
ICANN79 | CF – GNSO: NCUC Issue Forum Work Session
Tuesday, March 5, 2024 – 1:15 to 2:30 SJU

ANDREA GLANDON: Hello, and welcome to the NCUC Issue Forum Work Session. My name is Andrea, and I am a participation manager for this session. Please note that this session is being recorded and is governed by the ICANN Expected Standards of Behavior.

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BENJAMIN AKINMOYEJE: Thank you, Andrea. As you must have known, this is our third issue forum that we've had as the Non-Commercial User Constituency. What we use this platform to do is to create discussion space for topics that are very important to the non-commercials as a group of individuals and collective. This time around, we are very much fortunate to have collaborators in the form of the Global Partners Digital who have come to work with us to discourse Internet fragmentation and human rights within the ICANN context. We're hoping we've got amazing panelists and we're hoping that as non-commercial, we can get some great conversation moving forward and we can enrich the conversation. We

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can bring up perspective and see how it can help our community move forward in the agenda we believe in. So we hope that we can freely engage and we'll reiterate our stance and positions and see the progress we can make today. We look forward to an exciting conversation and we hope we can see further collaborations like this in the future. Thank you. Over to Micha.

MICHAELA NAKAYAMA SHAPIRO: You can leave it on. I hope this is all right volume wise. Thank you all for being here today. Thank you, Benjamin, for the introduction. My name is Michaela. I'm here representing Global Partners Digital. We're a social purpose organization based in London and we work to protect and promote a digital environment underpinned by human rights. As a first time ICANN attendee, I want to thank the NCUC for having me today and their support in organizing this session today. To all of those who has welcomed me and Global Partners Digital into the space, thank you so much.

We are here to discuss a topic that though it's likely to be familiar to many of you active in this space is one that at times has divided the Internet governance community. This is not a new topic to ICANN. Just this morning, I'm sure many of you saw on the schedule, there was a ccNSO session on Internet fragmentation as relevant to country code top-level domains. There was also a 2022 plenary held at ICANN75 in Kuala Lumpur that discussed the implications of Internet fragmentation trends on ICANN's ability to fulfill its mandate. Through that discussion, two main trends were identified, one being potential threats to the domain name system, the DNS, as well as threats to the

broader multistakeholder model of governance. From both these discussions, it became clear that such trends could pose a threat to the technical architecture underpinning the Internet as well as end user access and experience of the Internet. It can also threaten ICANN's mission and the ability of end users to exercise their human rights. While an important jumping off point, these discussions highlight the need for a deeper discussion of what Internet fragmentation is in practical terms. What is it? What is it not? What does it mean for different stakeholders, and in particular, for end users? And more importantly, what can we, as an ICANN community, do about it?

Based on this broader need for answers to such questions across the Internet governance ecosystem, the IGF's policy network on Internet fragmentation developed a framework for discussing Internet fragmentation. For those of you who attended the ccNSO session earlier today, Bruna Santos laid that out. I'll also credit my supervisor [Shatal] as one of the co-chairs of that framework.

I won't go too in depth into it. But essentially, the framework lays out three key dimensions. Fragmentation of the user experience so what you see when you log on to the Internet and look at a web page. Fragmentation of the Internet's technical layer, one that many of you at ICANN are probably very familiar with, and fragmentation of Internet governance and coordination, which you can see in policies, regulations, as well as any threats to the multistakeholder model of Internet governance. The aim, though, is not for this framework to be a definitive answer to the question of what is Internet fragmentation, but rather a jumping off point for today's discussion. At a moment

when the Internet governance landscape is at a turning point with the WSIS + 20 process, the Global Digital Compact at the United Nations, NETmundial, among other processes, now is an opportune moment to reflect on what the Internet is and what we want it to continue to be and to recommit the multistakeholder model of governance.

That's what we aim to do today. With the panelists we have here and with you, the audience, and the ICANN community, we'll delve more deeply into how ICANN understands Internet fragmentation and where there may be risks to ICANN's mission to ensure a stable, secure, and unified global Internet in order to further understand what the ICANN community should be worried about versus what it shouldn't. Importantly, it's also an opportunity to discuss how we can respond to these threats. With that, I'll turn to our panelists today. I'm very lucky to be joined by four esteemed panelists. I'll turn first to Paul Wilson of APNIC.

PAUL WILSON:

Thanks, Michaela. I'm Paul. I've been the head of APNIC for quite a while now. APNIC is the IP address registry for the Asia Pacific. We're one of five organizations that operate as membership-based nonprofits. We provide the allocation and registration of IP addresses around the region. There are four others who do the same task. We're a technical organization, so we deal very much with the Internet infrastructure layer. And to us, the Internet, really, meaningfully, is that layer of TCP/IP that builds what we call the Internet. It's the platform that allows you to send a packet from any one place to any other place uniquely identified by an address that needs to be

properly managed within an address pool to allow that to happen. But the Internet, of course, as we see it, is the enabler for all of the applications and everything that all of the benefits of the Internet and as such, it's a fundamental part.

Fragmentation has been with us forever. It's a very generic term and it means to break something up into smaller parts. That's too generic to be meaningful. Even the term Internet fragmentation is far too generic, as I think, I want to explain, to be really meaningful to talk about as such. Except you could generalize to say that the majority of cases of Internet fragmentation are harmful, a minority are definitely not harmful. They're deliberate and useful. You might generalize that Internet fragmentation is a bad thing, but really, you can't talk about the impacts or the measures to deal with it or anything very relevant unless you break it down.

It's interesting that the purpose of the Internet was to overcome the fragmentation that existed at the time. So back pre-Internet, there were numerous network products, computer systems and accompanying networks that were being built and that were fragmented. So they were completely set. But the point of the Internet and what really built and drove the Internet for many years was as an infrastructure that—a set of software, actually, a set of software and standards that allowed those systems to link to each other and to interchange packets. But more than that, actually, and this is where I'm just to jump to the policy network, I think that's a really useful framework to talk about user experience as well as technical fragmentation, as well as governance, because user experience and technical fragmentation definitely overlap heavily. The point of the

Internet in the first place was to bring a whole lot of useful uniform network services that were then available. Instead of being restricted and firewalled to IBM or to Digital or to NEC or to different technologies, they became universal.

