
SINGAPORE – NCUC Roadmap for Ecosystem Evolution: Institutional Innovation
Friday, March 21st 2014 – 10:00 to 18:00
ICANN – Singapore, Singapore

PANEL: Roadmap for Ecosystem Evolution: Institutional Innovation

BILL DRAKE: My apologies to people online waiting. It's very hard to get people to end a 15-minute coffee break. They needed a half hour one. Unfortunately, we didn't have that. But we can slim this session a little bit accordingly, as needed. All right.

So good afternoon, again. Welcome back from coffee. If we could get some calm in the room, that would be great.

This is just a reminder, this is the fourth panel. Roadmap for Ecosystem Revolution: Institutional Innovation.

Just a reminder what this conference title was. ICANN and the Global Internet Governance: The Road to Sao Paulo and Beyond. And why do I say that? Because many of the issues that will be discussed in Sao Paulo at the NETmundial are not fundamentally about ICANN in the first instance or even the second. Although ICANN has very much a strong stake in the broader ecosystem and its evolution, there are aspects of that ecosystem that are not specifically about how does one manage IANA and so on and so forth. And that's really kind of the agenda for this last session because if you look both at the agenda. Because, if you look both at the agenda that's been set out for the NETmundial and the submissions -- and, again, I remind you that, if you click at the bottom of

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

the link at the bottom of each of the session descriptions on the program, it takes you to a page with a bunch of submissions from the NETmundial and some other documents, including documents from the participants, the panelists, and their organizations specific to the particular topics. And, if you look at some of those documents, you will see that, in fact, there's a lot of discussion about some issues that are -- would seem to be quite unrelated to ICANN in important ways.

They reflect the fact that there has been, for the past decade, since the beginning of the World Summit on the Information Society, an ongoing debate at the international level based particularly in United Nations type forums, about whether or not there is a need to create some kind of new mechanism to help to fill real or perceived gaps in the global Internet governance institutional architecture. And for a long time in that debate focused in particular on the notion as we called it back in the days of the WSIS and the working group and the Internet governance on oversight of ICANN and names and numbers. But it also focused on the notion that there needed to be some sort of a new policy space that governments, particularly developing country governments felt that there was not any sufficient place in the existing institutional frameworks we have for global Internet governance to address many issues that fall outside the domain of, you know, just names and numbers and so on.

And often these were described as orphaned issues, issues that did not clearly fall within the jurisdiction of any existing organization. But there was also a broader sort of discussion about the need for mechanisms to help promote the formation of international public policies about Internet governance. Governments for a long time have argued that,



indeed, they don't have sufficient support from the international system to be able to develop effective policies to deal with a wide range of Internet governance issues, not just the infrastructure issues but the issues pertaining to the use of the Internet, which are also part of Internet governance, whether it's intellectual property, electronic commerce, privacy, surveillance, any of those kinds of questions many governments have felt for a long time that there's something missing. And there's been an ongoing discussion about that that has included, in the current context, a discussion about enhanced cooperation, which is ongoing within the U.N.

Under the U.N. Commission on Science, Technology, and Development, the CSTD, there's a working group on enhanced cooperation which is working very hard right now to try to come to some agreement. And we'll have a final meeting in the weeks ahead to try to do that.

There's also a second set of questions that one might see as being tied in here, which is: If governments are saying that they need someplace where they can go -- the framing often is we need a policy space. We need a place where we can talk to other governments about Internet governance issues at the global level. One, you know, either you're talking about creating some new mechanism, perhaps, that has decision making authorities. Or you could be talking about some alternatives. One alternative might be to strengthen the Internet Governance Forum and give it more of a proactive role in contributing to solving global Internet governance issues. So I think we also want to talk about that a bit.



And then also there's been more recently some discussion about the idea that perhaps what's -- what could be useful in the ecosystem would be some kind of a new multistakeholder mechanism that would be more of a knowledge sharing, expertise sharing nature. Let's just say something like a clearinghouse that would help to map issues and expertise to outstanding issues and help developing country governments and others find effective solutions without having to create a negotiation body.

So there are three sorts of poles to this discussion, really. The questions of whether some kind of new intergovernmental mechanism might be devised, whether instead one could just build out the IGF and make that more satisfactory and useful to governments and other actors around the world, and whether some kind of new mechanism of a more knowledge sharing, expertise sharing nature might be advisable. So it's in that context, then, that we have the questions that are before you, although you can't quite read them. Perhaps the staff could scroll down a little bit on the questions that are shown on the screen.

And we have a very good panel of people to talk about these kinds of issues. And you can see their names on the program, quite obviously. I'll just run down from my left here. We have Markus Kummer who is the vice president for policy at the Internet Society and formerly the head of the secretariat of the Internet Governance Forum.

We have George Sadowsky from the board of directors of ICANN who has been very closely involved in these issues for many years.

We have Peter Major who still represents, I believe, the Hungarian government in the GAC right? Sometimes. But is also, more



importantly, in the current context the chair of the working group in the enhanced cooperation in the United Nations.

We have Marilia Marciel who is from the Getulio Vargas Foundation in Brazil and member of NCUC.

We have Alice Munyua, not -- formerly with the government of Kenya. And now -- I'm sorry, Alice. I'm losing your -- dot Africa, right? No, no. African Union. Sorry. I'm losing my mind. I need more coffee.

And at the end we have Bertrand De La Chapelle, formerly of the board of directors and now head of the Internet and Jurisdiction Project.

All of whom have been very closely involved in these issues both within the ICANN environment and in the United Nations environment. So that's the background of what we want to talk about today.

I thought perhaps we could start with the first set of questions pertaining to this debate about intergovernmental policy spaces and whether anything can or should be done there. And it's very easy for people to instinctively say no. But there are some very real concerns on the part of a lot of governments. And I think they need to be addressed. And they will come up in -- at the NETmundial.

