DUBLIN – NextGen@ICANN Presentations
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ICANN54 | Dublin, Ireland

UNIDENTIFIED MALE: This is ICANN 54 Dublin, Level 4 Foyer, and this is the Next Gen @ ICANN presentation.

JEFFREY DUNN: Hi, everybody behind me. We're going to start in about five minutes. We have a few more people coming. They're a little delayed. Thanks.

Alright, everybody, we'll be beginning now, so thank you for coming. I know that you're all behind me, so I apologize for the setup. Welcome to the Next Gen @ ICANN presentation. All these students are between the ages of 18 and 30 from the UK and EU, and they have done a pretty rigorous application process to get here.

You've probably seen a lot of them throughout the meeting, walking around, trying to make friends with you, and networking and finding jobs. If you like anybody's presentation, feel free to walk up and offer them a job. I don't think they'll mind.

So how this works, it's relatively informal. We're going to just be going around the table here. They've each prepared a five-to-seven-minute presentation, and the presentation covers what they've been working on back home or back at university. And so the topics are varied and, as you can see in the programs that are on the tables that you're sitting at (please feel free to look through them as you go through the presentations) there are a lot of topics covered. They're going to be in depth as possible in five to seven minutes, so use your imagination as to how deep it will get.

But I'll also be sharing the slides on the ICANN meeting site as well afterwards because I know it's a little hard to see some of the finer points up there. I wanted to also hand it off to Agustina Callegari, who is our Next Gen ambassador. She participated in the Next Gen program in Buenos Aires, and she has been helping these students and adults going through the Next Gen process for the first time and making the meetings a little bit less scary, at least that's the goal.

AGUSTINA CALLEGARI: Good morning, everyone. I'm Agustina Callegari from Buenos Aires, and during ICANN 53, I was part of the Next Gen program. To make a long story short, I'm only going to say that ICANN 53

opened to me many opportunities and here I am again as an ambassador.

For all of us, this has been a very enriching experience, and we passed through a very challenging learning process with all the group. I will also want to highlight two crucial aspects of this presentation that we are all going to see now.

The first one is the ICANN team because this wouldn't be possible without their effort. Over the past two months, I had the opportunity to become increasingly aware of the joint effort and the logistics behind this meeting now. In order for this program to materialize, there are many people involved and working very hard like [inaudible]. I feel very grateful to them and they have a very clear aim that is [inaudible] people like us involve in ICANN community.

The second part of this program, of course, is the Next Gen team. They have been amazing all week. Luckily, I'm not going to deliver a presentation today, so I feel very relaxed. But I would like to encourage them to continue participating in ICANN, involve. I know that they are all very happy and very enthusiastic about this experience.

So once again, thanks for everything. This was an incredible week, and so now your turn to deliver the presentation.

JEFFREY DUNN: First, I want to introduce Sana Ali, who is from the United Kingdom, and she'll be our first presenter.

SANA ALI: Hello, everyone. Thank you so much, Agustina. You've been a really good ambassador, and I will be very sad to see you leave and also leave myself. I'll start right away because intend to go a little over my allotted time.

My presentation, I'd just like to disclose, first of all, that the scope of this presentation is not a comprehensive argument for or against intellectual property. That is far too big for me to deal with in the amount of time that I have. I just want to shed some light on some of the ways that intellectual property rights have transformed as a result of so many of our activities moving on to the Internet.

Specifically, they've transformed in a way that places new kinds of limitations and boundaries on the community of users, and this in turn has implications for our collective right to expression and free speech.

We live in interesting times, and doing the things that we might have done quite casually in what seemed to be our private lives just a few decades ago might result now in a lawsuit. As a result,

we have to reexamine some of our internalized behaviors in light of the merging and blurring of the lines between our private and public spheres.

To begin, I'd like to describe an image I came across during a particularly fruitful procrastination session while I was researching. It's an image of Liam Neeson from the movie *Taken*. I don't know if everyone has heard of it. I hope you have because, otherwise, this will make no sense to you.

It's a picture of a scene where his character is on the phone threatening his daughter's kidnappers with the line, "I don't know who you are, but I will find you and I will kill you." But this is what it actually said, and then I have a little pun under it. I don't know if you get that pun.

I thought this was quite funny because it reflected the high value our society now places on intangible goods, which are information products, and our almost comical observation with fighting wars over these goods with the modern tools of warfare, lawsuits.

It also alludes to a more serious problem, which is the chilling effect on the Internet of excessively throwing around legal threats relating to intellectual property and also, to go with that, a shrinking Fair Use defense. I will return to that after we've dealt with the basics. Next slide, please.

First of all, what is intellectual property? It consists of three different kinds: the trademarks, copyrights, and patents. All of these have a different set of issues relating to them.

In reality, the growth of the Internet has disturbed the old balance in different ways for each of them. But fundamentally, the purpose or the benefit of having IP stems from the idea of an individual's natural or democratic right to one's own labor, whether it be physical or intangible creative products and, secondly, the benefit to society that comes from, obviously, incentivizing creativity. More creative products are beneficial to society, and to encourage production, we must product the creator's right of initial distribution.

The 1710 Statute of Anne is widely recognized as the beginning of modern Western copyright framework, and it centered around the recognition that the intangible nature of intellectual property meant that you would have a loss of control and money making capacity after initial distribution. What copyright law was attempting to do was grant a right to a temporary monopoly, and it was not designed to grant any lasting control over actual access or future distribution.

For example, if you went into a bookstore and you bought a used book, that would be completely fine because when you purchase a physical copy of a book from a bookstore, you have

compensated the author for the work that they have done in producing the story. Once you've completed that transaction, the book passes out of regulatory oversight.

In other words, once the initial commercial transaction is done, you could read the book as many times as you wanted, you could lend it, borrow it, reread it, resell it, whatever you wanted to do, essentially. But the ultimate effect did not stifle freedom of expression, spread of information, or even control actual access to the work.

And in context of the time that the statute was passed, the main purpose was to try to limit the power of the legal monopoly by putting a timeline on it, which was 14 years, which is way less than what now happens.

What this did is essentially create the idea of a public domain. What that did was ensure that while you were protecting the commercial life of creativity, you were also protecting its noncommercial life and giving and protecting the social good by creating a right for creative reproduction or remixing because every creative product is kind of built from other creative products.

Now keeping that in mind, we come to the present, and I'll talk us through a few cases to demonstrate how that balance has kind of been upturned. Can we go to the next slide? Thank you.

In a recent talk, Shami Chakrabarti, who is the Director of Liberty, she provocatively likened Internet surveillance and the resulting self-censorship to cameras being installed in our living rooms. In doing so, I think she highlighted the deconstruction of that public/private divide that has characterized our social interactions for a long time.

And by extension of the analogy, the blurring lines now show us how problematic it is now that we cannot distinguish between public and private, commercial and noncommercial use, fair use and unfair use. Everyone is engaging in activity on the Internet, which isn't necessarily noncommercial or commercial by nature, because we all are acting as commercial entities in some way or another. By contributing our own creative content on host sites or by selling our attention to certain ISPs, we are deeply enmeshed in a web of commodity relations.

An outcome of this has been to blur the line between thought, speech, and intellectual property. What that does is ultimately act detrimentally for freedom of expression, what traditional IP law systems kind of tried to force on to this dynamic new social environment.

A case that demonstrate this is the Stephanie Lenz versus Universal. In this case, the Electronic Frontier Foundation filed a suit asking a federal court to make a declaratory judgment in

favor of the fair use and free speech rights of a mother who posted a video of her son dancing literally in the living room, but the background of the video was a Prince song.

Upon receiving a takedown notice from Universal, YouTube removed her content from the site without really asking her or anything. Basically what that meant is that there was no recourse available for her because even if she thought that what she was doing was under Fair Use, she wasn't able to follow up on that without the help of a huge NGO to come and pay her legal fees to fight for her right to Fair Use.

Another case we have, I should speed up a little, I realize. Another case we have is – yes, there it is – is the Barbie Fanzines versus Mattel. In this one, basically, around 1997, there was a proliferation because of the popularity of Barbie in parody sites and also fan sites on the Internet.

So basically, this was something that was always happening. Already, there were people remixing or doing what they wanted with their Barbies in the private sphere but then with the Internet, they started publishing their stories online. And suddenly, when this was potentially accessible by anyone from everywhere, Mattel began to send cease and desist notifications to these websites for violating their trademark. Star Trek fan sites have been similarly targeted by Paramount.

It's interesting to understand the implications of these threats made by the content creators to individual consumers on the Internet. From a freedom of expression perspective, it's highly problematic to note that the interaction with and consumption of a creative good was much freer in the past when no one could enter your house and prevent your child from handwriting a story featuring their favorite Star Trek character. That child could even take that story to school, share it with his friends, classmates, but to do the same thing now in an online environment could evoke a lawsuit.