So, e-mail, for instance, became a single uniform universal service at the user level that allowed anyone with an e-mail address to contact anyone else. I think that's a really useful case study to bear in mind because we just take that for granted these days, and it's been with us since the early days of the Internet. For some reason, at the user experience level, we accept that we've all got 15 different instant message accounts and for some reason, we don't expect them to talk to each other. That, I think, is a classic example of a case of unfragmented versus a completely fragmented system for which there is no good reason apart from commercial concerns.

Fragmentation was overcome by the Internet in its first incarnations. It wasn't an issue for quite some time. Actually, until the World Wide Web came along which initially was a fantastic also infrastructure or application across the Internet that overcame fragmentation allowed really extensive and flexible information sharing. Probably the first example that came along then was what we referred to as the browser wars, where the World Wide Web started to fragment, again, deliberately due to the decisions of Microsoft and others who tried to differentiate themselves and to improve on the World Wide Web by making changes and making browsers that were custom to their changes and that created a fragmentation of the Web. That was overcome, actually, by legislated or threatened legislated efforts that brought the Web back together again. That was overcome before we

then had, at the same time, fragmentation in instant messaging, fragmentation in Internet telephony, fragmentation in social networks, then very purely, commercial fragmentation of things like music streaming and video streaming. All of those, I think, can be seen as examples of fragmentation. By illustrating all these numerous different examples, you can see how they really do apply in different situations. They have got different regulatory or legislative contexts in which they operate. If you wanted to discuss the reasons or the solutions to those things, then you're really talking about different actions happening.

I was really happy recently when the European Union did something about fragmentation of these things by saying everyone has to have a USB-C. Which was a great example of legislating towards eliminating user experience fragmentation that I think affects practically everyone who uses these things. Analogy for you, first. I think that was a really good example of solution to fragmentation. It was purely to tell these companies that they needed to behave differently.

MICHAELA NAKAYAMA SHAPIRO:

We can dig into all those examples, definitely, as we go through this session. I really appreciate that introduction and your perspective bringing in the technical elements of Internet fragmentation. I definitely want to dig into more the end user experience and the governance levels of Internet fragmentation. Maybe we can then move into more of the policy and regulatory space. I'll turn to Ajith for that.

AJITH FRANCIS:

Thanks, Michaela. My name is Ajith Francis and I'm with Public Interest Registry. We operate .org TLD. I'm glad that I'm speaking after Paul because Paul has really set the landscape of what it actually means for the user experience fragmentation. I want to take a step back to frame two issues that probably contribute to the user experience fragmentation and the two risks that drive that largely.

The first element is the risk of technical fragmentation. The second one is more the policy framework fragmentation. From the technical fragmentation perspective, I'm not going to speak on the numbers side, but particularly from the names side, one thing that is interesting in terms of a potential risk for fragmentation is also the interoperability with alternate naming systems. We're seeing a bunch of different alternate naming systems pop up and they serve a semi-different function to what the DNS is. The DNS is an addressing and a naming function where some of these alternate naming systems are serving as an identity and a verification system. For the end user, there's this question of understanding what are the two systems and how do they interoperate at the policy level. But also the technical level, there's a question of how do we get these two systems to interoperate, especially when they also operate on very different technical frameworks on the baseline.

An example of this clash between these two frameworks or these technical landscapes is what's happening at the moment with the litigation between the Ethereum name system labs running a litigation on eth.link. There is a .link gateway that offers third-level domains for Ethereum name service users to basically have content hashes of the IPFS website. There's a whole litigation process that's going on that

risks how users perceive these two different landscapes and what that actually means for also the users and also the policy implications that it has from the policies that we develop and the due process that we have within ICANN framework would that apply to these additional frameworks. So that's one key element of the technical fragmentation.

Moving to the second part on the policy fragmentation risks, I think one of the biggest challenges to fragmentation at the moment is also the threat to the multistakeholder model of Internet governance. This is at two levels. The first level, I think, is also a lot of states who are in principle in favor of multistakeholderism still taking unilateral action to regulate and legislate on the Internet, particularly on the technical layer. This leads to a very fragmented regulatory framework for the providers of the technical services with varying different requirements across jurisdictions.

Two great examples of this are when the Digital Services Act was being negotiated in the European Union, there was a question of where do DNS registries and registrars fit in? Are they mere conduits or are they a category of their own? We're also seeing something similar in India where DNS registrars are now being equated as Internet intermediaries in the same definition as what might be application layer providers like Facebook and Twitter, for example. This stems from the lack of a shared set of principles on how we understand the technical nature of the Internet and also the roles, responsibilities, and the corresponding duties of those operators at a global level rather than at a piecemeal national level. That's the first element of risk of the policy fragmentation.

The second is what we're going to see, I think, in this year with whatever happens with the Global Digital Compact and the WSIS + 20 review. They are two key landmarks to strengthen our support for the multistakeholder model, both as a principal level but also in defining guiding frameworks for how we want to govern this shared architecture that we have. I think I'll yield my time back to you, Michaela.

MICHAELA NAKAYAMA SHAPIRO:

Thank

you so much. What's already really fantastic between both those interventions already is we're already seeing the ways in which it can be really hard to put fragmentation into different buckets. There are so many interlinkages between them. Just to complicate it a little bit more, I'll turn to Ros to talk about the governance landscape.