So let's start the conversation perhaps with Marilia. Could you kick us off and give us a few minutes on what's going on with this discussion?

MARILIA MARCIEL:

Thank you very much, Bill, for the introduction and for the invitation.



When I was invited to be on this panel, two expressions that were on the program kind of stood out for me. The first is institutional motivation, which is the main topic of the panel. And the second was the road to Sao Paulo. And, being one of the representatives of civil society in the executive committee, I thought that maybe I could provide an answer and some questions and jobs in my personal capacity that people might have. But we had a very good presentation this morning from Sally and Daniel regarding NETmundial. Of course, if there are still questions, even regarding what is the political environment in Brazil, what are the expectations of actors and so on, I would be happy to address if you have questions about that.

But, to save time, I'm going to focus on this expression which is institutional innovation. Some days ago, the community had very important news about the willingness of the United States government to transfer the stewardship of the IANA functions to the global community. And I think that is very natural and even desirable that this community here focuses on the development of a comprehensive plan for transition until the 2015, a plan that would involve all the community that is part of ICANN and also the broader community.

Nevertheless, even though this is a very important moment to ICANN and that names and numbers underpin the whole function of the Internet, so they have this fundamental importance to us, yet, when we talk about names and numbers, we are talking about the very specific area of Internet governance. And, as Bill presented, this panel is about other areas of Internet governance that are broader and that are on the agenda of NETmundial. And we should not forget about that. We



should not focus on ICANN and forget about this very important stuff regarding the roadmap that is also on the agenda.

When the Tunis agenda -- that is one of the main documents approved at the end of the World Summit of the Information Society -- talks about institutions, it clearly separates the day-to-day management of the Internet from the public policy issues related to the Internet. And, when we talk about the day-to-day management of the Internet, we notice that there are institutions in place. These institutions are operational. Of course, it could be improved, as we saw on the last panel. But they are there.

When we talk about public policy issues, the Tunis agenda talks about two different institutional structures. Let's call it this way for lack of a better expression. One of them would be a space for policy discussion. And this space has been created. In 2006 it's the IGF, and it's working fine under constant improvement. And the second would be a structure for policy development, for policy making. And many people understand that there is a gap that -- regarding this -- the second structure that was predicted by the Tunis agenda. And the size of this gap, of course, varies depending on the opinions of each actors. And, therefore, the remedies to address this gap are also different when we talk to different actors.

But I think that there is a general consensus that there is a gap there. And, when we talk about gap, that is the reason why we talk about institutional innovation and not evolution as we talk about -- when we refer to ICANN and the IANA functions. It's not only about an evolution, but it's also about an innovation. It's about having the creativity and the



boldness to put in place something that was not there before. And this something is what is being discussed right now. I think what is important to emphasize as well is that, even though we don't have a structure for policy development, that does not mean that policies for the Internet are not being developed and not being put in place. Policies for the Internet are developed on a daily basis. If we think about, for instance, terms of use that are developed by platforms such as social networks or platforms of e-commerce, these terms of use are policies that govern many aspects of our lives. They govern our privacy, our freedom of expression, what happens with our data online. So it's a way to develop policy. If we think about standards, technical standards as well, many of the standards that are developed, they have policy implications. So they are a kind of policy development. If we think about the many international organizations that have a stake on Internet governance, they also develop policy on a daily basis. So then we could ask why should we need institutional innovations if we have all these organizations developing policy for the Internet already?

The problem is that we have issues with how these policies are being developed. First of all, if we think about terms of use, for instance, they do not involve all the actors that should be involved in the development of such an important way that affects our daily lives. So there are areas of policy development that we could say that they're not multistakeholder. They do not involve all actors that should be there. There are other areas that are not open enough. And, if we think about international organizations -- and many times we have so many problems even to have access to documents in international organizations. This is a real barrier for intergovernmental actors to form



positions to be able to participate meaningfully, having access, having transparency in what is being discussed in international organizations. This is another issue. And, if we think about standards, for instance, many of the -- much of the process of developing standards, it's not accessible enough. And I don't say accessible, meaning that it is not open. Of course, the process is open for those who want to join the list and participate and so on. But the process is not understandable. It's not readable by the average people.

And, if technical standards have policy implications, then I think it goes without saying that all the people, even though they don't have a technical background, should be able to understand what is at stake and participate. So we have all these problems and issues that need to be addressed. And, moreover, there are some actors that point to other points that need improvement in Internet governance. For instance, how can we guarantee that policy development will be sufficiently coordinated between all these different organizations? How can I guarantee efficient communication between them? And how can we guarantee that policy development is not fragmented? So there are many issues that are raised. And, if you go to the background documents of this session, that is a very good questionnaire that has been developed by ISOC. They interviewed stakeholders across all sectors that have identified reasons and points where Internet governance ecosystem, this larger area of policy development should be improved. And I think this is a valuable document to look at.

Just to finish and begin concluding, because we have little time, I think that the debate of institutional innovation has been driven by fear of change for much time of the Internet governance debate.



But we have to bear in mind that 10 years have passed since WSIS. And most actors have moved away from extreme positions from thinking about only intergovernmental arrangements or thinking that the status quo is the best that we can have.

I think that actors are making a confluence to more moderate and constructive positions. And, if you go to the background documents again of this session, we have tried to identify some of the best proposals for improving the ecosystem of Internet governance. Many of them come from civil society, actors and organizations, which I think this is also important to emphasize. This is not a point only for governments, for developing country governments. This is something that has been advanced by civil society, by non-governmental actors as well this evolution.

And I think that ICANN and the ICANN community has a role to play in this debate about institutional innovation. Because ICANN can serve as a very important model of how multistakeholder debate has worked in practice. The ICANN community puts a very important emphasis on the bottom-up process. And this is something that is very valuable on this discussion.