I have a little snippet to read to you from one of the website owners whose website was taken down. She had a parody website of Barbie. She said, "I created this site to explore the phenomenon of Barbie, not Barbie as a toy or collectible, but Barbie as a symbol that a culture has created, absorbed, shaped, and been shaped by. The site is a visual exploration, just as children mutilate their dolls to create new stories and meanings, so too I mutilated Barbie, created new faces for her, changed her weight, her expression, added emotion, or removed that tiny shred of emotion that she normally has. Through this, I dissected the meaning that Barbie carries. I wanted to find the core of this symbol to discover and reveal the source of meaning. Many themes came out of this exploration, religion, sexuality, communication. Barbie can compete with any of the

great religious symbols of our team. She's an active representative of consumerism, a spokesperson for the American economic system. She is a model for feminine appearance. She transcends national language boundaries as one of the most powerful teaching tools of our time. Everybody knows who Barbie is. In light of this, it's perhaps not surprising that my site has come under the scrutiny of Mattel."

I don't know if you can actually see those images that I've put up, they're examples, but I think they're all illegal. Sorry.

Finally, we have our last case. These two images I feel are very striking because doing one of these things is not illegal but the other is. On the left, we have Sony's AIBO pet dog, which is a robotic dog that they created.

The AIBO robotic pet was reverse engineered by a hobbyist but not to violate copyright but to get around the encryption surrounding the software so that he could give the robotic dog the ability to dance. But Sony tried to prosecute him for publishing this information on his website because under the DMCA, you can be penalized for circumventing technology that protects copyright, regardless of whether it is done with the intention of actually violating the copyright itself. So in this case, teaching your dog how to dance is not acceptable because it's a robot and you have circumvented technology.

When Sony tried to prosecute him for publishing this information on his website, there was a public backlash, so they dropped the charges, but this is not uncharacteristic of what's happening, essentially.

I think what the three examples that I've given are trying to show is that the control that is granted under intellectual property right systems has now essentially gone way beyond the initial time limit allotted, beyond control over initial distribution, and the control also now extends into the actual ownership period, as well. So it attempts to control and delimit how we use the products by legal and technological means. Next slide, please.

So maybe we need to reevaluate whether intellectual property serves users' rights very well anymore. Perhaps it's time to update the legal framework for intellectual property to suit the new behaviors and potentials before us as users but also content generators and regenerators. Thank you.

JEFFREY DUNN: Thank you so much. Next up is Benjamin from Germany.

BENJAMIN BERGEMANN: Hi. I'm Benjamin. Thanks for having me. I'm a master's student of political science at the Free University of Berlin as well as a student assistant at Berlin Social Science Center, where we do

research on Internet governance and Internet policy, broadly speaking.

To begin with, I guess everyone in the room would kind of immediately support the idea that policymaking within ICANN should be even more democratic and inclusive. In my presentation, I will ask how a more democratic policy process could actually look like. And if you allow me a second guess, asked how to achieve more democratic and inclusive policymaking, I assume that many people here at the ICANN meeting would actually propose to improve the participation within ICANN in the first place. But the argument I want to make is slightly different from that. It's actually an empirical one.

I draw on the recent WHOIS privacy controversy and I'd like to tell a sort of alternative story of what more democratic policymaking might mean, but yeah, right. First of all, I owe you an explanation of what I mean by more democratic policymaking, and for that, I refer to the concept of politicization.

Politicization in Internet governance circuits sometimes comes with a slightly negative connotation, so to say, but in fact, politicization is a well-established concept and term in political science and, simply speaking, it means making things public.

To be a bit more specific, there are three conditions that can be applied in order to define a controversy as politicized. The first condition is the polarization of opinions. To have a political conversation at all, there need to be two different opinions, so this is the basis of politics, so to say. The second, an intensifying debate. These different opinions need to be voiced, actually. The third component is public resonance, meaning that there needs to be an audience present who is affected and who actually follows the debate.

I will now draw on the recent WHOIS controversy, which I deem as rather politicized in this sense. Can I have the next slide? Thank you.

Just to briefly introduce you into the case, simply and mutually speaking, the policy process is about clarifying the roots and responsibilities for privacy and proxy services. These services allow people who registered a domain name to hide their personal information from the WHOIS database. The controversy around that unfolded sometime after the publication of the working group's initial report in summer 2015.

Many observers in fact noted that the degree of public debate and engagement was outstanding. But which factors made it politicized in this sense? From my point of view, there are three factors that stand out.

The first factor was a non-technical framing. In the initial report of the working group, it's really difficult to find out what is at stake here. In a quite technical language, the initial report states that it wants to: "Provide a sound basis for the development and implementation of an accreditation framework."

In contrast, many actors, especially civil society, emphasized that this is a privacy issue what is at stake here, that this is a human right. And I assume that framing the debate in terms of privacy made it more accessible to many people and also allowed for more polarization.

The second component I want to refer to is that there were actually channels outside of ICANN used to enhance participation. There were two campaign websites with form letters, a petition, and a telephone tool, and these are all tools we are familiar with from domestic Internet policy campaigns like Net Neutrality and SOPA people.

These tools kind of enabled people to participate without being familiar with the formal ICANN participation procedure, and one could even argue that these tools were kind of nice hack or tweak to the official ICANN participation procedures. To refer back to the concept of politicization, one could argue that these alternative channels helped intensify the debate in a way.

Coming already to my last point, there was considerable public resonance in terms of media coverage. The big tech blogs like Ars Technica, Buzzfeed, as well as the Tech Policy sections of big media outlet, as you see The Guardian there, covered the proposal. I think this is actually the exception rather than the rule to have this kind of an audience for Internet governance at ICANN.

In contrast, domestic policy issues surrounding the Internet seem to be rather well covered these days. So even your parents might know about the "right to be forgotten" ruling last year, but they don't know about Internet governance at ICANN.

To conclude, I think there could be quite a few takeaway points from my presentation, but the most interesting point for me is that there seems to be a line drawn between what is Internet governance and what is so-called public policy. This line, I think, is first a bit artificial, so to say. This line kind of demarcates politicization and depoliticization, and this is what I wanted to show with that graphic.

It seems that whenever issues leave the realm of Internet governance in terms of framing, in terms of participation, and in terms of their audience, they appears a public policy issue and they appear more politicized. This is exactly what happened in the case of the privacy and proxy services. Thank you. That's it.

MICHAEL BOOTH: Thanks, Benjamin. Hi. My name is Michael Booth, and I'm a second year undergrad at Portsmouth University. Today, I'm going to be discussing IPv6 and internationalized domain names for end users and organizations. I'm going to be looking at how ICANN engagement affects the usage of these and what can be done to raise awareness.

For those of you who don't know, IPv6 is the new addressing protocol. It's longer than IPv4 with a couple of billion more addresses. IPv4 has 4.5 billion, which seems like quite a lot, but that's not enough. We've now run out. IPv6 has 360 undecillion, which is a number of with no real meaning, so quite a lot. IDNs are a new type of top-level domain, which uses non-US text, so Chinese and Arabic text can be used for the domain names.

The first thing I looked at was the deployment of IPv6, and the responses I got were along the lines of, "We're going to have a project starting in the future or we use IPv6 because we have to." I asked a couple of organizations and these are responses I got.

Initially, 318 organizations used IPv6 for IPv6 World Launch Day, and since then, more companies have picked up and started using IPv6 as well as ISPs. There's a chart here. A lot of people have been documenting the usage of IPv6, so there's the IPv6

launch website. ISOC has a Deploy 360 program, and other companies such as Cisco have got statistics.

The Google one's here are the easiest to look at the charts. So it shows here a pickup in IPv6 on the November 9, 2009, which was the world IPv6 launch. Again, we've next got another usage increase in June 2012, which was World IPv6 Day, which was when companies were meant to put their IPv6 online and begin using it. We've then got, more recently, a 3% increase can be seen since February to October this year. So all the traffic going to Google, 9% of it now is using IPv6, which is still quite a small percentage. But when you think about how much traffic Google must get, that's quite a lot still.

I then looked at the importance of IPv6, so I was thinking why do companies use it or not use it? The importance placed on IPv6 by organizations reflects how they use it and reflects how ISPs use it. Nobody wants to be the first one to implement IPv6. A company wouldn't want to use it if no customers are going to be using it. An ISP wouldn't want to use IPv6 if no websites are using it because they would be useless to their customers.

So again, I was asking different companies, and one quote I got here was that IPv6 will become important, but right now, it's not, and it's more important that people are aware and training for other technologies.

I then looked at the interest in IDNs, so these are the internationalized domain names. There are 6 million IDNs in use, which is 2% of the global top-level domains, and we had 1,900 applications for the new generic top-level domains. When I looked at this again, a lot of companies are using IDNs and buying them up because of copyright risks, so they want to make sure they've got their brand and keep their own brand recognition. A leading domain registry when I asked said they believe in IDN, and they'd actually bought quite a lot of the new IDNs and generic top-level domains.