ROSALIND KENNYBIRCH:

Okay, perfect. Might have to do a bit of a stretch here. Thank you so much, Michaela, and thanks so much for inviting me to participate on the panel. Just to really reflect on how useful I think my fellow speakers, the points they've made to start and frame the conversation. I guess I'm coming at this at a bit of a different angle, given that I'm less of a technical expert, so to speak, but to really talk about fragmentation in a more comprehensive way. And that's why I think the layers approach, as we've all discussed, is so important. Because it's important to really flag if you have one takeaway from today, I would suggest that fragmentation—it may not just happen at the technical layer. It is also capable of happening at an institutional layer

and a user experience layer. So we should look at this. It's not just, "That's an issue for technical folks." It's an issue concerning all of us and all of us that hope to continue to engage with and support the continuation of this multistakeholder model of Internet governance.

With that in mind, I'll speak a little bit—I'll mainly frame my comments around a report that I, alongside others, co-authored for the IGF's Policy Network on Internet Fragmentation. We drew a couple of conclusions on fragmentation at the governance layer, specifically what that looked like in men and what we should do to avoid instances of fragmentation happening at that governance or institutional layer. To frame my remarks, in this report, we found that fragmentation of Internet governance at the governance layer primarily relates to the interactions between global Internet governance and standards bodies. When these bodies do not coordinate inclusively, it can and does result in fragmentation. This fragmentation can manifest in siloed or duplicative discussions and exclusion of specific groups from participation, resulting in decisions being taken without consensus from the global multistakeholder community. Fragmentation at the governance level importantly can also create knock on effects for fragmentation at the technical and user experience layers.

That was how we framed and conceptualized fragmentation at this institutional layer of the Internet. And we found a couple of things through our research and work together that could help to avoid fragmentation at the governance layer. These include avoiding duplicative mandates. As we know through our travels here to the IGF here, there, and everywhere, there are a lot of organizations involved

in Internet governance. So if we're looking at introducing more, there really needs to be a rationale behind that, a community-led multistakeholder call for that, and a real attention paid to avoiding a potentially duplicative mandate.

Secondly, we looked at avoiding closed forums with closed or exclusive participation. Again, to avoid fragmentation at the governance institutional layer, it's really important to avoid creating or continuing groups or forums that are only available to an exclusive set of participants or not all participants on an equal footing.

Then finally, taking action with right measures at the right level. It's no secret in the ICANN community that there is sometimes debate about what our national government's introducing and how is that going to affect our processes at ICANN. Just to really say that we can also avoid fragmentation at the governance layer by making sure that national governments and indeed supranational governments are in close contact with multistakeholder bodies about their proposed legislation, about things like that, so there can be a conversation that can be aligned with the wishes of the broader multistakeholder community through ICANN.

I'll leave my comments there for now. But thank you so much and thank you again to my co-panelists for setting that up so nicely as well.

MICHAELA NAKAYAMA SHAPIRO:

Thank

you, Ros. And thank you for setting out those. I think that's already clear that inclusivity and multistakeholderism are very key elements of

Internet governance. And it sounds like that's already an area that I think we can dig into more. That leads me really well into Ephraim's comments, who will be talking about the human rights elements and implications of fragmentation.

EPHRAIM PERCY KENYANITO: Thank you very much. It's good I come last because I try to tie up everything. The purpose of all this is to serve the Internet user, the common person, my mom, my grandmom, my dad. Someone who's not in this room who doesn't understand exactly what we do. The purpose of all the work that we do is supposed to serve them. When the Internet is fragmented—as Paul mentioned, there are different types of fragmentation. When the Internet is fragmented, it cuts off the user experience and their rights. There are various types of DNS level of fragmentation. So I'm going to stick to the ICANN mission and vision of the DNS, Article 1 of the Bylaws.

So government censorship. When certain governments have taken actions such as to block and manipulate DNS records, we are trying to access Facebook, you are a journalist or there is a specific riot or protest happening in your city and you're all being directed to this clone website that is logging all your details and they're getting this data of all your sources and everything and all the popular name list, to block specific websites or entire domains and hindering access to information and freedom of expression. I'm not going to mention specific names of certain governments, but this has been a trend, including Internet shutdowns at the DNS level. Blocking certain websites in collaboration with certain telecommunication companies,

that is a form of fragmentation for certain users. Sometimes this has gone on for a few weeks, few days, few months, few years. There's a specific country from where I come from, which has gone on for almost five years of blockage of certain key websites, which are from the West compared to what they wanted the citizens to access.

National DNS filters. This has happened in some countries in Asia, not to mention specific countries, where there is a gateway, and at the gateway, there is that manipulation where there is that filter.

Then private DNS manipulation, this happens within school networks, within workplaces, among others. These are types of fragmentation. For me, at the user level, these are the examples which I would give.

But the impact on human rights, some of them I've mentioned, freedom of expression. Sometimes you want to express yourself. You might have read a very interesting sad incident over the weekend about this parent who was being arrested in the U.S. for sedating some kids that come for a sleepover. Do you remember? You read that in the papers? It was in the papers. Now that I'm a parent, I can relate and such stories horrify me. This is a parent who sedated—the daughter was having a sleepover with some friends and put something in the smoothies. They were about to go to sleep. And this kid felt it weird and texted the parents like, "Hey, please come pick us up. I feel something weird is happening here." The parent to this kid comes, and initially this parent refuses to let them in. They have a stand-in for almost two hours trying to tell them, "No, come tomorrow. They are asleep." And this person goes. Can you imagine if there was that fragmentation of that level whereby you are banned. This is a life case.

But then you're being banned from using your phone, being banned from connecting to the Internet to contact your parent. That is a simple case. I'm trying to drive this point home to that level.

Zooming out, journalists, you are trying to reach out to certain contacts in another country, trying to reach out for help. But then your Internet is cut off or it's being manipulated. Your contacts are being recorded and you are being essentially prevented from communicating and getting the help you need outside your country.

So freedom of expression, rights to education. Right now, post pandemic and since the pandemic, we're using the Internet more as a source of information. There's more online learning than before. When there is that manipulation and the fragmentation at that level, there is right to education that is affected, especially entire countries.

