journalists, but from the general public as well.
Twitter is another example of how technology was used to facilitate communication between policy makers and citizens, but did not define the overall project. Twitter was widely used to promote the initiative through “tweets” with URLs for the website home page as well as specific sections of the debate. The interviewees believe that this spurred many blogs, online forums and other “places” to begin hosting their own debates and promoting their own URLs on Twitter.

The use of ICTs also influenced the policy agendas of other stakeholders. Due to the visibility that the mcr project achieved online, even offline interactions between the project leaders and other government institutions were impacted. The interviewees reported that at one point during the consultation period, the Federal Police contacted the Ministry of Justice to express their opposition to a particular policy proposal. The mcr project representatives maintain that the police became aware of the issue though the online consultation, and that prior to the consultation, internet legislation had not been on the police force’s agenda. According to its organisers, the mcr initiative motivated the police, and other institutions, to join the debate about Brazil’s future internet legislation.

The second lesson mentioned in the OECD report is that “the online provision of information is an essential precondition for engagement, but quantity does not mean quality. Active promotion and competent moderation are key to effective online consultations.” As mentioned above, without the intervention of policy makers, the more than 2,000 comments posted online would not have been translated into a properly formatted policy document to be submitted to Congress. In addition, the active moderation by policy makers was described as essential to maintain a certain level of debate. The interviewees reported that no defamatory comments were circulated online during the entire consultation period, but added that they had discussed internally the eventual need to intervene if necessary, as well as the possible need to monitor the site. Another decision
made by the interviewees was to avoid sharing their own policy views in the comments section, leaving the debate section open for members of the public to discuss the issues among peers. They believe that this was viewed by users as evidence of the transparency and openness of the project’s sponsors.

The third and final lesson mentioned in the OECD report is that “the barriers to greater online citizen engagement in policy-making are cultural, organisational and constitutional not technological. Overcoming these challenges will require greater efforts to raise awareness and capacity both within governments and among citizens.” As the interviewees describe it, web 2.0 tools allowed different publics to engage in the consultation process, including some that are usually absent from such practices. For example, they reported with surprise the willingness of cyberactivists and videogame players to discuss the future legislation of the internet. Eventually, the interest of these young people in the MCR initiative motivated policy makers to present the project at Campus Party, a well-known online entertainment event in Brazil.

Web tools also motivated experts not previously involved in the debate to share their ideas. The interviewees commented, for example, on a healthy “online battle” between two experts supporting different proposals to regulate log records kept by internet service providers. The debate started in the comments section, but it became so extensive (in terms of both the length and number of comments) that the sponsors decided to publish it on the main page as a properly formatted text compiling the contributions of each author.

URUGUAY: A CONSULTATION WITHOUT COMMITMENT

In 2010 the government of Uruguay announced that it was preparing draft legislation to streamline and systematise regulations governing the telecommunications sector and the process of technological convergence affecting the media.
The National Telecommunications Department (dINATEL) – a specialised division of the Ministry of Industry, Energy and Mines (miEM) – launched a timeline of activities that included the creation of a Technical Consultative Committee (ctC). This 30-member committee was made up of representatives of a wide range of civil society and private sector organisations involved in the field, who were brought together to offer opinions and make proposals.

The activities also included a series of conferences with international experts, the organisation of thematic debates and forums, and the creation of a website. Initially, the site was to be used to receive contributions from other stakeholders and to publish reports of the deliberations and conclusions of the ctc, so as to make the process more transparent.

By late 2010 the ctc had drafted a document which compiled the main contributions received. As a consultation process, the ctc was a classic advisory body, which used the internet in an innovative way to increase the transparency of the process and to invite other stakeholders to contribute to the debate (Rodríguez 2011).

Thanks to the success of the ctc’s work, there was an explicit willingness, expressed in numerous documents and public statements by miEM sub-secretary Edgardo Ortuño and the director of dINATEL at the time, Gustavo Gómez, to open up discussion on other issues related to communications policy to more stakeholders and the general public.

**Framework and background of the Uruguay Public Consultation Project**

Beginning in March 2011, representatives of dINATEL and Fundación Comunica held a series of talks with our research

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6 See Box 1 on page 89
team on the subject of “virtual” public consultations and the possibility of using them to support DINATEL’s work in the drafting of different policies. We agreed to carry out a public consultation that would be planned by our research team, convened by DINATEL, and jointly implemented.

We considered a number of different subjects, including the proposals that had emerged from the CTC for new legislation on audiovisual services, and finally decided to focus on the digital television broadcasting policy that DINATEL was working on at the time and which we considered to be a more manageable issue for a first experience. It was agreed that the consultation would take place between 22 September and 7 October 2011, later extended to 14 October.