Academic syllabuses did not focus on IDNs, so I looked at A level and university syllabuses here. I found they looked at the older generic top-level domains, so .com and .org and .net, and none reflected IDNs or the new generic top-level domains. This could be, of course, because they're quite recent and syllabuses haven't been updated yet.

I then looked at how Internet governance affects this as a factor. At the companies that I talked to, ones that had direct contact with ICANN were more likely to already be using IPv6 and using IDNs. I asked a university, a domain registry, an international institution, and high school, and the only ones that were using IPv6 already were ones that were deeply involved or having varying degrees of involvement with ICANN already. And it's the same for IDNs.

So I think until all companies support IPv6, or at least most, and that's including the smaller ones, we won't see any uptake on IPv6 because it's just not realistic for ISPs to use IPv6 when companies and websites that their users want to access aren't running IPv6.

IDN usage will increase and it's already quite high. We're seeing really good uptake on this, and it has been very well received. I think this is because it has been well advertised, especially in Asia. Individual users are, I found on the whole, unaware of ICANN and unaware that they can input. So they won't have been seeing much usage and many will be unaware of these technologies.

I also found that the more aware an organization was of ICANN and the more they participated, the faster and more likely they were to use new technologies, so IPv6 and IDNs. There were also compatibility fears, so no one is currently just IPv6. Again, that would not be realistic because they wouldn't be able to access the parts of the Internet that are on IPv4.

So overall, I'd like to see more focus put onto IPv6 adoption with a framework setup to inform people. This is large organizations and smaller ones who maybe rely on consultants to inform them about the use of IPv6 and other technologies. IDNs on the whole, they're already doing quite well. People who need to use them

are using them. I think it's not always the computing departments. It's marketing departments that need to be seeing these more. So again, they're unaware and a framework needs to be set up to make these departments aware more.

I'd also like to see a feedback network for end users, possibly voluntarily through ISPs, so that they can get more involved with ICANN, where they maybe don't know it exists or have ideas but have no understanding of how they can share them. I think also that general ICANN engagement can be worked on, as well. We're now part of the Next Gen program, but I'd like more pressure to put onto academia to increase the knowledge of IPv6. I've run out of time, [whatever] I think. Alright. Thank you.

JEFFREY DUNN: That's okay. I just wanted to welcome a very special guest, one of our biggest supporters within ICANN, Fadi Chehade, who you probably all know. I wanted to invite him just to say a few quick words to these students who are just beginning their stakeholder journey. Then we'll continue with the presentations, I promise.

FADI CHEHADE: I would frankly rather stay here and watch these presentations, but the Board called for a meeting right now, so I need to go and

attend it. I am a great supporter of this program. This program was birthed during my tenure because I believed that you will be critical to the new ICANN. ICANN is becoming independent within the next few months, and an independent ICANN will need everyone to keep it strong and to keep our values and principles exactly where they need to be.

This morning, I spoke to the fellows, some of you were there, that without those principles, without this commitment that brings us together, ICANN's independence could be fraught with many difficult things.

You have watched in the last few years countries become independent of either powerful leaders or colonial powers or whatever. Some of them did quite well. Some of them didn't fare very well. And if you ask yourself why, why? Why did, I don't know, why did Tunisia a little bit better than Egypt? And what's behind that? And you will find that in these cases, there's a group of people that stuck to exactly the same principles that led them to start this independence drive throughout and after and did not sell themselves short of the principles that led them through this.

And we today, at ICANN, are going through that independence drive. We're going from a moment where we had a steward, a good steward, but nonetheless, a steward, and a country, in that

case, the United States, that had unique control powers over what we do. And as that ends, it is incumbent upon us to make sure that an independent ICANN is strong and is rooted in the principle that we all believe in.

You are the young, I think, purists that can keep this truth. I met, as I shared this morning, with the heads of the International Red Cross in Geneva recently and asked them, "How do they keep the International Red Cross independent and neutral even in times of war in the middle of people shooting at each other?" When an ambulance comes in with the International Cross sign, people stop and respect it. How do they manage this neutrality? This independence?

And I thought they will tell me because we have contracts, we have treaties, we have things that we sign with all these governments. No. They said it's principles. We had principles and we stuck with them. And governments know that we stick with our principles.

So what are the principles of ICANN? What are the principles of this community? What will get us there together? This is what we should ask about. So as lawyers roam this building and want to change all kinds of bylaws and laws and agreements and words, ask yourselves, what are the principles that bind us? Because that's what will be left. That's what will be left.

And I'll point you to, for example, the NETmundial principles that were developed in Brazil in Sao Paulo in April 2014. This would be a good place for you to start looking at common principles that bind this community. Live by them, call people on them, make them living principles, not just written words.

I can't thank you enough for the time you gave to ICANN this week. Thank you. You're early in your careers, you're shaping who you will be, and I hope that this week, this experience contributed to that shaping. You get shaped by your environment, you get shaped by your families, by your professors, by the people you meet. But at the end of the day, at the end of the day, you will hear many things and you'll see many things, but there are a few things that matter. There are a few principles on which you will stand all your life. You're shaping them now. Make sure you know them. No one should tell you what they are. They're inside of you. Just know them and stand by them and don't give up on them no matter what happens, including all the pressures I feel, you feel, everybody feels at ICANN. Stand by what to believe in and don't give up. So welcome to our community.

You have my support, you have my team's support. We look forward to working with you and to see you, and I hope to see some of you in Marrakech, even if you have to swim over from someplace, just come. We need you there. Marrakech will be a

key meeting for ICANN, a historic meeting for ICANN and, also, my last meeting, so I'd love to see many of you there. Be well. Take care.

JEFFREY DUNN: Thank you so much, Fadi. We're going to continue with our presentations, and we move on to Giovanna Carloni from the United Kingdom.

GIOVANNA CARLONI: Hello. It's a pleasure for us to have Fadi speaking here, and I really do hope he stayed a bit longer. It's a shame that he's going away but, well, my name is Giovanna Carloni, I come from Brazil. I've just finished my master's in law and technology at Queen Mary University of London. So as I have a legal background, I'm not going to talk about IPv6 and tech stuff, but I hope I can give you some good information and I hope you'll find this interesting, at least.

I'm going to talk about Internet regulation and how to make laws for cyberspace. Talking about Fadi, actually, and we had a lot of time to spend with him this week, he was very, very nice to stay with us for many meetings. In most of the meetings, he actually mentioned the layers of Internet governance, and I guess all of you are quite familiarized with that.

I'm kind of going to talk about the layers, as well, but I'm giving a different perspective. I'm bringing here a theory by Professor Lessig. It's the theory called the New Chicago School. He actually says that our actions as individuals are constrained by many different forces. Two of these – you can't really see in this light, but actually, I don't have my slides. One back.

Oh, yeah. Unfortunately, you can't really see, but we're going to share it with you anyway. So there is a circle and around this circle, there are four forces that constrain our actions. There is the market that constrains through supply and demand. There are social norms, so our community constrains our actions, as well. There is the architecture. So features of the world, natural features actually constrain our actions, such as physical and biological features. We are constrained by that.

And actually, Lessig focused his theory on that, so he says, actually, that this theory applies to the Internet because the architecture of the Internet is the code, and the Internet is constrained by the code. But a fourth force that constrains our actions as individuals is laws. And actually, if you think about layers, law would be in the top layers, so it would be in the societal and economic layer, whilst the architecture would be in the logical layer where ICANN is.

And we heard yesterday, actually, that the societal layer, so you could think about the laws, they actually influence the way ICANN is acting. He gives a lot of examples but I'm not going to go in it. So you can pass, yeah.

So we're going to talk about laws here, and one thing that Fadi always says is that because of these conflicts between the layers, we need to find a balance because the Internet has a transnational nature, so why shouldn't we give it a transnational approach? ICANN is a multi-stakeholder model. We could use that, but actually I think we could focus on how we could actually make laws and national laws and not from an international perspective but work on the national perspective and try to avoid these conflicts between all the layers and try to produce more effective laws for rights for cyberspace. You can pass, please.

So I'm bringing another theory, and I'm going to try to be very brief here. Chris Reed is a professor from our university in London and he wrote this book called *Making Laws for Cyberspace*, and this what he says: "The system of laws which aim to govern cyberspace is so [inaudible] that it fails to fulfill its purpose." I think you could pass.

This is what he proposes. Lawmakers should make laws in a different way in order for these laws to be effective. They should

focus on cyberspace actors. They should consider what cyberspace actors already do and draft their laws having this in mind. Also the laws have to be understandable to these cyberspace actors and, very importantly, they need to be possible to obey. Otherwise, they're just going to be ineffective and cyberspace actors might ignore them, even though these laws high and strong sanctions, they could possibly be ignored as we saw in many examples.

So therefore, the laws should have a clear connection between the obligations that they're imposing and its normative aims. Pass the slide, please.

Interestingly, in our newcomers meeting on Sunday, Jean-Jacques said this to us: "A standard works not because it is mandatory but because it is widely adopted." And you can actually apply that to laws, as well. A law should not work because it's mandatory to obey but because the cyberspace actors actually recognized the legitimacy of these laws to constrain their activities. You could pass the slide, please.