I'll give a very specific example because this is public information. The Uganda court case. 2016, there was a Uganda court case about the Internet shutdown. It was not just the Internet only but it also affected mobile money among others and people were cut off from rights to healthcare. You are at a hospital, you want to pay using the equivalent of Google Pay or Apple Pay but you're cut off. You can't access your money and you have to pay cash and it's a life-threatening situation. These are real-life examples. I'm trying to drive the point from—as I said, as I was speaking this topic, I want us to speak in a way that someone who's not here is watching online, they would understand why it's important whatever we are doing here. Access to information, as I mentioned, you are trying to access information.

Economic and social development. There is now online businesses. There are people trying to sell things online via Facebook, Marketplace, via Instagram, via TikTok and others. You're being denied this right to sell your products. There are so many enterprising young people selling things on some of these platforms.

MICHAELA NAKAYAMA SHAPIRO:

I would

love to be able to dig into those more. I really appreciate how visceral that is. Especially, I like the examples that you were giving of your grandmother. I also struggled to explain what I do to my grandmother. And I think this is really helpful to have these concrete vivid examples. What I would like to take from all the statements that our panelists have made so far is to try to frame it into—we've talked about what Internet fragmentation looks like at this broad level. And we've also zoomed in, as Ephraim just helpfully really did, to make it concrete and talk about the real-world impact of Internet fragmentation.

Now I want to bring us back into the room. We're at ICANN. What does that mean then? In the case of ICANN, where do we see potential threats to fragmentation or to the Internet governance model that we stand for? Are there ways that we, as an ICANN community, can be thinking about fragmentation? I would like to turn to our panelists, whoever would like to come in first to maybe think about in the ICANN context. Fantastic. I'll turn it back to Ephraim.

EPHRAIM PERCY KENYANITO: It's going to be on the record, but I'm going to be very direct. This does not attribute to my current, former, or future employers. My statements are my own. A way in which ICANN world works which is different and, for me, coming from the Global South, I'm going to be very point blank about it. At the gTLD level, the rules are clear. But at the ccTLD level, sometimes the ccTLDs are coping some things that are being done at the gTLD level that are sometimes inadvertently harmful. They sometimes don't understand how the phrasing of it.

For example, the phrasing of the work that DNS abuse is happening at the global level, it's good steps are being taken. But then at the ccTLD level, some ccTLDs have copy-pasted word for word what some gTLDs are doing. And in their countries, they don't have that backing legally to properly evaluate "DNS abuse". Sometimes it can be misinterpreted some of those terms in the name of DNS abuse, for example, to push some people offline. That's just point blank.

That's why, for example, the U.S., the UK, among other countries, have reports and studies about rule of law across the world. Even Freedom Online Coalition has a very good report on rule of law and the Internet a few years back. You can be able to see the world is not homogeneous. Some countries, you can do some things and you can have freedom of expression. Some countries, you might not have the same balance.

So when a draft or a policy is drafted at the ICANN level and it doesn't take into consideration the certain environment—there's this project called DAAR. I said I'm going to be very blunt. DAAR project. DAAR is the domain abuse something, something. It's an ICANN project and

some ccTLDs are part of it. I would like, as we are doing this, just take some of the ccTLDs that are part of it. I think it's 21 or 23. And some of those countries look at what some journalists have been prosecuted or some people have been prosecuted for what they have posted online. There are some of those countries have had Internet shutdowns or domain in blockage in the last 10 years. You'll have your answer there. So sometimes there's that good effort, but then sometimes there's that out of touch element whereby you're drafting something at this global level, you're urging ccTLDs and others to copy and implement as part of their policies but you're not allowing them enough room to amend and to have exemptions in line with the law of those countries and stuff like that. So that's the other thing.

MICHAELA NAKAYAMA SHAPIRO:

To me,

that sounds a lot that resonates and has a lot of parallels to what Ros was talking about in terms of intentionality or unintentionality when it comes to developing policies. And I wonder if any of the other three panelists want to come in and comment on that. Please, Ros.

ROSALIND KENNYBIRCH:

Sorry, I'm conscious others probably want to come in as well. But just a quick point and back to your initial question about the role of ICANN and interlinkages there and how ICANN is looking at fragmentation. I think from a governance layer perspective, this is why it's so important that ICANN be engaging with other Internet governance-related bodies, whether that's the IETF, the ITU on development issues, all of that. Because we've got processes underway and coming up like the

Global Digital Compact, WSIS + 20 next year. So in order to avoid issues or proposals that could contribute to fragmentation at any layer but particularly the governance layer, which is discussed at the UN, it's essential that ICANN's coordinating strategically with these other Internet governance bodies to make clear what the risks are. With that quick broader point, I'll hand over to others that may wish to come in. Thanks.

PAUL WILSON:

There are two Ns in ICANN, one for Names and one for Numbers. And there's some big differences between the way those two identifier sets are being managed, but they're also similar in that what ICANN is charged with doing is making sure they're managed for uniqueness. Whether it's a name or a number, you want to make sure that it has a unique custodian that you don't have one name or one number that is duplicated and allocated or used by different places. So that's a fairly unitary or singular thing that ICANN is charged with in both cases. It's easy enough, but there's a lot more to ICANN's role and a lot more to the management of both of those identifier sets, because they are enormous sets that are being managed these days with a hierarchical delegation of responsibility. And that immediately introduces the possibility of divergence, right? That is the point, in fact, whether it's different Regional Internet Registries having responsibility for different address pools or whether it's different registries having responsibility for different TLDs, you actually got the ability to diverge and to have different things happening.