And ICANN is a place of very clear procedures. And these procedures are points of security that all actors are going to be heard into the process. Procedures usually help those that are less resourced, even in terms of financial resources or knowledge and so on and guarantee that everybody will have an input into the process. And joining ICANN discussions is amazing how many people procedures we have here to



follow until we reach a decision about something. And I think this is very positive.

Some evaluation and forward-looking, in my opinion, we have to think about the political moment that we are in. And we are in the middle of the WSIS+10 review. In 2015, the WSIS is going to be reviewed. And there are some proposals on the table saying that the WSIS -- we should have a full-scale review. We should have a whole new text about information society.

I don't think it would be the best way forward. I don't think that we are right now in the position to negotiate a better text than we negotiated 10 years ago. We have a good text with the Tunis agenda and other documents that came out of WSIS.

What we have to do now is to move forward and implement these documents comprehensively. And that includes moving forward with the debate of institutional innovation. And, politically, I think that we are in a key moment right now. Because we are in a moment in which there is persistence -- persistent -- people are let down because this debate has not moved forward as it should for many years. And, on the other side, there is eroded trust into the system. And, if we fail to provide any solution to this institutional deadlock on this other area of Internet governance, I'm afraid that this will just grow the frustration and the trend of fragmentation of the Internet.

So I think we need present some response to that. I think that in the Internet governance debate, some actors have treated these discussions as a game that I should win 5-0. If my team wins everything, if the winner takes it all, it is the best scenario. And this is not



sustainable. We have many relevant actors, governmental and non-governmental actors that have asked for change, asked for institutional innovation. And we must not ignore them. It's not sustainable to continue to ignore them.

And, to conclude, I would say that we had made advancements so far. The announcement from the NTIA was very important. We here in this room and in this meeting know the importance of it. But it is not enough. The peoples of the world, they don't know about the roots. They don't know about the importance of the change. And this will not really impact their lives. And this is positive. Because, if the root changes do not impact their lives, it means that we need -- we did a very good transition that did not impact the Internet. But they understand what the privacy issues and concerns that they have. They understand how their privacy and freedom of expression and consumer's rights are important to them. And NETmundial was envisioned to be a people-centered event. We should not forget the background and what were the immediate reasons that triggered NETmundial. And it was to make people's rights respected in a scenario of mass surveillance. Mass surveillance is not a topic of NETmundial. This is off the table. But the mindset to put people in the center of our discussions should be there. And, to do that, we should go beyond the discussions of the root file. And we should talk about institutional innovation in NETmundial, too. Thank you.

BILL DRAKE:

Thank you very much for that. That's a good broad background to the politics of the discussions around creation of new mechanisms that have



gone on over the past 10 years and NETmundial. Very much appreciate it, Marilia.

Alice, would you like to follow on that point? By the way, five minutes each perhaps. And then I have a little thing that will make noise.

ALICE MUNYUA:

Just to quickly reintroduce myself, Alice Munyua, currently the African Union Commission, formerly with the Kenyan government. The dot Africa project is a project of the African Union mandated by the African member states. And the African Union Commission is implementing it together with the zed ACR, just to be clear.

I'm going to be speaking for myself but also on behalf of the African Union Commission in terms of just the way the African region is trying to innovate in various ways to be able to get as many of us as possible on the Internet and as many of us as possible participating in several of these Internet governance related policy and governance processes.

I'm sure many of you have had these statistics ad nauseum. But again, just to repeat it, in terms of just demonstrating why my continent is not that meaningfully participating in these processes.

The U.N. says that only 26% of the population in developing countries uses the Internet. While 74% of -- 74% come from developed countries. Africa has less than 20% access with most users concentrated in urban areas and most of them using accessing the Internet through mobile phones, despite their poor quality and extremely expensive prices. And there are various reasons for this. But these reasons have resulted in a low level of participation in these processes. They're not just ICANN,



but also Internet governance processes. And all the others that are coming up.

And also this means that most of the assumptions that are made about Internet governance come from developed countries. And those are the ones that inform global Internet governance debates, discussions, and even decisions.

So an understanding of this unevenness, not just access to the Internet and use but also in disparities in terms of effective participation is very, very important. And it's a debate and discussion that must continue. And, from our part of the African region and especially at the African Union Commission, we're making quite a lot of progress in this area.

So, apart from our Africa ISOC organizations, you know, AfriNIC, which we all now RIR which has, you know, made very impressive strides in deployment of IPv6. We've got nearly 52 African countries allocated. The others, the FTLD and AFNOG complement other in various Internet governance areas focusing on different areas of specialization. But, one of the things we have to realize that is in the Africa region, Internet governments are extremely important and are still the most important stakeholder. Because they're the ones putting down the infrastructure and coming up with various policies, conducive and otherwise. And, especially in my country, even important in actually supporting and providing space for the multistakeholder process to continue. For example, in Kenya multistakeholder policies processes are part of our constitution. So it's a constitutional provision for any policy, not just in the ICT sector, while it's being developed to adopt a multistakeholder approach. So now you can imagine why an intergovernmental

organization like the African Union is a very important organization. It's made up of member states. And you can see the role that it played, for example, during WCIT because it's the African Telecommunication Union that brought all the African member states together to develop what we're calling a common African position, even though not all African member states are assigned to it.

So the African Union leads several processes harmonizing ICT policy and regulatory frameworks. And some of the more concrete initiatives include, for example, infrastructure in partnership with ISOC where -- called the Interconnection and Traffic Exchange Program, which is aiming at developing as many ISPs as possible in each African country. The aim is to have at least 80% of our Internet traffic exchanged within Africa by 2020. So trying to keep it local.

And then we've got our Internet governance forums, which have been actually quite successful and I think the east African one was a very fast one subregional one which was convened by Kenya. The Kenyan -- we started off with the Kenyan -- the national IGFs in the five east African countries and then which were the building block for the east African IGF. And now we have a continental IGF.