What we have when lawmakers don't consider all these factors in order to make effective laws is we have meaningless laws. So we have laws that are not respected by the people to whom they're being directed. Pass the slide, please.

I bring here one example, because I come from Brazil and we are quite excited with our new Internet law. It's called Marco Civil. I hope most of you heard about it already. Marco Civil was approved last year, and I didn't come here to say it is a meaningless law but actually to give you some facts and ask you some questions so you could actually think if Marco Civil is really going to be an effective law and is really going to achieve its aim, which is to enforce rights and enforce rights to Internet users and it also imposes obligations in Internet service providers.

Marco Civil was created after a long public process of participation, so it included the interests and comments of many sectors of society, and so this is a good point. Marco Civil was sanctioned by our president during NETmundial, so this is also an interesting factor, but the thing is that Marco Civil is a technical law at some point, and it's also detailed. And now it's being under process of regulation, not in terms of European regulation or European law, but actually it's going to be administratively even more detailed in order to give guidance to people who are supposed to comply with this law.

But if we think on Professor Reed's theory, the idea is that a law should be easily understandable in order to be possible to obey. So possibly after the regulation, it's going to be so complex that the Marco Civil is not going to achieve its aims.

I'll give you just one example. Article 10 Paragraph 4 of Marco Civil says that data protection should be safeguarded in terms of security, but the regulation's going to establish in which terms this security should be achieved. So is it for a law to really give the way to achieve its aims, or should the law just give its aims and leave for the actors to go there and achieve it?

I'm just going to finalize saying that our lawmakers should really think on how to make laws for cyberspace so they become effective and not meaningless. Thank you.

JEFFREY DUNN: Thank you so much. Next up we have Alexandra.

ALEXANDRA CHERNYAVSKAYA: Thank you very much. Welcome, everyone. My name is Alexandra Chernyavskaya. I'm originally from Kazakhstan, but currently I'm studying at the London School of Economics, and that's where I researched the topic I'm about to present.

I would like to start with an example from the pre-Internet era. In the beginning of the 1990s in the UK, there were two competing broadcasting companies, both of which were suffering from major financial losses at the time and it seemed like the only solution for them would be to merge into one company.

In the same year, government has made a decision to replace one regulatory media body with another one. While both of those regulator institutions were very skeptical about the proposed merge of the two companies, in five days, that took one authority to step down and for the other to take control of the license of one broadcasting company was transferred to another, and thus, the merge was completed while basically nobody was watching.

Rumor has it that the head of one of those companies visited 10 Downing Street just before the merge. The office was at the time occupied by Margaret Thatcher. And although nobody can definitely prove that something went on behind the closed doors, there are still rumors that that meeting contributed significantly to the merge that took place.

Of course, that was television, but this example actually illustrates how much potential influence media corporations can have on policies that in turn affect the society. So what about the Internet, then? Today, it seems to be at the center of things. A person can access any information at any time, and unlike television, digital media communications largely remain outside the top-down regulation unless it's the very backbone of the Internet. And it's mainly due to the presumed innovative capacity and the competitiveness of the players within the digital market.

So Internet is left to regulate itself and the companies' market share or the dominant market position don't seem to be of much concern. Indeed, there is a very popular notion that digital marketing has the capacity to offer the public unprecedented level of freedom. While new media indeed have that interactive quality, we have to remember that a great proportion of the participatory environment is controlled by the private interests whose main goal is obviously profit. In fact, it has been recently suggested that the structure of the algorithms of the search engine and social networking sites, thanks to advances in personalization, are providing users with more information which they are likely to agree with or like rather than something that's likely to challenge their beliefs or their views.

This created something that's been named filter bubble. However, it's not the actual filtering of the content that has to be considered here but the obscurity of that process of the filtering and users' inability to look inside that algorithm and to understand what is actually going on.

So why telecoms are left to their own devices and permitted to self-regulate? Is it because it is impossible to regulate or is it because it was that way from the very beginning and nobody can be bothered to change it? Or because the market players find it very convenient to go a great length to maintain that

relative freedom and keep the idea of top-down Internet regulation off the mainstream political agenda?

Well, I reckon it's a bit of everything. Next slide, please. So in my research, I asked whether the large telecoms can use their significant monetary and human resources, as well as their connections, to make sure that regulatory framework remains as favorable to them as possible.

I have to say that it's not an easy question to answer. It's unlikely that lobbyists in a recorded interview would say that they use this or that tactics to make sure the company is not restricted by any new piece of legislation that they don't like. Well, luckily, lobbying is not the only practice that exists. Within the European context, litigation may become a rather effective tool, and it's significantly easier to actually observe and document and study.

It has been claimed that it's primarily due to the mandate of the Court of the Justice of the European Union whose rulings can be rather proscriptive and who can overrule some of the national regulations to extend their rulings to a number of countries at the same time.

So I looked specifically at the rulings of the Court of Justice in relation to a large digital corporation and people who surrounded the court proceedings as well as the research produced by the company around the same time the litigation

took place. Basically, what I did is I analyzed the ways people are connected outside the actual court proceedings and the pathways through which information that may affect the outcome of the case can be transferred to the decision making within the court case.

There is a whole bunch of academic literature that explains and justifies every bit of this design, but unfortunately, I can't recount that now due to the time limit and I don't want to make it more boring than is absolutely necessary.

There are two components. Could you come back to the previous one? There is no graph. Okay, there is no graph. Okay. I'll try to explain it. There are two components that I examined. The network of people that basically this graph is supposed to represent the research activity of the company. So the number of publications the topic of which corresponds with the case that they were involved in at the court, and basically I realized that the pattern of the research that's being produced actually kind of coincides with the milestones in the litigation process, while basically all the peaks in the largest number of research is actually produced, for example, when they file the first complaints to the court or when they appeal to the European Court of Justice whereas the decrease in the number of research publications goes down when they are waiting for the results or when they're expecting to find the ruling of the Court of Justice.

Could you go to the next slide, please? The second component I examined is the network of people that surrounded the court cases. For example, in the case here, company M and company S – sorry, I can't disclose the names – have an equal number of connections to the decision making bodies, but while company M only had a connection to one decision making individual, S had connection to two court representatives, which could be seen as a greater source of potential influence.

Basically, unfortunately, the entity I studied did not have any case that they won in the European Court of Justice. And, in fact, neither of the cases I examined had the perfect combination of the available information and the network connections that might guarantee them the favorable outcome. So in the future, it'd be interesting to have a look at more cases and see whether the theory still stands.

So why does it actually matter? It matters because citizens are removed from the policymaking process and hardly have any say in it. This is particularly worrisome in relation to the media and communications sector because the access to reliable information, most particularly news and current affairs information, is believed to be one of the foundations of the democratic society. However, when the digital media and telecoms corporations due to their gatekeeping capacity can affect the way we access information and, at the same time, can

also affect regulatory norms on which the entire process is based, the whole situation might need to be looked at with greater scrutiny.

To conclude, I by no means suggest that self-regulatory model of the Internet doesn't work. However, we must be wary when we leave commercial entities whose primary goal is profit to roam freely on the Internet, which is a precious tool and it would not be prudent to turn the Internet into a battlefield on which corporations are fighting for their customers by means of questionable tactics. Thank you.

JEFFREY DUNN: Thanks. Next up is Christopher.

CHRISTOPHER DENNETT: Hi, guys. I'm an international politics student, third year, so finishing my degree this year. I'm going to talk to you about anonymity online, so briefly looking at the interest of big businesses and the rights of individuals and how we can actually try and balance it.

To introduce this, since 2005, look at how far we've come over the past decade. Society has become ever more digitized, so people are putting more and more of their information about themselves online to the point where we've got almost two

personas: a persona that is physical where you're talking to me in person and also the digital persona. And this is the one that really matters and what I'm going to talk about.

The digital persona is all the information that you put online, your Facebook, etc. This data is valuable and with this comes the rights of individuals, so the rights to privacy. We need this protected.

I was inspired to actually talk about this speech because of the recent WHOIS controversy. Like Ben, I read The Guardian article and I looked at where it actually came from. It turned out it came from the initial report on the privacy and proxy services accreditation issues. It's specifically concerning the requirement of transparent WHOIS data for a person engaged in commercial TLDs.

This is really good for businesses because it does away with proxies and it creates a centralized database where they can easily access people who are in theory breaking the law. And it really does seem to fall heavily on the side of business interests at the expensive of individuals.

But that WHOIS controversy, it doesn't work. In theory, it works, but it doesn't in reality because all you're going to do is you're going to catch the stupid criminals who are going to host illegal content on a commercial website with their personal data for

everyone to see, and meanwhile, you're going to catch the innocent people who because of this, are going to have to put their own personal data up, which is susceptible to people like spammers and a wide variety of people who just want to harass people because they've got nothing to do, unfortunately. This is what people, as The Guardian article said, they SWAT attack people, so they send SWAT teams around because they've got nothing else to do, it seems. The Internet is very broad and it's not just full of intellectuals. We've got to remember that.