Is that fragmentation? It is in the sense that you don't have a single framework across all of them, but it's also chosen. I mean, it gets to that principle of subsidiarity, which is a principle that a problem is best solved by the people who are most closest to it. As the world is a big place, people who are closer to the challenges of managing these resources in their own environment tend to go in different directions. I think one of the really important things that happens within the RIR world, it's not really within ICANN, it's more within the RIRs, but also within ICANN, I believe, and this forum, is to make sure that you've got a forum and a location in which things can both diverge and yet coordinate and converge. It's a case of think globally and act locally. But by thinking globally and by having this forum in which that can happen, you can avoid a damaging level of fragmentation. That damaging level actually can exist and some would say that it exists across the RIRs at the moment with quite a big divergence in the way IP address transfers. And markets are being run and we've really got quite a big difference happening between different approaches. Hopefully, it's a temporary thing because what we tend to see I think in the RIR world and maybe in the domain name world is that divergence happens, people observe the divergence, they learn from, either, the good example or the mistake that's being made in this part and they may then avoid that and the people who do make a mistake might come back. The place in which that happens I think is really important. I think that comes back to ICANN's role and the real importance that ICANN has in literally interpreting those two ends, the names and numbers, and the fact that it's got real work to do there.

I mean, there's more that ICANN does which is to actually attract a bunch of people who've got bigger interests and bigger concerns about the Internet. For instance, at the GAC. And many of the people on the floor here who come to ICANN because it's a damn good place to listen and learn and exchange information and to avoid fragmentation that concerns them, which might be outside of the names or the numbers space. ICANN serves that purpose as well, and I think it should continue to do that.

MICHAELA NAKAYAMA SHAPIRO:

I

appreciate that, especially as a newcomer to ICANN. I think that is the beauty of ICANN that you are bringing such a diversity of perspectives coming in. Please, go ahead.

AJITH FRANCIS:

Thanks so much. I wanted to comment on the question of what are the opportunities. For all of us as advocates of the multistakeholder model, I think there are three potential avenues that we might be able to consider. One was something that I picked up was also in the Policy Network on Internet Fragmentation, the notion of the need for principles and definitions, particularly at two different levels. And multistakeholder principles and definitions that we can all get behind at the level of what is the Internet in terms of the technical architecture of the Internet and the different actors and the roles and responsibilities, but also how do we define Internet governance and the increasing tension with digital governance. It's an interface where a lot of action with regards to issues on the digital layer are falling onto

the Internet governance layer. How do we address that is a key challenge. And that's leading to the regulatory quagmire that we're increasingly seeing. It's also strengthened or structured on the baseline that the DNS is not the appropriate mechanism to address issues of those kinds at the technical level.

Articulating that at a principal layer is the first part. The second part is where do we do that? What is the institutional framework where we can have that conversation collectively that we bring together the different actors to talk about those issues and develop those principles? There is a need for that institutional framework which I think we do sense that there is an institutional vacuum at the moment in that sense of this coordinating function between the different frameworks that we have and the different institutional structures that we have, and we do see that.

The Digital Cooperation Forum, it was at one point put out by the Secretary General, I think the problem with the Digital Cooperation Forum was that it was a multilateral-led institution. But we do need something in that sense of a hub-and-spoke model where they can coordinate some of those functions.

The third thing is, I think, behooves in all of us, is to also go out and facilitate awareness and education on what is the technical architecture of the Internet, what does it actually mean to take action at the level of the DNS, and educating the policymakers on the different layers of the Internet and what does it mean to act or what are the roles and responsibilities and the capacities of the different actors within that stack.

Those, I think, are the three things that I would say I think we could probably work on. The first one being principles and definitions, developing an institutional framework to address that institutional vacuum that we have, and then facilitating awareness and education on that front. Thank you.

EPHRAIM PERCY KENYANITO: Okay. Thank you. For me, where I see an action item, which ICANN Org and Board can take action, just so that we're not here to complain and give direct action items, where action can be taken in terms of addressing the issue of fragmentation and what sometimes is happening at some certain national levels is the action that, for example, ICANN took in 2020 by writing to the European Data Protection Board, to the European Council, to the European Parliament, three different public comment processes when some things were going wrong in terms of affecting the DNS. This has happened several times when it comes to the EU. But then that does not happen to my part of the world, whereby sometimes there's a proposal that is being proposed by a ministry, by a regulator that might fragment the Internet, might cause harm to users. Yes, this time, we understand the GDPR and all these EU processes that were happening would affect the entire world. But then just slight piecemeal fragmentation at one national level would affect the entire user experience. If ICANN is to work in a way that is global, within its mandate, post the IANA transition 2016, is to try and speak to every part of the world. I know it's a lot of work, but this is a way in which maybe the Government Engagement Team can be empowered. It has happened before in the EU. It can happen more in the Global South.

Because the population amount in that part of the world might be high and some of these actions sometimes go unnoticed and sometimes it's published in newspapers, journalists, human rights people, some embassies, [inaudible]. But then ICANN itself does not take action as much as it has taken action, for example, during the entire GDPR process in the EU. This, for me, is a direct call to action to ICANN Board and ICANN Org to staff itself to ensure that they are able to respond. Sometimes some of these things are flagged, but there isn't that response that has happened, for example, with the EU or in the past. For example, during the GDPR process and this public comment process is that the EU Council, European Parliament and the European Data Protection Board public comments that ICANN submitted. So that can happen with other proposals so that they just don't let it slide.

MICHAELA NAKAYAMA SHAPIRO:

Thank

you so much, Ephraim. That's a fantastic place to pause because I think I would be remiss to not mention the differences in regional understandings of inner fragmentation and regional manifestations of fragmentation. I think that's a really important perspective to bear in mind. I'm also mindful of time. While I'm sure a lot of us would love to stay all day discussing this, I do want to give the audience a chance to come in. So if there are questions or comments from those in the room or online, please do feel free to come in. And I'll pause for a moment there.