And for Africa the IGFs are very important. It's the place that we feel our local issues are able to be discussed. It's also the space where we feel that we can go beyond what the global IGF can. We can even -- you know, for the east African IGF, we've even gone beyond and in some spaces developed policy and regulatory frameworks. For example, the discussions around an African cyber security, cyber security -- cyber security convention started at that level. Right now we're considering



an African Union Internet governance declaration. And this is taking into consideration that we haven't started to develop an interAfrican agenda. And we don't have a vision, a collective vision. So we started initiating those discussions first at the ministerial level last year in December to create our own agenda, our own vision, which will provide or propose mechanisms for facilitating Internet development in ways that really respond to our own local African conditions. It will also contribute towards reforming an Internet governance decision making bodies and policies with an African agenda in mind

And also support and enable meaningful participation of African stakeholders. And this is in the works given the mandate during the African ICT week in 2013.

I've mentioned the African Union convention is another one, another one of the areas and issues that came up and has been quite high on the agenda where African member states feel that there's no other space to discuss this issue. And that's the reason why, you know, we laid that foundation for an African-wide cyber ethics convention that begins to provide fundamental principles in this very important area of cyber security. And it will harmonize African cyber legislation and as well, obviously, strengthen existing member states and regional economic community frameworks.

And also defining security rules.

And then one very important one that is part of this ICANN process is the dot Africa project. I think it's one of the biggest projects that has brought several -- that is Internet-related and has brought the biggest number of African member states towards one initiative. We've



currently got nearly 30 African member states participating in this -- in dot Africa, which is in itself an ICANN process through what we are calling a government reserve name list which provides African governments with a priority to reserve names that are important to them and their constituencies. And this is an ICANN process.

You know, that where we've taken -- you know, we've taken advantage of these projects to begin to educate, create awareness with African members in, you know, for ICANN and for them to actually get even more involved in ICANN processes. So we have more of us participating in the GAC. We have several of our private sector organizations also beginning to participate in various ICANN processes. So, I mean, this is the way of innovating -- of the African Union innovating processes and initiatives to be able to bring as many member states not just member states but other stakeholders into these processes. Another one coming out of the project is creating our own what we are calling trademark -- a rights protection mechanism. This is recognizing quite clearly that the trademark -- the ICANN trademark clearinghouse is an important rights protection mechanism for across all gTLDs.

But I think we have to understand that there are very few African trademark holders who even know what ICANN is even forget about the trademark clearinghouse. And the fact that we have a few generic top level domain names that are coming from the African region, it's important that we have to build our own mechanism to encourage trademark holders, both registered and unregistered, to be able to participate in this process. Because we have a promise to the African members who are stakeholders that we are going to try and protect African intellectual property as well. And so the reason why we've



come up with our own local mechanism called the max validation system that would provide a more efficient and cost effective mechanism to engage with a broader collection of local services and products, provide us, within our even geographic areas and specifically to African geographic TLDs.

Apart from that, I think I've mentioned the government reserve name list, which is extremely significant to our governmental authorities and which for us has been very significant in just bringing as many stakeholders as possible to participate in this process. I mean, the current challenges are, I think -- and I think our current challenges is finding that we have been made to conform to some of the processes of the ICANN level. Even though they do not -- they do not conform well to our own local contexts.

For example, if we're going to be launching the dot Africa project, we have to have given our own governments the -- our priority. But ICANN rules, current rules, actually, you know, say that they all have to have gone through a trademark clearinghouse. I don't know how you're going to have governments and member states doing that. Anyway, that's a discussion that we're having with the ICANN staff and the ICANN board.

And the other one is the max validation system. And I think several of our stakeholders have made calls and have, you know, have continued to request that ICANN to actually allow for locally -- local approaches to some of these ICANN processes to be able to engage as many of our organizations and many of our stakeholders as possible. I think I'll stop there and wait for questions. Thank you.



BILL DRAKE:

Great. Thank you very much, Alice. So there's a ton of stuff going on in Africa and, clearly, a great deal of interest in creating spaces to be able to tackle a lot of these many issues that are happening in the broader Internet governance environment to come.

Perhaps I can turn to Peter Major to tell us what's going on with the working group in enhanced cooperation and their efforts to think about that problem at the global level and what they may come out with in the weeks ahead. Peter.

PETER MAJOR:

Thank you, Bill. First of all, thank you for inviting me to this panel. And I have to apologize in advance because I just got off the plane and after a 20-hour flight. So probably I won't be that coherent as I am usually.

During the IGF I participated on the panel of George about the multistakeholder approach. And then I got intimidated by the theories, and I got intimidated right now by the two ladies again. Because you are telling me that we are doing something very, very complicated and very complex thing in the working group, which is unfortunately true. It is really true.

But I just want to dwell on a little bit on what is the working group and how it was created. You may know -- some of you may know that there was already a working group which was a multistakeholder working group within the U.N. system within the CSD -- that is the Commission of Science and Technology -- for development on the improvements to the IGF. And after a couple of meetings and long, long discussions and



very heated discussions, the group concluded with about 40+ recommendations to improve something, which is already to my mind was very good.

But there was some essential points which were pointed out already during this series of discussions, tangible outputs and policy questions.

And the U.N. accepted the report of the working group and the recommendations in 2012. At the end of 2012. And it created the new group also within the Commission of Science and Technology Development to investigate about the implementation of enhanced cooperation. I don't really want to go into the details of what enhanced cooperation. If I want to be very blunt, I don't know. There are more knowledgeable people here who know it. Anyway, but, basically, to me it's a perception. It's a perception of governments not being involved. And I could hear from ladies on my left that there is a perception also from civil society. And there's a perception from business and -- so all over we have this perception that we are not involved. So I was very, very pleased to chair this working group because that was a real multistakeholder working group. While still governments were still a bit in maturity. We have 43 members of the working group. There are 23 governments. But we have five representatives of the other stakeholder groups.