What I'm actually going to talk about is I'm going to look at the interests of businesses, the rights of individuals, and also what ICANN can do and what policymakers can do, so what we can do, essentially.

The interests of business primary fall under one scope, which is the protection of assets. In 2012, the MPAA claimed they made a loss of $58 billion due to online privacy. This is up from $8 billion in 2005, so alluding back to the digitization society, you can see how far we've come.

It's therefore necessary that people in your position, in ICANN's position, to provide a platform to protect themselves, and there are two sub-interests. Firstly, the ability to pursue, and secondly, the ability to deter, which is much more controversial.

Regarding the ability to pursue, it's necessary for ICANN and people in positions of power to actually create a centralized database to actually pursue lawmakers or, failing that, enhance cooperation between relevant bodies because, at the end of the day, it is their assets that are being utilized. It's people that are stealing it online, but we do it so casually it's become a norm somewhat in society.

And secondly, the ability to deter. We've got all these films online that are readily available that instead of paying to go to the cinema, like watching *The Martian*, for example, we can watch it in the safety of our own and not have to pay that 5 pounds. And this is wrong because, essentially, we're stealing. You wouldn't go in a shop and steal some oranges, so what's the difference?

The difference is that the physical act and it's so easy to forget that because we are online that we are actually committing a crime. And so if there an ability to deter for businesses, to make an example, then this may actually help them. It may stop people. It may help people put it in perspective that we are actually committing illegal acts by doing something that is very casual.

That's all good and well, though, but what about the interests of individuals? There are two rights to individuals. Firstly, the right to privacy, and secondly, the right to express yourself.

The right to privacy, if we're going to look back at the WHOIS controversy, is necessary for people to protect themselves. If we look at an unregulated database that exists for commercial gTLD owners, then they're vulnerable and we can't allow something like that.

People have rights and particularly if you're a European citizen, under the European Charter of Fundamental Rights Article 7, we're protected, and that couldn't happen. I mean, I'm no lawyer so I'm not going to go into the specifics, but it's necessary to remember that individuals do have a right to privacy.

Secondly, the ability to express yourself. One of the key reasons that the Internet has succeeded is because people can remain anonymous. They can express ideas that other people might not necessarily agree with and not face all the flak that they would if they do it in person. It allows people to actually develop ideas and lets people learn, and it's important that we protect that.

Therefore, it's essential that privacy is guaranteed in order to limit the risk of reprisal for expressing one's ideas. I mean, if you take, for example, Michael, who sat next to me. If he put something on his website, michael.com, which is a commercial

gTLD, that I don't like, I could quite easily go on WHOIS, according to this WHOIS controversy, if that was implemented, I could go online, find his details, and I don't know, I could send the police around saying that he's going to kill someone. And all simply because I don't agree with something that he's put online.

And it's incredible that this was even considered. What we've essentially got, if you want to go to the next slide, is ICANN and the wider public are actually stuck in a position where we've got two opposing sides that actually both have really legitimate claims. One with the right to protect their assets and the other one to protect their own basic privacy.

So we've got to try and find a balance and, unfortunately, I've got a couple of minutes to do this, so I'm not going to find a balance because people have been talking about this for decades. Right? So I actually came up with five ideas that are not just specific to the WHOIS controversy, but generally, like that we should all incorporate and remember.

Firstly, it's that when developing policy, we've got to be aware. So what we think would work and what works in reality is something to consider. So this WHOIS controversy, I mean, in five minutes, I came up with four points to actually beat this system. Pseudo names, setting up a shell company for less than

50 quid, using a PO Box, avoiding DNS and actually just using IP addresses are all ways that the people that you're trying to target are just going to get around. And again, it's going to put the individuals who are not doing anything wrong in a vulnerable position.

Secondly, we've got to improve verification on WHOIS data. At the moment, it's suggested that 40% of WHOIS data isn't accurate. What ICANN could do about this is maybe introduce various levels of payment verification that are a lot more specific. And with possibly even a move to something like for owners of commercial gTLDs to look at who's actually viewing their profile. I mean, obviously, make exceptions for people like the FBI and police force, etc. But I was actually told the other day this isn't actually possible for maybe at least another five years until the database is actually wrote, so we'll have to put that one aside for now.

Finally, thirdly, listen to big business. Big businesses have a right. It's very emotionally charged debate, this. If we look at it, we're all individuals but we're not all businesses. We don't all have assets to protect, so we tend to only really be able to sympathize with one side, which is what am I going to get out of it? But instead, we've got to realize that businesses do have a legitimate claims, too, as much as we might hate and as much as

we might want to watch some online film instead of paying the extra five pounds, which they deserve.

Fourthly, acknowledge that nothing is perfect and make provisions to account for this fact that people may undermine a policy. We've got to create flexible policy that is adaptable to changes, and we've got to look and try and perceive any possible developments, any possible ways to get past this and create buffer zones that stop them exploiting it too much.

And finally, think forward. We've got to be flexible and creative in the way that we address online privacy and ready to adapt to changes of businesses and personal rights. The UN is considering making the right to encryption something in the near future, and we've got whatever policy we're going to make whenever we're considering this debate between the interest of business and the privacy of individuals, we have to bear in mind that the world does change and the Internet does develop, and so we've got to create something that's futureproof.

With that, I spoke to you about the interest of business, the rights of individuals, and also I've just offered you five very brief suggestions as to what policymakers and ICANN and the community can do. Thank you.

AYDEN FERDELINE: Hi, everyone. Thank you for coming today. My name is Ayden Ferdeline, and today I'll be speaking to you about how influential civil society is in shaping and framing spectrum policy in Europe. I'll disclose something fairly self-evident. Spectrum is not an Internet governance matter. However, there are parallels between how spectrum policy is made and how ICANN interacts with its stakeholders, particularly in relation to topics perceived as being more technical.

Each era of humankind has had a resource that drove wealth creation. In the agricultural era, it was land. In the industrial era, it was energy. And now in the information age, it is electromagnetic spectrum: invisible radio waves that allow a message to be transmitted from point A to point B.

Leaving aside what spectrum is, all you need to know is that it's an immensely valuable, finite resource, which is managed by states with gross inefficiency.

Spectrum is no longer an obscure abstraction for most people. Today, Europeans are experiencing firsthand difficulties making phone calls, streaming online videos, and interference over Wi-Fi networks. These are not abstractions, these are spectrum policy problems. The allocation of spectrum in the UK and at the supernational level in Europe is subject to public participation

protocols that, on paper, sound meaningful, accessible, and transparent.

But when spectrum policymakers seek input from the public, very few citizens choose to have a say in the policy choices that directly impact them. Spectrum regulators in the UK and at the continental level have formally consulted with the public on matters of spectrum policy on 105 occasions over the past five years. The number of responses received from individuals on an issue directly impacting 250 million Europeans numbers between 0 and 45 respondents per consultation. Most would be nearing towards zero.

These consultations have, at least since 2010, been administered solely online with no offline engagement efforts. This low response rate is unusual in an age of democratic disenchantment when citizens are demanding to have more and more of a say in how their lives are governed.

In scholarly literature, a lack of participation in public consultation processes has been attributed to a perception that government officials do not value citizen participation. This is supported by opinion polls. According to a 2010 Eurobarometer poll, two-thirds of Europeans say their voice “does not count” to policymakers, and this perceived democratic deficit threatens the legitimacy of the European project.

I wanted to know if there was any truth to this perception to decipher the reality from the rhetoric. So I performed a software-assisted qualitative content analysis on 127 consultation responses submitted to one of two public consultations, one run in the United Kingdom for Ofcom, the other at the European level by DG Connect. I compared the regulators' assessment of the responses against an independent assessment, which I conducted, of the same consultation submissions.

One of the principles of an effective consultation process is that the process is one that invites participation from people of all walks of life. Both of the organizations whose consultations I researched emphasized in their policy documents and in other materials that their processes are more egalitarian than elitist, accessible to all.

This did, at first glance, appear to be true. When I compared the respondent demographics against those of the average respondent breakdown for a digital consultation run by the European Union, there were more responses from individuals or consumer groups than is the norm.

I determined that 35% of the responses to spectrum consultations came from individuals or consumer groups, which is actually quite high. You can't see it on this graph at the moment, but 45% of individuals or consumer groups, 45% of the

responses to a consultation run in the European Union are usually by individuals. However, of these 45%, over 40% come from academics, which suggests that individuals with no institutional affiliation represented 4.5% of the total respondent pool. In comparison, in spectrum policymaking, 35% of the respondents are from individuals with no institutional affiliation.

But in spite of there being at least as a percentage of total respondents not in terms of raw numbers because as I mentioned earlier, these consultations are receiving between 0 and 45 responses whereas some consultations by the European Union will receive in excess of 200,000 responses. So in spite of this, of there being a greater proportion of individual respondents than is the average as a percentage, there are indications that the stakeholders who chose to participate in the two consultations and whose voices were heard by the regulator, fell within a more democratic elitism camp.