INES HFAIEDH:

Thank you very much for this. It was very interesting. I'm Ines Hfaiedh, NCUC Africa representative in the Executive Committee. I have a question. There are many tentatives for Internet impact assessment and how to recognize that this is a threat and it could cause fragmentation. I feel this is like a top-down technical way of dealing with things. Are there other procedures of ways which are more bottom-up? Especially that I come from Africa and we have a lot, not only—Ephraim, for example. I come from Tunisia, so it's famous for those things all over our history, I think. Are there ways, procedures, how people from bottom-up they could say this is a threat not only to fragmentation but also to our human rights? How can we do this very interesting equation? How can we do that? Thank you.

MICHAELA

NAKAYAMA

SHAPIRO:

Fantast

ic question. Do any of the panelists want to come in on that?

EPHRAIM PERCY KENYANITO: Maybe Paul can but not putting him on the spot. Maybe I can start. Maybe what we can do, as I mentioned, is to try and speak when we can. I know sometimes we might not get the kind of response. For example, when the EU sometimes put processes on the table or ITU and ICANN put out official statements, we might not get that response, but I hope we get there. That's the message that I want us to get, whereby when EU has put out something, a proposal or some steps, ICANN has responded. I would want the same to happen also in the Global South, whereby a government has put out a proposal to do DNS

filtering, for example, we would want ICANN to respond. It's not just writing only to the EU, ICANN should speak also to the Global South governments when need be.

MICHAELA NAKAYAMA SHAPIRO:

I would also say that that is—sorry. I just wanted to come in to say I think that's exactly the gap that I would really love as an ICANN community for us to be able to address. That there is this bottom-up process to identify either to consensus around a set of principles maybe or if it would be a build a bottom-up understanding of Internet fragmentation and to use the lens of human rights as part of that evaluation process. We were discussing right before the session in preparation, we have this framework to discuss Internet fragmentation. While there's elements of human rights integrated, there's not necessarily a human rights filter or a human rights framework. Similarly, you have the Internet society's core principles of the Internet. And I wonder if there's a need. It sounds like there would be interest in developing something that almost brings both those together. So I certainly would be really happy to work on something like that. I don't know if others are also interested. Please come in, Ros. Then I know, Adam, you had said you wanted to come in, right? So I'm happy to turn to you after Ros.

ADAM PEAKE:

Thank you very much. Adam Peake. I work for ICANN Org Global Stakeholder Engagement. I was a little late and I apologize for that. There's a number of things. Ephraim, you were mentioning the

complexity of issues and processes and how do you contribute to all these different calls for opportunities to contribute.

One of the things that ICANN Org is doing and you will see it at geopolitical session on Thursday, I think it's 1:15, we'll be talking about a new network that we're trying to form. At the moment, it sounds like it's going to be a mailing list. It's going to be much more than that. It's going to be a collaboration where we can come together on joint messaging, if we want joint messaging, but it's not meant to be bounded to something where you write a statement that we all have to agree to. It's sharing ideas. I hope part of that sharing of ideas will be understanding what the opportunities are for us to comment so that we don't miss that January the 23rd deadline, whatever a deadline it would be, and we all know how to contribute. That's part of what the network will be. You'll hear more about that on Thursday. So please go along.

Actually, you were talking about how we engage. I think one of the most important things is these are processes of member states, which means that you really should talk to your governments. Hello, United Kingdom. Because those are the people who are negotiating the text that we want to influence. So talk to your governments and give them their opinions. But as we work towards the dates of meetings, you can always advise Ros who might be sitting there with 150 paragraphs to edit, and if you only like paragraph 17A, if you start helping her write her text, that is very helpful because she's working on 50 or 60 pages of document. There's always the opportunity. You don't have to lobby. All you're doing is providing someone with your thoughts and advice.

Start talking to your governments now is very helpful. This I remember from working in the World Summit many, many years ago.

The other thing is, again, that talk about what is it that we're trying to defend here. It's the technical functioning of the Internet. And you've probably seen Sally Costerton, this very simplistic files and they don't attack me for the simplism. The idea that if you hold up your mobile phone, most people will think of "This is the Internet." It's not. It's content and it's applications and it's services. The Internet is a foundation that enables this to happen. And what we're concerned about with the multistakeholder model is ensuring that that technical underpinning, the foundation that allows this to work and whatever concerns people may have about harms or opportunities, that happens here. What we're trying to remember is that during the pandemic, the bits moved, the addresses worked, things carried on. And where would we have been in the pandemic without that and technical underpinning? That foundation that we all work on here. Those are the things we're really trying to protect, I think. Those of you who work on content and human rights, of course, carry on working on content and human rights. But your job will be much, much harder if you do not have the open, interconnected global Internet. That's the ICANN pitch on support what we do. Anyway.

MICHAELA NAKAYAMA SHAPIRO:

Thank

you so much, Adam. Would you like to come in, Julf, after Ros? Okay. I'll turn to Ros then for the moment.

ROSALIND KENNYBIRCH: Great. Thank you so much for those comments, Adam. I think really, really great to hear. I think there were just two points I wanted to come in, and they connected well with both of your points. One was on what can we do from a bottom-up approach to talk about and address issues like fragmentation? I actually think the Internet Governance Forum is a really good place to do so. It's always excellent to see ICANN community members attend. And I would encourage even further participation. Look, there is a global IGF, but actually, there are over 150 national and regional initiatives you can get involved in. All the way from the West African IGF to our own country's UK IGF, a little shout out there, for our multistakeholder Internet Governance community. So I would say those are really excellent places to be discussing those issues. Actually, there is a UN Internet Governance Forum Policy Network on Internet Fragmentation. It's a multistakeholder policy network. We drafted this report that I was speaking to earlier in the conversation. And it was all of us working on an equal footing, myself as a government member, working alongside civil society and private sector members to draft the text, and we were all working as equal partners. That policy network is a great opportunity to get involved from a bottom-up, equal footing perspective as well. But I would encourage conversations in national and regional initiatives linked to the IGF as well.