And we have results. We have results. First of all, the discussion itself goes in a very smooth way. Very polite. And to me it's already something that people can work together. Even if they disagree, even if at the end of the day we don't achieve great results, but at least we can sit down and we can discuss.



We have started the work just sending out the questionnaire about 18 questions to all stakeholders according to the mandate we had. And we received 70 responses to this long questionnaire, which made about 1,000 pages. So, naturally, of course, you can't work from 1,000-page document. So it has been reduced at 25-page summary.

But, one of the major results of this questionnaire and responses were that there was a correspondence group within the working group which was set up to identify the main problems, the main issues which came out of this responses and to try to map the problems or policy issues to existing mechanisms or to identify the gaps.

And this is a very serious work. And I really appreciate it.

Now, let's get back to the perception. As Marilia pointed out -- and she's following remotely, I think, the sessions we have -- there was a big polarization within the group. There are two groups who are -- two major groups who naturally don't agree on anything. I mean, they are just opposing each other. And, apparently, they can't agree on that.

And, getting back to the original question, what I'd like to achieve. At least to rely on the work of this correspondence group to show that, yes, there are already mechanisms. There are quite a lot of mechanisms which do real work. And yes, there are gaps. There are real gaps, and we have to do something about that.

And, once we have that, probably we can go a bit further and to be a bit innovative in creating some eventually new institutional framework. I'm not really sure whether we will have that considering that even the working group itself is being funded on a voluntary basis; that is, it's not

in direct U.N. budget. So, I mean, those proponents who are claiming to have a new U.N. institution, I can't really see how it can happen. But this is something in the U.N. you can't say that we want to create a new one, but it's being downsized everywhere. But we have made some progress. And we are going to have our last meeting before reporting to the Commission of Science and Technology for Development in May. And I hope to achieve at least a couple of recommendations to put down on the table where are the gaps, where are the real mechanisms, and where are the divergent opinions. So on that basis I think we can provide some input to this whole process and to move forward where -- in a very slow way, but we're going to move forward. Thank you.

BILL DRAKE:

Thank you very much. Peter. So the U.N. process turns along, but sounds like we may not end up with a consensus there. That's not surprising. Which then leads us to the question of can we do better with what we already have? And one of the things we already have is the Internet Governance Forum. And we have here Markus Kummer whose Internet Society recently had some thoughts on that. Markus.

MARKUS KUMMER:

Thank you, Bill. It's a pleasure for me to be here. Let me also start with the Tunis agenda and with the history, as we have many veterans around the table here. There have always been different interpretations of what we mean in the Tunis agenda in the details. We agree on the broad outlines. But, like Peter, I'm one of those who never understood what enhanced cooperation, what it is meant exactly there. There are different schools of thought. There is those who think it should be



enhancing cooperation, improving the functioning of organizations from within and between organizations. And there are those who think they're something you needed.

But, when you talk about institutional innovation, we should not forget that the Internet institution are actually examples of institutional innovation. Starting with the Internet Engineering Task Force, really opening gathering where anybody can participate and contribute. And then we have to pay tribute to the U.S. government in the '90s coming up with the idea of creating ICANN. Because, basically, based on the realization that traditional intergovernmental mechanisms wouldn't be fast enough to cope with this rapidly developing technology.

And that brings us to the role of governments. Yes, of course, the role of governments is key. But the problem is the governments are used to different kinds of cooperation, different kinds of working methods. They're used to one-stop shop organizations. They talk about trade, they go to the World Trade Organization. When there's avian flu, they go to the World Health Organizations. And, when there's something to do with the telephone, they go to the International Telecommunication Union. So, for them, it's only normal that for one issue, you want to have one organization. And now the Internet is different. It is as different distributed governance arrangements that are adapted to the underlying distributed technology.

So are there gaps in these arrangements? The answer is yes and no.

Yes, if you think there are no institutions dealing with this or with that that are universally known. But it is no because there's always somebody dealing with something. Spam is a good example. All of a



sudden at WCIT, it emerged as a problem. Many of us had thought this is not -- no longer a problem any more. We know how to deal with it. We cannot deal with it completely, but we have methods on how to make the problem bearable.

But there are many developing countries who didn't know the solutions. So okay. Let's take it up and let's work on it. And we as ISOC, we took up what I like to call the WCIT leftovers. And we put some efforts into working on spam, organizing workshops. And we continue with working on spam in this year and preparing an anti-spam toolkit. And there are practical measures there, but they are not known well enough. And I think this is, to a large extent, the issue. There are groups dealing with the problem. But the problem, the solutions they provide are not universally known. And this is something we definitely have to address. Do we need new institutions? Do we need new mechanisms, or do we need to strengthen what we have?

And the question you asked, Bill, there is the IGF that is here that exists. And, when we look back, there are various people in the room who are part of these discussions when we had the working group on Internet governance. Yes, we identified there's a need for something else which does not yet exist. And the working group came up with a proposal to create the platform for dialogue. And at the time, the vision was let's look at some organizations that provide that. And the organization for economic cooperation and development was seen as a possible role model. But, of course, we realized at the time that it was far too ambitious to think you would be able to replicate an established and existing organization. But the idea was always through dialogue,



identify possible solutions, share best practices, and find a bottom-up way of finding a convergence of policy through dialogue.

And it's very gratifying to hear from Alice that the IGF model in Africa actually helps policy makers to develop their policy. Now to begin with, the global IGF was very, very fragile. It was not so that the entire world embraced the model as it was put on the table. People came. And, again, the veterans may remember when we had the first discussions or the first meeting in Athens, there was a lot of nervousness around. There was lots of mistrust. Might be hijacked, might be captured.