For instance, in the consultation by the UK regulator Ofcom, three mobile network operators objected to a proposal that an overlay auction approach would be the best mechanism for auctioning off the 700 megahertz bandwidth spectrum. And Ofcom heeded to this, ignoring objections from all of the civil society respondents.

I'd like to touch upon briefly how I made that determination. There is no shortage of organizations in the public and private sector talking about spectrum in Europe. They even submit responses, some of which are hundreds of pages in length and would take a lifetime to read. So to aid in the process of reviewing 127 responses, I used a software tool to transform lexical co-occurrence information from natural language into semantic patterns.

I then applied Bayes' probability theorem to cluster together themes of content based upon meaning. This was done by first indexing all terms within a document. I then used these terms to build a dynamic dictionary that iteratively extended the seed word definitions followed by executing co-occurrence distributions and clustering algorithms to calculate a host of relationships, including a measurement of the statistical strength of each relationship to gain a broad overview of the main themes within the raw data. This process identified ten major textual themes raised by stakeholders in their consultation responses, and that's what this graph is showing.

I performed this process twice, once on the raw consultation responses and again on the consultation summary documents released by the regulator from where I manually compared and contrasted the themes identified. Next slide, please. I'm running

short on time, so I think I should skip this slide. Thanks. I don't think the statistics are going to interest everyone.

But in summary, I was able to identify a low variance in language among certain responses, which suggested that there were at least two orchestrated campaigns by special interest groups seeking to sway the regulators' judgment. And at least one major topic surfaced, which had been ignored entirely in the summary documents that were produced by one of the regulators, DG Connect, at the European level.

So while the regulators, Ofcom and DG Connect, do accept the views of those stakeholders who actively choose to engage in formal consultation processes, they need stronger mechanisms through which to engage with ordinary citizens in relation to spectrum policy. Having online consultations is fine, but even in the most developed countries, broadband penetration is not at 100%, so more research and more work is needed to identify how we can build engagement in online policymaking processes amongst those who may not be aware that they have an interest in something, be that spectrum, or be that one of ICANN's core activities, and this matters.

When I discussed my findings seven weeks ago with a representative from DG Connect, which was the European Commission Directorate whose consultation that was analyzing,

I was told that those who respond to spectrum consultations are the experts in the field and that public involvement in spectrum agenda setting would be problematic because the subject is simply too technical for the average person to understand.

I disagreed, and that's because there is empirical evidence that even citizens who only sporadically participate in decision making have the same judgment the experts in the field possess and do know how to properly appraise complex evidence when, and this is important, when given the time and the opportunity. Next slide, please.

Of course, the cynic inside of me thinks there is another reason why we don't involve the public in decision making. It reminds me of how the gold miners in the film *The Treasure of Sierra Madre* pretend to outsiders that they're not gold miners and they've not stumbled across anything of value lest their gold fall into someone else's hands.

As it stands, those who respond to spectrum consultations in European are a small group of insiders who are aware that the value of spectrum today is greater than all of the gold ever discovered. These insiders do not have much of an incentive to disclose more and more information to the public in an accessible way. It's thus up to regulators to make sure every

voice is heard and every stakeholder is aware that they have a stake in the game.

Thank you for your attention.

VINZENZ HEUSSLER: Ladies and gentlemen, my name is Vinzenz Heussler. I studied law. I'm from Austria and I'm currently a researcher at the Center for Computers and Law, the Law faculty of the University of Vienna.

The subject of my presentation will be the Trademark Clearinghouse. First, let's take a quick look how the domain name system trademarks correlate to each other. In the domain name system, a domain name serves as a name for IP addresses helping us humans to find Internet resources, whereas a trademark identifies goods and services as being from a particular source.

So how do they both correlate to each other one [inaudible]? Technically, there's one unique domain, but there are various competing trademarks out there with different scopes. Moreover, we have the so-called trademark dilemma. The increasing [inaudible] trademark owners [inaudible] creation of domain names incorporating the trademarks.

In the last decades, domain law found solutions for these problems. However, the Internet underwent a revolution in the meantime, the new gTLD program, which exponentially increased the number of available domain names. So now we have two levels of potential infringement, level one being the TLD itself – so next slide – and level two, being the second level domain name under the many new gTLDs.

This is where Trademark Clearinghouse comes in. The Trademark Clearinghouse is a global database established by ICANN containing verified trademarks from all over the world that serves the purpose to prevent trademark infringement at the second level in the domain name system.

It opened for submission in March 2014, and August 2015, we had approximately 38,000 trademarks from 120 jurisdiction in the Clearinghouse. The aim of preventing trademark infringement is particularly achieved by two rights protection mechanisms: the sunrise period and the trademark claim service.

There are many issues about the Trademark Clearinghouse. I decided to take a side focus on the so-called matching rules. When you submit trademark information to the Clearinghouse, a set of matching domain name labels is generated according to a set of defined matching rules.

The Trademark Clearinghouse database is structured to identify when a domain name is considered an identical match with a mark in the Clearinghouse. For the purposes of the sunrise service and the trademark claims services, identical match means the domain name must consist of the complete and identical textual elements of the mark.

This is something trademark owners are not too happy about because it means that plural versions of trademarks or domain names just containing the trademark or trademarks plus keyword or common typos of trademarks are not supported by the Trademark Clearinghouse services. However, the matching rules are intended and designed to provide an objective or amenable and foreseeable way of determining a match, excluding legal determinations by the Clearinghouse.

Now let's get to the core function of the Clearinghouse, the right protection mechanisms, starting with the sunrise period. In the sunrise period, trademark owners have the advance opportunity to register a domain name corresponding to the trademark of the Clearinghouse prior to the launching of a new TLD. Registry operators must offer some rest period of at least 30 days prior to the launching.

This means that sunrise eligible right holders have the opportunity to save their trademark when a new top-level

domain name, is offered to the public. Therefore, they are – it's the previous one. So therefore, sunrise eligible right holders have a privilege in comparison to the general public and trademark owners who didn't send their trademark to the Clearinghouse.

In this regard, I think widening the matching rules isn't a good idea because trademark owners would have too much of a privilege in comparison to the general public.

Now let's get to the second rights protection mechanism, the trademark claims period. The sunrise period is a right protection mechanism in a preemptive sense, whereas the trademark claims period comes to effect afterwards. It follows the sunrise period for at least 90 days.

What happens there is that during the claims period, anyone attempting to register a domain matching a trademark in the Clearinghouse will receive a notice. This notice is a warning displaying the relevant mark information. The potential registrant then has two possibilities: to register or not register.

If it decides to abort the registration, nothing else will happen. However, if it decides to continue the registration, another notice will be created by the Clearinghouse to those trademark owners who have relevant matches in the Clearinghouse. They then may take action starting a court UDRP or URS proceeding.

I think it's very important that the claims notice doesn't intimidate a potential legitimate registrant because when we receive claims notice, it doesn't necessarily mean that we're going to infringe trademark rights. This depends on things such as the intended use, or you may be exempted under Fair Use or noncommercial use.

On the other hand, for trademark owners, I think that claims service is a very useful tool to become aware of and detect potential trademark infringement. Especially in this regard, I think widening the matching rules would be a good idea.

So to sum it up, Trademark Clearinghouse is the first global repository of trademarks of its kind and gives trademark owners the possibility to protect their trademarks in an entirely new way. So it's premature to say whether the right protection mechanisms supported by the Clearinghouse are deemed to be efficient because the Trademark Clearinghouse is still under evaluation and therefore development.

So I'm curious about it and I look forward to see what the future brings. Thank you for attention.

JEFFREY DUNN: Thanks. Before we move on to the next one, I just wanted to apologize for some of the slides that have been messed up by

Adobe Connect. I'll be supplying the proper slides. These students developed some excellent slides on the ICANN meeting website, so you can look at them after, and it has all of their contact information and other relevant information. So I apologize in advance for some of the slides that have been messed up on the presentation here.

But moving on, we have Jelena from Serbia.

JELENA OZEGOVIC: Thank you. My slides are messed up. So sorry for that. The presentation is very lovely, the color is blue, and it's quite interesting here. I apologize for turning back on you. I hope that everybody will see the presentation. You can go to the next slide.

The topic of my presentation is how to explain ICANN locally. For example, how to introduce the Internet governance and the IANA transition and all of those complex stories to the local audience, for example, the Serbian audience, which are not pretty much interested into Internet governance.

In Serbia, there are a lot of political and economical issue, and people in general are more tuned into commercial topics than into learning and educating about ICANN and the future of Internet. You can move to the next slide.

So one of the problems is like – yeah, you can see that on my slide. The general reaction that we get when we speak about ICANN is like "ICA-what? What is that big organization?" And for some reason, people think that it's only been governed by United States of America and they just misinterpreted it at some point.