Then just as a second point, well, to that point, I think it's great to have regional conversations about these issues. I would emphasize as well the importance of having a global understanding. It would be ironic if our conversations about Internet fragmentation are fragmented by regions. So I would always encourage that, wherever possible, even as

we're discussing these issues in our regions, that we connect to the wider global multistakeholder community and try to gain group consensus or understanding as well. Thank you.

MICHAELA NAKAYAMA SHAPIRO:

Thank

you so much, Ros. I see a hand on the Zoom chat. I'm happy to let Bruna come in. Also, just a quick note that the policy network actually has been renewed for one more year. So really excited about that. That's another opportunity and happy to discuss that more. Go ahead, Bruna.

BRUNA

MARTINS

DOS

SANTOS:

Thanks

, Michaela. It just came in on the point that I was going to mention, actually, the goal for the policy network in 2024 is really to work on the implementation of the recommendations we've issued for a lot of those topics and so on. Everyone, not just NCUC, but also ICANN community is very much welcome into this conversation as we really wanted to dive on what do the recommendations say and why is it relevant to reinforce, let's say, coordination between technical institutions that work on Internet governance. So things like that. If you're willing and looking forward to having the discussion, engage with us. That's all.

MICHAELA NAKAYAMA SHAPIRO:

Thank

you, Bruna. I also see a comment in the chat about the need to discuss Internet fragmentation within the remit of ICANN. So I'm going to be very cruel to my panelists right now as we're running low on time. And I do want to reiterate though that this is just the first, hopefully, of many discussions that can take this forward within the ICANN community. I'm going to be cruel by asking my panelists to think of one thing that you'd like the ICANN community to take away from this and ideally to do that in 30 seconds each. Does anyone feel brave enough to start?

PAUL WILSON:

I was thinking back to the question which was about grassroots participation. I really think, without romanticizing it too much, I think it's really worth thinking about the origins of the Internet itself. It has been described with the adage of rough consensus and running code. But it really did represent a participatory process where individuals at the grassroots level could participate in standard setting, in policy setting, in operational decisions. And the Internet has got so much bigger these days that that's not really a sustainable model across the board. But there are still examples of it everywhere in ICANN at the open mics and in the RIRs through the policy process and in a whole lot of organizations that aggregate those individual contributions in a trusted way to bring them forward.

Adam said talk to your government, and that's not possible in a lot of cases. But maybe when you do aggregate with trusted voices who can help to apply pressure and really demand, that if you're not actually

being listened to then you get listened to to the extent that you possibly can, I think that's the way that we overcome the fragmentation in to say just regional groups. Because there are just regional groups, but there are a whole lot of other groups at national level, across regional level, at inter-community level that help to just amplify the number of channels. And it really is. I think it's worth bearing in mind that that's anarchic and ungoverned system is how we got to be where we are now. Without that being part of the model, we wouldn't actually be here at all. We'd have something completely different.

MICHAELA

NAKAYAMA

SHAPIRO:

Absolut

ely. ICANN can also serve as a space to have those discussions and access the people that you might need to access. Another advertisement for ICANN. Any of the other panelists who want to come in? Fantastic.

AJITH FRANCIS:

I think there's a dual tension. States want to protect their citizens from harm, and at the same time, we have to also protect from cracking down on freedom of expression. These are two tensions that we're seeing in today's day and age. What is happening is that this tension is falling on to the architectural layer, and that is what we need to protect against. Going back to what Adam was saying, content issues is not the space, ICANN is not the space to discuss that because it's outside the mandate, and rightfully so. Because we're about the

names and the numbers, as Paul was saying. And we need to protect that framework and to ensure the technical interconnectedness and the interoperability of the systems, and that's the core function that we should address.

Having said that, I think at a global multistakeholder level, we do have that institutional challenge. There is this, again, dual tension there of whether these issues can be resolved through a multistakeholder approach. What does that look like? We need those governance conversations to have a place to have those. Not to make decisions just yet but to actually frame those conversations. What are the different issues that are at stake? I think the NETmundial is starting to approach this question of what is the institutional framework or the institutional governance architecture that we could think about for these kinds of issues. That is, I think, one of the places where a lot of things that, Ephraim, that you're saying, I think needs to input into those conversations. But I think when it comes to ICANN, we have to be very careful that we're talking about the names and the numbers and we need to preserve that architecture and the neutrality of that architecture.

MICHAELA NAKAYAMA SHAPIRO:

Thank

you for bringing us back to that. I do want to give time to Ros and Ephraim to give closing remarks. Whoever would like to go first.

ROSALIND KENNYBIRCH: Thanks. Just moving down the row. Two main calls to action from me. I'll keep it brief. I think, number one, and this goes to what Adam contributed to the conversation, but pay attention to the broader governance processes, including those taking place at the United Nations level and how those might affect Internet governance. It's really important to keep an eye on these and for us as governments to hear your feedback. There might be things we don't catch or we didn't think about that actually as a community we think might present difficulties or indeed might present opportunities. So we really need to hear feedback from all of you. It shouldn't just be one government official looking at a room at a text 150 paragraphs long, as Adam eloquently says. Really, just an open invitation to feedback on that and to say that as we've identified throughout the conversation today, there are many groups including a really welcome effort by ICANN to create this mailing list and network that will help connect people up on these issues. I know there is an IGF strategy group linked to the multistakeholder advisory group that discusses these broader issues. So there are ways to get involved too in this and these conversations without doing it all on your own too. Just a real call to action to do look at those groups for involvement, look to feed in at that broader level and also to leverage this year's IGF to do so as well. I would expect we will see conversations about what is the utility of continuing the WSIS process, why is the multistakeholder model the best model for Internet governance. I know I would be delighted to see a lot of people coming up and saying exactly why at this year's annual IGF. Thank you.

MICHAELA NAKAYAMA SHAPIRO:

I really

appreciate that. It's a very hopeful note. Go ahead, Ephraim.