In terms of the traditional policy consultation tools outlined at the beginning of this paper, the consultation was originally conceived as a virtual public hearing, with the addition of a few key elements of a public notice-and-comment process.

As well as providing a space for interested individuals and stakeholder groups to make comments on a series of proposals, the process also aimed to enhance the public’s capacity to participate effectively, by offering background information (articles, regulatory documents, proposals for alternative solutions). This background information was particularly important for addressing the subject of digital television broadcasting and other similar issues related to telecommunications in Uruguay, where the general public is normally cut off from the debate and unaware of the real impacts of information and communications public policy guidelines in the face of the advent of new technologies.

As revealed in a survey we conducted in October 2011 for DINATEL, the public was largely unaware of the debate that was subject of the public consultation. There was also little awareness of the government’s plans to table a bill for a new law on audiovisual communications services, despite media coverage on the matter.
The consultation was to be convened by DINATEL, which would also have the last word regarding the content and general design of the consultative process. In other words, similar to the Brazilian case this was initially planned as a government consultation.

DINATEL, through its director, Gustavo Gómez, actively participated in the design of the consultation, contributing ideas for the design and the proposal in general.

The academic community also played a very active role, providing a number of the articles included on the site to encourage or frame the debate and participation. The citizens would be given a public and horizontal space where they could express themselves, and the government would have a commitment to listen to them.

This situation changed abruptly in early August, when the minister of Industry, Energy and Mines announced that Gustavo Gómez would be removed from his post as the director of DINATEL at the end of October. This was the first of two unexpected actions by the minister, and it meant that although Gómez would continue as nominal director of DINATEL until the end of the consultation, he was forced to reconsider his decision to convene it and even to participate in it.\footnote{The reasons for the removal of Gómez from his post were never clearly explained by the minister, Roberto Kreimerman, who stated that “there have been differences in working methods, but within a climate of great mutual respect.” However, neither the consultation nor policies related to digital television appear to have been motives. According to most observers, it was the result of differences over telecommunications policies, an area that also falls under the remit of DINATEL.}

Gómez’s decision to convene the consultation received a mixed reception from the public. According to a survey conducted by the authors in October 2011, 65% of respondents were aware of the consultation, with 15% knowing of the existence of a debate on the issue and 23% knowing of the government’s plans to present a new regulatory law. A large majority of those aware of the consultation, 85% and 77% respectively, were either not familiar with it or were undecided about its potential outcomes.

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decision to adopt a low profile following the announcement of his exit from DINATEL changed the fundamental nature of the initiative, which went from being a government-convened consultation to merely a government-supported consultation.

The second unexpected action by the minister occurred at the end of the first week of the consultation. When a draft version of a presidential decree on regulation of the transition to digital television broadcasting was leaked to the press on 28 September, the minister immediately responded by publishing the draft legislation on the ministry’s website and requesting feedback and comments on it.

While this official consultation process was limited, because it asked for comments to be addressed directly to the ministry and no background or contextual information was provided, the fact that it was launched in parallel to the online public consultation, and with no prior communication with the team responsible for it, served as a clear signal that the public consultation was no longer supported by the government. It had become a citizen-led process, an unofficial consultation, without even any guarantee that the government would take its results into account.

Content of the website consultapublica.org.uy

The consultapublica.org.uy website was created to enable the development of an open debate, one that would bring together government authorities, the academic community, the business community and social and political organisations with an interest in the issue of digital television.

It was aimed at fostering informed and inclusive deliberation, and at reaching the widest possible range of public opinion.

8 According to the categories outlined previously, the minister’s consultation was essentially a “circulation of policy proposals for public comment”, with participation “limited to key recognised stakeholders to the exclusion of less-organised groups and the public at large.”
The site presented an overview of the main areas of discussion around the potential impact of the introduction of digital television broadcasting on Uruguayan society. It also offered the opinions of influential actors in the political and academic spheres, to allow the public to compare and contrast various opinions and positions regarding the digital television policies best suited to our country.

The information shared on the website was divided into three thematic areas or dimensions. For each dimension, the site offered:

1. A brief introduction to the theme, written by a specialist and expressed in a clear, straightforward manner, so that anyone visiting the site could become better informed about the issues and compare the positions put forward before expressing their own.

2. A “vox populi” style video reflecting different views on the advent of digital television (expectations, knowledge on the subject, general opinions).