But, over the years, we managed to install some confidence and trust and also a sense of community among those who attend the meeting. And that was apparent at the last year's meeting, I think, in Bali. And, yes, there are recommendation from the working group on IGF improvement. And these have been taken seriously. And the time has come now to move a step further. And we have proposed this Internet Society to take this step and also to learn from Internet institutions. And, in particular, from the IETF with the notion of rough consensus of having maybe policy recommendations that are here on the table up for voluntary adoption. And that could be a tangible output.

We have also recommended taking up something which has been in the air and I know you were one of those who recommended it from the beginning to have intersectional work. But to begin with, the institution -- it's not even an institution. The platform would have been too fragile because precisely there were fears of capture. But maybe time now has come. And it is an opportunity really to take this extra step and to strengthen the IGF and to really to let it fill this perceived gap. And this



is a place where governments can meet other stakeholders. And this dialogue is important. Governance needs to talk to the technologists. They need to know whether the solutions they envisage are actually implementable or could they break the Internet? Because some solutions, politicians propose, could be very detrimental to the good functioning of the Internet.

And this dialogue, I think, is only at the beginning. But it will be more and more important as we move forward. We have started on a very small scale with the Internet Society inviting policy folks to the Internet Engineering Task Force meeting. And the results are very encouraging. They come to begin with. They don't know what to expect. And they go. They are actually enthusiastic believers in the model of how the IETF does business, which is opposed to the intergovernmental model that governments need to approve the standards they want to have.

And, as Jari explained this morning, the belief in innovation without permission is at the heart of the Internet. And this is something that we want to maintain. And the IGF, as a multistakeholder model with a link to the United Nations, it is not a U.N. organization as such. But it has the credibility of the United Nations, which is important to many countries. Its linked to the Secretary General of the United Nations as its convener, gives credibility to governments that might be reluctant to go into a meeting of an Internet institutions. But the IGF can be a port of entry for those governments. And I think we don't lose anything and we gain everything if we work hard to strengthen it. Thanks.



BILL DRAKE: Thank you very much, Markus. So perhaps institutional maturation should be the title of this session rather than innovation. Or maybe they're tied.

Bertrand, what do you think about some of the topics here?

BERTRAND DE LA CHAPELLE: Thank you, Bill.

If we're looking at the title of the session, and I'd like to connect the whole exercise today and praise you for having actually mapped the topics to what is likely to be the agenda of NETmundial, basically. So there's one big track around principles. And then there's another track around roadmap. And the way you've framed it is, actually, the way I think it's going to evolve. There are two subelements in this roadmap issue. One is the whole discussion about the globalization of the IANA function/ICANN that we've been discussing. And the second one is what I tried to allude to this morning in one of my comments. Is the second dimension is precisely this connection is how does the ecosystem of Internet governance that we have today that basically deals with the governance of the network on the technical issues, so to speak, is going to expand or to develop under the same kind of principles to address issues that are fundamentally different in their nature because they are much less technical and much less political that are related to the use of the Internet, that are related to freedom of expression and privacy and so on.

Here I want to make a very fundamental distinction. Most of the technical issues that are being addressed by the IETF, the W3C, the RIRs



and ICANN, the governance ecosystem for the governance of the Internet start from the assumption of unicity and universality.

When you think about it, the standards, the addresses, the protocols, the naming system are intended to be unique.

The problems we're addressing on the governance on the Internet start from the contrary. The problems are being addressed in systems that are fundamentally heterogenous because they are national frameworks. I hear very often that the limitation of the intergovernmental systems is that intergovernmental discussion is too slow, cannot keep up so on. I don't see this as being the main obstacles. Multistakeholder discussions can be long. It's not the problem.

The fundamental distinction is intergovernmental organizations are based on one fundamental principle which is the separation of sovereignties. Which means that cooperation is an afterthought. It's something that you're doing when you're basically forced to do it. It's not the fundamental reason why you exist. The reason you exist and the reason why you do international organizations is to very carefully ensure that another sovereign is not going to infringe on your own sovereignty. This is not the recipe for handling the kinds of problems that we're facing with the Internet because of its transborder nature. So, fundamentally, the reason why the multistakeholder model is needed is because there is, one, a lot of situations where there are conflicts of laws between the different countries, and, two, as was mentioned by Marilia, in many respects the large Internet operators -- it can be DNS operators or platforms -- develop terms of service that had have a natural vocation to apply across borders.



It is a normative system that actually sometimes conflicts with the national laws.

And we do not have at the moment in the international system any principle regarding the hierarchy of norms. No national law is supposed to be superior to another national law.

And the problem of governance on the Internet is how do we manage disputes that come from conflicting norms in shared spaces? How do we manage conflicts between the terms of service of one company and the national law of another country? There is no principle of hierarchy. And we need to develop mechanisms to deal with that.

So I do believe that this is, indeed, one of the two subtracks of the notion of roadmap that should have a lot of attention in NETmundial.

The second quick thing is, as I said this morning, I strongly believe in the notion that governance -- Internet governance in general needs to be distributed, layered, distributed, multistakeholder and so on. But distributed is very important. It means that, instead of having the natural reflects of creating a single entity that deals with governance of the Internet or on the Internet, the approach should be to have issue-by-issue networks, governance frameworks. And, when you look at the definition of Internet governance in Tunis agenda -- and this will make Bill smile -- we all recognize that the expression principles, norms, rules, decision making principles and programs is actually the famous definition of regimes.

And he's well-placed to know why this is in there.