EPHRAIM PERCY KENYANITO: Thank you so much. Being the last speaker, I am not going to repeat much. I'm just going to say let's keep this conversation going. Let's have this conversation. It's important. It's the reason why we do... Sometimes we get so much into the technical, we forget the bigger picture, why we are doing this. That's why I was like, let's go back to the example of someone using the Internet and doesn't even know ICANN exists. Like that person or that cafe in, say, Nairobi, something like that. Think about that level. Looking forward to more conversations in how to get more involved in those ICANN communities that are being sparred over the next couple of months and stuff like that. So looking forward to that conversation on Thursday that Adam mentioned. Thank you.

MICHAELA NAKAYAMA SHAPIRO:

Thank

you so much. I'll try to do my best to summarize a lot of these fantastic action points that we've laid out. I actually realized I was going a bit fast. I thought we were ending at 15, so that's on me. So we do actually have a little bit more time. If there are questions that we want to take, I can also give that a few more minutes before I go into closing. Please, go ahead.

FARZANEH BADIEI:

Thank you. A lot of times, when we talk about the global Internet and the importance of keeping it global, a lot of countries think that, “Why should we keep the Internet global? Why can’t we have a regional Internet?” We need to make examples of why cross-border data flow and the free flow of information across the borders and free from the traditional border mechanisms is very important for the operation of the Internet. For example, when we have cross-border data flow and free flow of information, the network operators of small islands can do better by getting support from another network operator that is in another country. These are the things that I think, Paul, we should have mentioned, it’s a technical thing. For example, if we come up with strict policies that would limit that free flow of data, it would impact people’s access and the quality of access to the Internet.

The other thing is that access to essential properties of the Internet can be hampered and people will not be able to have access to the global Internet as we know it and if Internet fragmentation happens because there is no alternative to those critical properties. For example, IP addresses. They’re unique. Unless we want to come up with divergent IP addresses, they’re unique. If our policies hamper access to those IP addresses, then we have fragmented the Internet. But we should also focus on how the countries will be harmed, how their economies will be harmed by being cut off from the global Internet.

And for the human rights stuff, I think that we should do human rights impact assessments on the implications of Internet fragmentation on human rights. Because also, the Internet is not only a means of communication anymore, it’s actually access to essential services. And

COVID showed us this. For two, three years, we used the Internet to live our day-to-day life. So that was just a couple of comments.

AJITH FRANCIS:

Thank you very much for bringing that up. I think it's a very valid point. We did not talk about free flow of data, and that's a very critical piece. But I want to put that also in the broader landscape of geopolitical tension at the moment. I mean, we are also in a phase where the spirit of international cooperation is probably at its lowest, at least in my lifetime. We're seeing extremely protectionist endeavors and states trying to close down often. This does raise a very important question of where do we have these conversations about free flow of data? How do we prevent the fragmentation resulting from increased push on digital sovereignty? Where are those venues? This is exactly that we've not had institution building structured multistakeholder institution building in a long time. We need to look at this at a much more systemic level and a holistic approach to define where those venues are and define what the issues that those venues need to address and how they should be addressing it. I think those institutional layers and the topical layer are very interlinked for me because I struggle to find where the avenues for those conversations are.

MICHAELA NAKAYAMA SHAPIRO:

I

appreciate that. Do any of the other panelists want to come in on that question or that larger comment? Well, I can certainly say that that resonated with me and I think that's partly why these conversations are so important to concretize what is Internet fragmentation, why we

should be concerned. And it sounds like at least, there's a broader consensus among the panelists and those in the room that there is a need to talk about this to reiterate certain key messaging. It sounds like there's quite a few different pathways, that that could take both within the ICANN community and beyond. And I'm looking forward to continuing to have this discussion.

I'll try to do my best to summarize some of the action points that have come out from today. And I think already, we can see that there's a need to really concretize to have these clear examples to make the argument as to why the Internet as it is now and the multistakeholder model that governs it is important at a moment of geopolitical tension, at a moment where it is harder to have these... that it's taken for granted that the Internet just works. And to be able to cut through the noise and be able to go straight to what is actually the issues at stake and what are we trying to protect. I do urge everyone in the room to work together on this issue. I know I certainly am excited to continue this.

I can also say that the raising awareness issue is certainly one that we can definitely keep working on. It sounds like this with WSIS + 20 network that Adam mentioned could be one avenue to come together and coordinate on some of these key messages.

Internet impact assessments as well, particularly, with that integration of the human rights filter is something that I personally am very keen on and Global Partners Digital is very keen on and I'm sure others in the room would be interested in working on together and we can see how we can make that something within the ICANN framework and

within ICANN's mandate. And I look forward to those who have significantly more experience than me in the ICANN community to support with that work.

The point of talking to your governments but also bearing in mind that there are challenges to doing so for which I think that gives even more credence to why the multistakeholder model of governance is so important so that there are spaces that we can continue to have these conversations on an equal footing.

I hope that that was a useful conversation for everyone here. I want to take a moment to thank everyone for their time and their introductions, their comments, their feedback. I've also seen quite a few comments on the chat in the Zoom Room. I'm really grateful that we've had such a productive discussion. I just wanted to give a moment if anyone from the NCUC team wants to add anything as a wrap-up before we close out the session. Benjamin, if there's anything that you wanted to add.

BENJAMIN AKINMOYEJE:

Thank you, Michaela. I mean, this is another successful issue forum. For us, if it has to do with human rights, we're there. We're super excited and grateful that you find our platform really useful. I also just would like to thank Pedro and every other one that worked on getting this proposal together. The issue forum is coming to be the place to discuss trending issues, especially as it has to do with human rights and some of the technical remits that we see in ICANN. We're looking for more supporters and we're looking for more collaborators to

continue to make this going. Thank you very much for finding us worthwhile to engage with. Thank you.

MICHAELA NAKAYAMA SHAPIRO: Thank you so much. With that, we can close out the session. Thank you all for being here today.

ANDREA GLANDON: Thank you. You can stop the recording.

[END OF TRANSCRIPTION]