3. Academic articles meant to foster debate. These included opinion pieces by different actors involved in the discussions held during 2010, as well as others with an influence on public opinion, in addition to academic reports with varying degrees of depth and detail, adaptable to different potential audiences, with an emphasis on making information accessible to a non-specialist public.

4. Forums for discussion in response to “trigger” questions. It is noteworthy that among the opinions voiced in the discussion forums during the consultation, there were a number of comments that expressed either agreement or disagreement with specific articles.

5. Multiple-choice survey questions.

6. News articles on the subject and links to other websites were provided to direct visitors to other sources of more in-depth information on specific themes.
Visitors were able to comment on all of the articles, news stories and surveys after registering on the site, which fostered exchange and interaction. The forums and articles were specially designed to promote more informed participation, with a certain grasp of the subject matter. To take part in the multiple-choice surveys, visitors did not need to be registered, but could simply click on a response to each question.

The graphic design of the site was aimed at making it user-friendly, straightforward and visually attractive. Accounts linked to the site were created on the social networks Facebook (the groups ConsultaPública and Televisión digital en Uruguay) and Twitter (@consultapublica), to allow for wider dissemination of the content of the site and promote discussion in other forums. News stories, excerpts of comments from the site and all new content posted on the site were also posted on these networks.

The thematic dimensions selected were: (i) Institutions: Inclusion and transparency; (ii) Regulation and regulators; (iii) Use of the electromagnetic spectrum.

**Political contingency and change in strategy**

As we noted earlier, during the implementation of the online public consultation on digital TV between 22 September and 14 October 2011, two events occurred that substantially changed the basic premises of this initiative. The first was the announcement of the imminent removal of Gustavo Gómez from his post as director of dinatel by the miem minister, Roberto Kreimerman. The second was the leak, on 28 September, of an important draft decree that directly concerned the central theme of the online consultation – a leak that also gave rise to the parallel consultation, limited but official, conducted by the ministry itself.

The separation of Gómez from his post affected the initiative in the following ways:
1. Before it was even launched, the public consultation lost the support of the main stakeholder behind it.

2. The dissemination of the public consultation would no longer involve the direct participation of Gustavo Gómez or dinatel.

3. Without an official counterpart in the government, the initiative would be an unofficial consultation, without formal government support.

While we considered taking advantage of the fact that Gómez would continue to exercise the position of director of DINATEL during the consultation, his imminent departure would not have passed for formal support. It may also have been possible to gain the endorsement of some other government official, but without MIEM’s official support the consultation would be unable to be part of a formal process for public policy making. It was at this point that we decided to conduct an indirect public consultation, one that was not formally convened by the government.

The consultation was thus convened by Fundación Comunica, and its dissemination was limited to the efforts the organisation was able to make with the support of the university researchers responsible for the project, who made contact with different networks in the field of communications, academic entities such as the School of Communications Sciences at the University of the Republic and the Uruguayan Association of Political Science, and organisations like the Coalition for Democratic Communication and the Association of Producers and Filmmakers (ASOPROD), in addition to a number of news stories in the traditional media.

The leak of the draft decree helped raise the visibility of the subject matter of the consultation, which served to revive the issue and the consultation’s website, where we quickly published the draft decree and established a special forum for discussion of it. It also sparked an increase in participation and
contributed to one of our most important objectives: facilitating and interaction between the government’s proposal, academic input, political opinions and political party stances, all in open view of the public. However, the dialogue was never direct nor promoted by state institutions, but was instead guided by the interests of the media agenda and systematised through the website’s tools: the surveys, discussion forums and articles.

**Two consultations and two models**

While the leak of the draft decree revived interest in the subject, the minister’s decision to publish the decree and launch a parallel consultation to this research team’s public consultation marked a definitive end to the connection between our team and the ministry. The result was a set of “parallel consultations”, two processes taking place simultaneously. One was a consultation that sought to reach and engage the general public, while the other was aimed at incorporating specific demands from stakeholders directly involved in the audio-visual industry.

The MIEM’s official consultation drew contributions from two private citizens and ten institutions: the MELISA Network (an Ibero-American network aimed at increasing the accessibility of digital television to reduce the digital divide), the School of Communications Sciences of the University of the Republic, the Coalition for Democratic Communication, the Chamber of Uruguayan Pay TV operators, a private television station, three cable television companies, the telecoms company Claro