So the question is the governance on the Internet, the infrastructure or the institutional framework for governance on the Internet needs to be something that allows the creation of regimes. And the way to create regimes is actually to get the relevant stakeholders around the table to discuss the issues of their common concern. We do not have this mechanism so far. What we have is the embryo of this. And the embryo of this is the IGF, which is the first place where some sort of agenda framing or issue framing is happening, which means that you get people who are interested in one given topic. And they begin to talk about this. The problem is that it has many -- it's not a problem, actually. The good thing is that it has many similarities with what happens in the IETF when you create a birds of a feather. But the problem is in the IETF you get an accept. Once the birds of a feather meeting has identified that there is a topic -- and I've been helped also by discussion I had this morning on the fact that, to move to a working group in the IETF, you do not only need to have a successful birds of a feather. You need to have a group of people who say we're willing to work on that and another group that needs to say we are willing to vet or to observe or to criticize the work that is being done.

So what we have today with the IGF is the early stage of something that lead afterwards to working groups or processes or what I call the multistakeholder process is the one I'm leading. But we don't have the mechanism that allows for the formation of those issue networks. And what is at stake is what kind of lessons I believe can we draw from what is working in the IETF. And maybe other processes to create this mechanism that build on top of the IGF. I do not believe, for instance, without getting into detail, that the MAG of the IGF can play the



equivalent role of the IESG -- sorry for the acronyms -- in IETF. It is not this thing that will evolve into more than a program committee.

But how to create those groups is probably the way forward.

Let me finish by one point. We're talking about roadmap. And what I just sketched here is just one possible option to address those issues. But what is at stake in the roadmap and the NETmundial is are we able to collectively frame the topic we want to solve in a way that we all agree upon? There's no way you can find a solution to a problem if the formulation of the problem is not shared.

And so we are now rushing with various options. The roadmap, I believe, on this specific topic is, basically, to try to frame the topic in a way that is acceptable by everybody at NETmundial, bring this in to the IGF in Istanbul so that there is a plenary session and a few workshops that discuss this on the substance so that in Istanbul there is a sort of endorsement on a process to move forward. And the key question is what will be the process to discuss this? Leveraging the working group on enhanced cooperation, leveraging the work on many channels that have produced this so that it feeds into what is on the horizon, which is the WSIS+10 meeting. And the WSIS+10 thing is such a question mark that we have the power to basically feed what we think it should be. And I personally believe that the NETmundial is the kickstarting of the preparatory process for the WSIS+10. Because, otherwise, we're going to get into the whole debate of a new summit and so on, which is the worst thing that can happen.



BILL DRAKE: Thank you very much, Bertrand. A lot of interesting thoughts there. We're going to -- we're obviously running a few minutes late, having started late after the coffee break. We will wrap this session about 15. So, George, if you can bat cleanup with a little quick integrated thought, we'll take any quick comments from the floor. Okay?

GEORGE SADOWSKY: So I'm paying for the sins of my predecessors, as usual.

BILL DRAKE: I've been in that seat many times.

GEORGE SADOWSKY: Okay.

Well, I have so much to say and so little time. Let me start.

For me, the starting point of this discussion is the NTIA statement. Because it opens up in a real way the possibility of institutional change in Internet governance.

And the first issue, you know, once that happens, is we need to understand what the problem is, as Bertrand says. If you don't have a common view of the problem, you're not going to like the solutions very much.

But for any -- if you can define the problem well enough -- excuse me. If you can define the problem well enough, then the next thing to realize is that there are bounds on the solutions. There are constraints. Some



of them have been provided by NTIA. And to make it short, it's the digital Hippocratic oath. Do no harm to the Internet.

Some of them are going to be provided by the technical community. Because, if it looks like any part of the solution is going to be detrimental to the way the Internet works, they're just going to walk away from it. And rightly so.

And some of the constraints will be provided by civil society and the government saying we really -- this has to be a part of the solution. Otherwise, we're not going to play.

And the issue -- I think the practical issue at hand is how do you take those various spaces, assuming they have a non-null intersection, and converge to find out what that intersection is? And I'm a little bit pessimistic about that. But maybe the roadmap that Bertrand just sketched out has some hope of paying off.

So, if you're thinking that the solution has to include new institutions, there's some issues that come up. Institutions take time to build. There is a process of generating confidence, building trust, showing that the institution is stable, understanding what it can and can't do. And a new institution is likely to be characterized in its first years as a struggle for power, representation, all kinds of things which do not lead to any sense of stability in the institution. So those of you who were around ICANN for a long time may remember that ICANN itself was essentially lambasted as illegitimate for at least its first five years by quite a few people. And legitimacy is going to be an issue for any new institution. Things have to proceed marginally, maybe more slowly than some of us would like, but to building a foundation which is solid.



And, in addition, if we move to a new institutional regime, whether it's new institutions or not, I think the burden is going to be on us, whoever -- us being the people who define the new arrangements -- to show that it's at least as good and probably better than anything we have now. Otherwise, it's not going to be acceptable. Full stop.

There's a wonderful essay in a book written by a computer scientist named Fred Brooks called "The Mythical Man Month." And the beginning -- the title of the chapter is there's never time to do it right, but there's always times to do it over.

And I submit that we cannot afford to be the victim of that.

I'll give you an example of the cost of that. Some of you may remember an organization -- a U.N. organization called the GAID, the G-A-I-D. GAID grabbed the floor of the ICT for development agenda immediately after the cessation of the ICT task force, U.N. task force for ICT, or something like that. And for four years it did very little except hold conferences and fly people around the world. Essentially, the output was close to zero. But, by doing that, by grabbing the focal point of that subject -- I think it was in 2004 -- they preempted anyone else from grabbing the focal point and doing something else with it. The real cost of GAID was really a few million dollars. The opportunity cost of GAID was blocking anybody else from doing a better job and taking the subject and doing something good with it. We cannot let that happen in this Internet governance transition to whatever the future is.

Now, all of this might make you think that I'm very much opposed to change. And there was some sub -- some comments in the first session this morning about this.