So we have challenge in how to explain it, what is it? Because at the dot-rs registry, the Serbian National Internet Registry, where I work as a marketing and communication associate, we're very much committed into educating people of how Internet works, how they can participate, and what is eventually going on in that vast network space. You can move. Okay. Yeah, please go back to the lovely slide of this one. Yeah.

As you know, the ICANN in its draft five-year strategic plan from 2016 to 2020 really recognizes the need to internationalize and regional ICANN as a community, to be more relevant and more inclusive, so more people are involved and practically participating in it. So you can move to the next slide.

One of the measures, for example, key performance indicators that are just pointing out that that objective of internationalizing and regionalizing ICANN is to have a wide geographic spread of media coverage of ICANN and to tracking expansion of the

Fellowship program, my colleague fellows who are sitting here, I see you. Thank you for the support. You can go to the next slide.

Then what to do, how to improve the implementation of the objective? What we do locally, we educate, we explain, we simplify, but simplification is the challenge by itself. When we start explaining IANA transition to general Serbian audience, when we mention that United States of America do have an oversight function over how the Internet is being governed, the media and the general audience, you can see their faces change. It's like the America is governing it. Is it going to shut it down? Will they shut down a domain on some country? What will happen with Internet?

So that's the challenge of being not able to control the media coverage of that topic, by being supposed that general media just use conspiracy theories as an explanation of that topic, and they also tend to be a bit [sensational], okay I'll skip that word. Next slide.

This is an explanation, it's a text on a Serbian news Internet portal from 2014. The general translation of the title is the war around the Internet begins, who will govern the network in future? Tada, all the dramatization is in that title. And nobody even ever mentioned war. The media just use it to turn the attention by making it a bit yellowish so people can read it and

understand it, which practically makes no sense. What to do? That's the challenge. What to do? Move on to the next slide. Oh, yeah. There's a picture.

We in Serbia have for the seventh year in a row a very successful national conference called the Serbian Internet Domains Day or, in short, DIDS Conference. What we do is every time we have a first panel, which is hour and a half, committed to talking about one of the trendy topics about the Internet governance.

In 2015 in DIDS, we had a great discussion between Martin Boyle of Nominet; Jean-Jacques Sahel, whom you all know; and Leonid Todorov, the Head of Asia Top-Level Domain Association. So basically, we provided that interesting material for the media and for the public because we had a Russia guy, we had a French guy, and we had an English guy in the same room debating about the future of the Internet. It was way too interesting. They kind of conflicted their opinions.

More than 300 people in the room was listening all the time. More than 3,000 people participated online and followed the discussion. They were overwhelmed about how interesting the topic is because they used it to try to simplify it. They actually crossed their opinions, and that's the thing that attracted the attention of the public. You can move on to the next slide.

These are the links to where I really recommend to my fellow Next Genners to see the masters of the Internet debate where the three of those great speakers are really reconsidering and really deeply discussing the future of Internet because it's quite educational for you to. Can you move on to the next slide?

When we go back to the measures that are just serving to show whether the objective of further internationalizing and regionalization ICANN is being done, when we talk about the geographical media coverage, we had more than 160 media clipping units where ICANN was mentioned. It was like all over the media. Around 100 media outlets, such as national television, radio, newspapers, Internet portals, they covered and talked about the ICANN and the IANA transition. So that was great and we can say that we've really done much to raise awareness of the people about what will happen with Internet and why Internet governance is quite important.

When you look at to the ground level, we didn't have much new people started to participate in the community of ICANN. So all of those 300 people that were in the room and 3,000 that were online, none of them, for example, applied for fellowship. Serbian Internet community is quite active within ICANN, so my colleagues, which are behind me, (thank you for supporting, guys) can prove that.

But it just didn't affect it. No one new came out and started to participate or applied for the Next Gen program or something like that. You can move on to next slide.

Basically, what we can do as a Serbian National Internet Registry and maybe as an organization that is very committed into educating people, we can do something, which is, I mean, these outcomes are not revolutionary ones, these are not just ideas that are so innovative. What we must do, we must commit more time and resources into directly educating people.

For example, I participated in the Next Gen program. I learned about the Internet governance from the scratch, which is quite important, but the follow-up is also very important. We need time and resources to do that in Serbia in order to have new participants of the program.

I also think that a stronger commitment to building capacities of future fellows from the Western Balkans is important, and therefore, regional initiatives and perhaps the project support of ICANN will be interested. Next slide, please.

And instead of some super smart and revolutionary conclusion, there is no, we just have to work more. I would like to invite you all to come to Belgrade on March 15 and 16, where the new DIDS Conference will be ongoing and the second day of that

conference is our Belgrade Regional Internet Forum. So consider you all invited. Thank you for attention.

JEFFREY DUNN: Okay. Next up, we have Stacie Walsh.

STACIE WALSH: Thank you, Jeff. First, I just wanted to thank Jeff and Deborah and the DEPRD team for all of your hard work this week, bringing us out and supporting us at ICANN. And I'm honored to talk with you all today.

My name is Stacie Walsh and I'm currently a Project Assistant at Global Partners Digital, where I work with civil society groups on Internet governance and human rights. I recently completed my Master's in Communication Governance at the London School of Economics, so currently based in London but originally from the States.

Chris, thanks for setting up my talk a little bit. I, as well, will talk about WHOIS and privacy issues. My argument is basically about the next generation of WHOIS, which in ICANN, of course, has a very long name, the Next Generation gTLD RDS. Should be thought of more as a verification tool with a high level of privacy standards instead of a directory service, which is how it's currently being used. So yep, right slide. Okay.

To restructure the tool, we need to know what it is. We need to know the purpose. Right now, I haven't see any new language on the purpose of WHOIS or its replacement, but the Executive Working Group mentioned that a clear, more specific purpose of the system will be defined. The language on this slide is taken directly from the WHOIS webpage and currently defines its uses.

First, it's about linking the online and offline worlds. This is done by listing contact information. Second, it's an information resource or directory tool. And third, it says it should be used for any lawful purpose, but by putting this information online, there are a lot of unlawful purposes with direct consequences to the registrant that this enables.

As Fadi has emphasized this week, ICANN is focused on logical and technical systems of the Internet, not on content, so providing a publicly searchable directory service doesn't align exactly with ICANN's remit. Instead, we need to think of WHOIS as a data controller with thousands of data processors, which would be the registries and registrars. Next slide.

So what is the current issue? I'm going to focus on the dichotomy between commercial and noncommercial registrants. Currently, there's an unclear distinction between who qualifies as a commercial user. There's a proposal to include registrants who engage in online financial transactions

with users. This would include advocacy groups, self-employed, and anyone soliciting donations.

But as we will see, this proposal – not supported by all of the members of the working group, I should mention – encompasses many problems. The other focus areas the working group pointed out don't exactly align with the current definition of the WHOIS system, either. I argue that these areas support repurposing WHOIS as a verification system.

First of all, the issue of accuracy, keeping information up-to-date and correct. This is argued that by making it public, people are more likely to put in incorrect information because they don't want their real name or address listed. Second of all, privacy, that is, for privacy of data for the registrants. Third, privacy and proxy services, if they should be allowed, and the accreditation process for them. And then last but not least is the purpose. I would argue that really defining the purpose underlines the other three points that the working group is looking at. Next slide.

So what is the argument for listing personal information through WHOIS? First of all, is the accountability, so we need to make that link between online and offline worlds so that people know that they are doing business with a legitimate organization.

The second argument is intellectual property and copyrights, preventing websites from infringing on copyright and IP laws, a key issue in Internet governance. But this is an area of law that needs complete remodeling itself and shouldn't rely on the WHOIS system. Instead, companies should solicit access to that information instead of having a public directory.

And third is accuracy. Accuracy of information, keeping it up-to-date, and developing a tool to check with the registrants. But some argue that making, as I mentioned, information public will actually hurt the accuracy.

The problem here is that personal information does need to be publicly available. Before I get more into these issues, I'm going to look at what the civil society groups are saying, so you can stay on this slide.

What did the civil society groups say when they responded to the public call for comment? First of all, I mentioned there were only 12 responses to call for comment, a couple of them from what would qualify as civil society. But the Electronic Frontier Foundation did submit a comment that was signed by 46 organizations and 105 individuals. So these comments were representing a broad variety of people and views.

First of all, of course, is privacy, lack of privacy. Once your information is on the Internet, you can't get it back. Chilling

effects on freedom of speech. So for those advocates or people that run their businesses on donations and maybe live in parts of the world where bloggers are disappearing or there's a government that you can't really get away from, this will not allow for broader speech on the Internet, and it will also impact freedom of association, as well.

The real world consequences, which Chris mentioned a bit was swatting and doxxing. Swatting is when someone gives your address to law enforcement and they show up at your house fully armed, and doxxing is when you find the information, address, and you can send anything from pizzas to death threats to a person. Pizza is not so harmful, death threats, a little bit more.

There's a case of Randi Harper, who is the Founder of the Online Abuse Prevention Organization, and her information was actually found on WHOIS and she received death threats through the mail. So there is evidence of real world effect.