9 The official consultation was limited to the publication of the draft decree and an invitation for the submission of comments. “The aim of the consultation is to provide a space for the general public to express opinions and make proposals on the draft decree on open terrestrial digital television (...). For this purpose, the text of the draft will be available for the next 7 days on the website of the MIEM. Comments, proposals and suggestions can be sent by electronic mail (...); or through a signed letter (...). The comments received will be published on the MIEM and DINATEL website once the consultation period has ended.” www.presidencia.gub.uy/wps/wcm/connect/presidencia/portalpresidencia/comunicacion/comunicacionnoticias/miem-abre-consulta-publica-decreto-television-digital-terrestre-abierta-tvd
(Telcom), the Uruguayan chapter of the World Association of Community Radio Broadcasters (AMARC), and the National Association of Uruguayan Broadcasters. Due to the format of this consultation, the proposals put forward were essentially reactions to the draft decree, or quite often simply a reiteration of the positions stated by certain stakeholders in the framework of the CTC, or a defence of corporate interests in the face of a possible restructuring of the ecosystem of audiovisual communications services in Uruguay.

On the other hand, in our consultation the participation of industry actors and representatives of state institutions was nil and many of the organisations that make up the Coalition for Democratic Communication, which had been very active throughout the formal process led by DINATEL during 2010 in the framework of the CTC, chose not to participate in our consultation, even though they were expressly convened.

Comparatively speaking, the format chosen by the MIEM was a bureaucratic and formal exercise in seeking the input of key stakeholders, while our consultation was meant to foster participation by citizens, as well as professional associations, the private sector and political parties. While the methodology used for the MIEM consultation did not offer any possibility for dialogue with the ministry or among the participants, and simply provided email and regular mailing addresses, the general strategy of the consultapublica.org.uy site was to encourage the highest possible degree of horizontal exchange and the inclusion of citizens’ views in the policy-making process.

As for the input gathered through consultapublica.org.uy, the ministry did not ask for it and no reference is made to it in the report on the official consultation, although the minister had stated unofficially that it would be taken into account.

10 The contributions were published at: www.miem.gub.uy/gxpfiles/miem/content/video/source0000000059/VID0000050000001801.pdf www.miem.gub.uy/gxpfiles/miem/content/video/source0000000059/VID0000050000001802.pdf
The two consultations had different objectives and therefore had very different results. We believe our initiative was much more aligned with a pluralistic participatory approach, with emphasis placed on developing a public space for the deliberation of reasoning and arguments, while the MIEM initiative was a traditional consultation aimed at drawing input from specific interest groups. As such, it attracted participation from traditional corporate and private stakeholders, aimed at directly influencing the public policy in question and the policy makers responsible for it. From this perspective, the MIEM consultation was much more successful in its policy impact than the civil society consultation.

The changes and their impact

The fact that the Uruguayan public was presented with two simultaneous “consultations” reflects a certain rigidity and inertia in the country’s political routines, but also demonstrates the Uruguayan state’s shortcomings in terms of public management of the legal framework of public affairs. The lack of coordination among agencies, ministries and the president’s office attests to efforts undertaken by government leaders as opposed to precise practices or protocols to promote discussion of public policies that address common goods and universal rights.

Policy making in Uruguay follows a rigidly conventional and institutionalised course. As the result of a heavily party-centric model, policy tends be formulated incrementally with input limited to that of political parties, and in some cases, state or private sector organisations or companies.

An analysis of the events allows us to infer some of these problem areas and at the same time observe efforts to introduce change. The initial enthusiasm for consultation under Gustavo Goméz’s directorship is an example of this. However, the political system was not sufficiently robust to follow through with this innovative
practice, and resorted to a centralism anchored in political parties as the principal means of defining of public policies.

Policy making remains the preserve of parliamentarians, leading to a situation in which debates are often little more than “mock” debates due to their complexity, with no citizen participation and often without the involvement of the academic community in the formulation of regulatory and legal frameworks and no direct channels for empirical evidence and specialist knowledge to reach policy makers.

The public consultation carried out in Uruguay also demonstrated:

- The lack of legal protocols for the realisation of direct government-led public consultations with citizen participation for the development of laws and regulations, with the exception of the referendum mechanism.
- The existence of strong competition among Uruguayan state institutions in the telecommunications area, regarding which is the regulatory authority and which is responsible for policy design, in addition to some entities that act simultaneously as regulators and commercial operators, as in the case of the state-owned telecoms company ANTEL.
- The designation of political appointees to leadership positions in these agencies adds to the weakness of their management, as these political appointments tend to be made on the basis of a distribution of posts among internal sectors of the political parties in power.
- The presidential system of government, with a particularly strong role played by the executive branch, often makes it difficult for agencies like DINATEL and the Uruguayan telecoms regulator, URSEC, to perform their duties independently, especially since the institutional structure places them in a position of direct dependency on the particular administration in power.
- The lack of a unified legal framework for services in the audiovisual communications and telecommunications
sectors is a source of confusion. Institutional jurisdictions are complicated due to the complexity of overlapping, redundant and often limited legal structures.