Then I wanted to point out OTI's phone book analogy. They mentioned how we used to use phone books as a verification tool for organizations or finding people, but you always have the option of opting out of the phone book and not putting your information in there or altering you name, maybe having your first initial with your last name, instead of your full name. So the

WHOIS directory, as it currently stands, doesn't allow for these kind of personal decisions on privacy. Next slide.

I think what we need to remember is that ICANN here is the data controller. You can see on the right hand side of the slide that ICANN as a data controller, what that means is that they develop the policy around the data. They develop the who, where, what, why, and how data is collected and processed.

Then you have the registries and registrars, which are the actual processors. These are the people who collect the data and do anything from just storing it to running analytics on it. And so in that sense, we need to think of ICANN and the WHOIS system not as that directory but really as something a bit more technical and something really ingrained in data protection and not necessarily privacy or a directory. Next slide.

That was my argument for redefining the WHOIS as a verification tool. In the policy and development stage, we really need to think about built-in privacy. Knowing its purpose from the beginning, we can start building in privacy mechanisms into the policy and into the actual structure. This isn't something that should be done at the last stage. It's something that really should be in the system as it's being developed.

One way of doing this is thinking about data minimization. Data minimization means that you really only take the necessary data

needed for executing your aim, your goal. In this case, you might not need somebody's driver's license information, but you might need to know their country of residence or their nationality because that can be different from the jurisdiction where they're registering their domain name. So it's really about not only knowing the purpose of the WHOIS system but also the purpose for collecting each individual piece of personal data.

And then the last stage, when you actually operationalize the new WHOIS system, there can be formalized pathways for a corporations, people, company, lawyers, to get that personal data, but these formalized access pathways would require a legitimate reason, legitimate purpose, which in itself can be a very contested term. But that will give a certain amount of privacy to people who do want their information protected online.

And then last is we need to reinforce the privacy proxy service policy. Right now, one argument is that it's the weakest policy in the WHOIS system, so there are some arguments to just get rid of it, which it is the weakest and it's also the newest. So if we reinforce this policy, restructure it, and then, also, add on the accreditation bit at the very end, which has come up in discussions this week, I think the privacy proxy service is actually a legitimate tool to use for WHOIS. And that is the end. Thank you very much.

JEFFREY DUNN: Please bear with us, we're loading up the final presentation. For those of you who have been here the entire time, I really appreciate it. I know that it's been a while, and we're moving on to the last presentation.

MONIKA ZAINIERUTE: Hello, everyone. I'm Monika Zainierute. I'm actually an NCUC member, and this is my second time at the ICANN. It's great that I've been given a chance to actually talk at the end because what I wanted to do is talk way more about how all these issues that many of us have been talking, and it's great that Stacie was the last one just before me and talked about WHOIS a lot. So okay, these are all issues that are of interest to us and perhaps the question is: how can you engage in substance?

I wanted to say that actually my title is not what it says in the leaflet. Actually, I want to talk about ICANN's corporate and social responsibility to respect human rights and about the work that has been done so far, not in terms of social or corporate responsibility around the world that it says for some reason, but actually about the work that the cross-community working party has been doing on these issues and somehow to present what we manage to achieve and what need to be done and perhaps engage with you. So I prepared a little presentation.

But I think that most of it does not need a lot of detail because you guys are really the people that know a lot about this. So I guess I just make a short introduction and then, perhaps, present in more detail the last few ICANN meetings and what has been achieved by this cross-community working party and what are the ways to proceed.

These are the general slides that perhaps suggest that ICANN's policies and procedures do actually have effect around the world. It's not a revolutionary idea at all that the same rights that people have offline, that they should have online. We all agree on that, and the Human Rights Council not long ago endorsed the resolution on this.

Within ICANN itself, there is Article 4 of its Articles of Incorporation, which states that ICANN is bound to operate for the benefit of the Internet community as a whole and carry out its activities in conformity with the relevant principles of international law and applicable international conventions and local laws. Indeed, there is such a statement, which says that ICANN, within its operations, need to respect human rights and comply with the standards.

I don't want to go here into a lot of detail of what are human rights. This is a presentation, I guess, that we can skip some of the parts. But indeed, I want to present better the approach and

the difficulties that we encounter because each time, whenever we started this work, it has been very, very difficult to talk with people from other constituencies and other groups who say that ICANN is purely technical, it doesn't have anything to do with human rights, we shouldn't be the champions for human rights. And indeed, we're not saying this.

All we're trying to say is that within the policies and procedures that are actually within its remit, they should simply make sure that we don't have, for example, what we have in WHOIS now or that we don't have the registrar accreditation agreement, which is, in essence, in my view, at least, I think it is totally out of ICANN's remit to create data retention regimes for the global reach. That's what it is. I think this is totally out of its remit.

I think that we reached this level now where in these discussions where we have to make clear examples that in fact very often there are policies created and rules created that are outside of ICANN's remit, and they do have enormous impact on human rights.

We, in fact, would like ICANN to go back to its remit rather than extend it, so I want to highlight that this was a very difficult issue. People say that ICANN has nothing to do with that, and it has been a hard work to actually try to point these examples that it is relevant.

So this is a short thing that I wanted to say is difficult, and for the moment this working party on human rights actually only focused on the very first generation of rights like free speech and data protection and not to mention anything more complex, because that only heats the debate, so the approach is rather limited.

Also in search for consensus, the idea perhaps is to focus only to global human rights instruments, as well, so especially Ruggie's principles for business and human rights. Because how it all started, it was actually, I think the kickoff was with the Council of Europe report, which was a very European perspective on ICANN's effect on human rights, which I had a chance to participate in and write that report.

But it received a lot of negative attitudes because Americans, for example, were saying, "Well come on, okay, fine, but this is your laws, has nothing to do." So it gave us this kick to change the approach a bit and always avoid the geographical sensitivities and focus on the only very broadly accepted standards that everybody would agree on.

These are the things and I would say I want to briefly just say why we think that UN Guiding Principles on Business and Human Rights is the, perhaps, most suitable instruments. As I said once again, this is a global scope, and ICANN is not a

traditional business and it's not even a corporation in that sense. It is a nonprofit corporation.

However, it has significant business relationships with the registrars and registries and all these different actors and, indeed, it could be described as falling under these Ruggie principles, which in fact simply purport several very basic ideas that ICANN perhaps should weigh the human rights impact of its policies and procedures and they should develop strategies to ensure that the staff and other stakeholders understand those impacts because very often, as I said, it is difficult to even start the conversation. People think that this is nothing to do with it, so I guess awareness raising is a very important thing here. To develop and articulate a human rights policy that should be followed and make sure that employees and other stakeholders like us, that they understand and they could implement it while participating in the working groups and creating new policies.

So that's been sort of the idea. I would just briefly say that it all started in ICANN 50 when this Council of Europe report was released, and I think that was a sort of the beginning. It was deeply discussed and in LA, ICANN 51, and in the IGF.

Then Singapore, ICANN 52, I would say was a big breakthrough because then it was when the working party was created and GAC, Governmental Advisory Committee, created its own

working group on human rights, which I think is a big achievement. And they also issued a communique later saying that indeed the commitment of GAC members to ensure that when they participate in such multi-stakeholder regimes as ICANN, that they should still have duties to protect human rights within such frameworks, I think, is a big achievement.

ICANN 53 in Buenos Aires, just immediately before this one, also, was a success in continuing this work. The charter of the working party was drafted, the terms of references limiting its scope and making sure that the work is not duplicated in other groups because there is a working group on accountability, which has a lot to do with it, and privacy and proxies working group.

It's already there. It's been there. People were working on these issues for a long time, but I think there is this certain moment at the moment that needs to be used. Indeed, yesterday, at the ICANN Board meeting with the Noncommercial Users Constituency, we were assured that the Board now will give one of its Board members as a contact point to continue this. I think this is a success. These things are so slow here that you will be stuck here for a long time.

This is my sort of little sharing of the experience what has it been. I hope it provides certain more practical input, what it

could be and what could it involve, how you can contribute because I assume this working party, for example, and the topics that we try to pursue, perhaps, is of interest to you, as I notice from what all study and do.

So yeah, I think that the future is far away, having many things to do, and you're welcome to engage because these are the important issues. So thank you.

UNIDENTIFIED MALE: Sorry, Jeff. If I could just jump in. So the Next Gen programs helped us all communicate and engage more, so we'd all just like to say thank you to ICANN and thank you, especially, to Jeff and to Deborah. We've got you a few gifts.

JEFFREY DUNN: This is the best session I've ever been to. You get chocolate. I wanted to thank everybody for coming in the audience. I hope that you all approach the speakers afterwards with any questions and comments that you have. They're here to meet with you, and feel free to seek them out throughout the rest of the day. Most of them are leaving in a few hours, I'm afraid, so now is your chance. But thanks to everybody.

[END OF TRANSCRIPTION]