• Regulation through presidential decree creates a situation with considerable discretionary and exclusive power on the part of the executive branch.

TENTATIVE CONCLUSIONS

Beyond the differences and similarities between the two case studies, a number of tentative conclusions can be drawn as lessons learned from the experiences.

1. For a public consultation to be successful, the state must be willing and able to sponsor it, ensuring from the beginning that sufficient financial and human resources are available. Additionally, sponsoring government institutions must make a commitment to taking the results of the consultation into account.

The two public consultation experiences analysed here demonstrate that government institutions matter, and to a great extent. Government support (or the lack of it) proved to be a fundamental factor in the overall success of each initiative. In the case of Brazil, the support of the Ministry of Justice and Ministry of Culture was decisive in the planning, promotion and implementation of the consultation. In Uruguay, the lack of consistent support from DINATEL and the MIEM severely compromised the project’s activities.

However, while online consultations may serve as an important forum for the exercise of democracy, neither the issues defined nor the solutions proposed through public consultations have the power of actual legislation. In Brazil, the online consultation resulted in the drafting of a bill to be sent to Congress, but more than a year later, it has still not been voted into law. In Uruguay, on the other hand, the input received from the “unofficial” public consultation was ignored by the ministry.
It may be true that extra-governmental participation (by citizens, stakeholder groups, etc.) in the policy-making process is wider when consultations are conducted online, instead of behind closed doors, because of greater visibility, transparency and collaboration. Nevertheless, online forums still largely depend on the legislative and executive powers to ensure their significance and impact.

It should be noted that Brazil has specific legislation regulating public consultations, and, as a result of the MCR experience, the regulation of online consultations have been included in that legislation. In Uruguay, however, there is no legislation that regulates public consultations.

2. Another area in which government participation proved to be important was in publicising the initiative.

In Brazil, the policy makers involved participated in the largest possible number of conferences and events to promote the project. They also recognised the importance of media coverage, and used their Twitter accounts and websites to increase the exposure of the media coverage received.

In Uruguay, on the other hand, dissemination was limited almost entirely to academic networks, a handful of news articles, and very slight coverage in the mass media. The Uruguayan experience clearly demonstrated the importance of the political resources of the state as the sponsor of a consultation process (as well as the economic and administrative resources it can provide), regardless of the format chosen.

3. Thirdly, we could stress the importance of the role of academic institutions.

In the case of Brazil, the support of the CTS was decisive for choosing which platform to use, deciding how comments would be moderated, and collaborating with government institutions in the final drafting the bill. The participation of the CTS, an organisation with recognised experience on the issue, also enhanced the legitimacy of the consultation and
demonstrated that the government took extra-governmental participation seriously.
In the case of Uruguay, a team of researchers from the University of the Republic were commissioned by a civil society organisation to design and operate the web platform and to select the materials considered necessary to provide background information to participants in the consultation. In both cases, the participation of the academic community ensured that academic research played a key role in deliberations.

4. Another challenge lies in attracting the participation of stakeholder groups in online consultations.
In Uruguay, policy making is carried out within traditional and institutionalised spaces, under considerable party-centred and/or stakeholder influence. This meant that, given the possibility of participating in an open online public consultation and/or sending comments directly to the ministry, most stakeholder groups, from both the private sector and civil society, opted for more traditional (and more direct) channels.
In Brazil, the policy makers were surprised by how sectors of the public who normally ignore policy making initiatives participated in the debate. At the same time, traditional stakeholders, especially from the private sector, were reticent to share their contributions online, presumably preferring the more direct, and less public, channels. Numerous companies, for example, attempted to send their input by email or letter instead of using the website’s public forums. The consultation insisted on transparency, however, and only accepted letters and emails if their authors agreed to allow them to be published on the website.

5. Finally, as with any policy consultation, the topic being discussed matters.
If people perceive their interests are at stake, they will be more likely to participate. Moreover, precisely because there are private or institutional interests at stake, democratic policy making processes should implement consultations with
stakeholders to ensure that all of them are considered and to seek consensus among conflicting interests.

However, online consultations have a built-in bias. For example, part of the success of the Brazilian consultation may be explained by the fact that its topic, internet governance, was perceived as important by “cyberactivists”, a community particularly qualified and accustomed to online deliberation. In fact, similar consultations carried out after the MCR initiative – one on personal data protection and another on intellectual property – did not inspire the same degree of interest in the public.
REFERENCES