I don't think there's a fear of change as much as there is a fear of breakage if the change isn't well-engineered.

If you -- and, by the way, there's no way to operationally test this change, this institutional change, before you make it unless you go very slowly and very carefully.

So that I know we're all familiar with unintended consequences. We suffer from them. Sometimes we benefit from them in our daily lives. We need to understand what those consequences are and minimize the unintended consequences of any change that we make in the Internet governance regime.

Let's see.

Let me go on to something Bertrand said this morning. He made a differentiation between the governance of the Internet and the governance on the Internet. And I think that's a really important differentiation which tends to get lost in many of the discussions that we have. Certainly it gets lost on the one discussion list regularly found occasionally and restored.

The governance of the Internet is an issue that involves ICANN, IANA, the ISTARs, et cetera, et cetera. By and large, if you look at the Internet, it's scaled from a few people to two billion people. It has thousands of moving parts. It's intricate. It operates on the basis of cooperation and not necessarily even contracts where contracts would be common in the business world. It works.

As a technical phenomenon, it works.



The tougher issues, the issues of the governance of issues on the Internet, because the Internet is a disruptive force, has entered into our society is much more important in the long run. And the problems are much tougher.

Let me give an illustration of one of them just to show a different side of it.

And this has to do with orphan issues. Is cybercrime an orphan issue?

Well, I see Steve shaking his head saying no. I would say yes and no. And let me describe something that happened a few years ago. In the United States there's a television program called "60 Minutes."

It's a journalism program. And they have people on and talk about various issues and problems.

Well, Ron Noble, who was the Secretary General of INTERPOL was on the show. And he was given -- and this was when cybercrime was an issue, and this was one of the focal points of the discussion. By the way, you can see this on YouTube. If you can find it, you can see it. That's how I found it. So he was asked "Do you have enough resources to handle this problem?" And he started crying. Visibly.

And he said -- he recovered, and he said, "No, we have maybe a few percent" or something like that of what we need.

So is cybercrime an orphan at the international cooperative level, or is it being starved to death by its parents who are the governments of the countries of the world? That's a much more difficult problem to address, and yet it's an important problem. I suspect it's becoming



more important. That's an issue of international priorities. How does the Internet governance movement, if you call it that, or the Internet governance community people who are involved or interested in it, make an impact in terms of priorities that have to do with accommodating this disruptive influence in a way which is positive for society?

So these are really tough issues. And I just hope that once -- once NETmundial is over, that we will be able, at least on the 1Net list, which I'm active on, we will be able to say there is life after IANA. And we'll be able to start addressing these issues because they are by far the most important.

The conclusion I have -- and I think Bertrand said this more eloquently, as he normally does, is that the institution building we need is the institution building within this community. Because we are not equipped to deal with converging on acceptable solutions to -- I'm very pessimistic about the IANA issue. I hope we'll be able to converge. But, if we can't do that, what hope do we have on the larger issues. We need to build institutions among ourselves that will allow us to address effectively these problems in a way that makes sense and makes good use of the resources that we have, because we are -- there are a fair number. Let me stop there.

BILL DRAKE:

Thank you, George. I think that probably the jetlag is setting in. The day is getting late. Everybody wants to hear Larry Strickling. So let's try to just move real quickly and just see if there's any questions on this broad nexus of issues. I mean, the fundamental problem remains that --



whether all this non-ICANN broader IG stuff is your top priority or not, the fact of the matter is the NETmundial process will be there. And it will be there because these issues are very much of concern to a lot of actors in the international community. So it has to be recognized and addressed. Do we have any interventions -- sure, please. Let's just take a couple of quick questions. And then we'll just go through the questions all together. And then we'll do a quick response. And then we'll cut this and move on to the next bit.

Jeremy.

JEREMY MALCOLM:

I'm Jeremy Malcolm. I used to be with Consumers International. And I'm moving into EFF, but now I'm just representing myself.

I thought this third question, this third bullet point was really good. And none of the panelists really addressed it. A number of the proposals for institutional change are trying to make a compromise by saying, well, okay. We're not going to form a new institution. But we're going to form a new clearinghouse or various words used to describe it where governments and other stakeholders can come and say, okay, there's this problem. Where do we go with this problem? Who do we talk do about it? And the clearinghouse can say, okay, you can go here because the IETF is dealing with it or the OECD is dealing with it. Or it could say nobody's dealing with it. Let's form a working group and deal with it.

So I'd like to hear from the panelists. Do you think that is the right sort of approach? And, just for those in the room, if you want to find one example of the proposal like that, go to best bits dot net which is the



Web site of best bits civil society coalition. And, down on the bottom of the page, you'll see links to our submissions to NETmundial. And one of them is this sort of proposal for a decentralized model of Internet governance that uses this sort of clearinghouse function. So, if anyone wants to give some thoughts about that, could that work, could there be a compromise that would be satisfactory. Thanks.

BILL DRAKE: In fact, that's linked off the Web site for this meeting.

YOUNG LEE: Young Lee from dot KR. I'm currently a council member of the ccNSO, but I'm speaking on my own behalf.

I think there is an elephant in the room that a lot of people are not actually addressing. And that is the issue of, actually, the role of governments that or the enhanced role of governments that the ITU has been talking about. And I think that there is a general agreement, even within the ICANN community, that the role of governments could be enhanced, maybe -- I mean, more than at least the current status that the governments have within ICANN.

So, because we're talking about NETmundial, I actually wasn't able to look through all of the 187 documents. But I did try to skim through some of the major countries contributions like Russia, China, India, Iran, and Argentina, who actually, when we're talking about multistakeholder -- whose voices, actually, are not being heard in this room within ICANN.



Because what I hear from them -- not that I agree, but I would just like to point out that there is a significant force that does not agree with what we have been talking about and what I think most of us have been agreeing, which is that the -- yes, ICANN has a lot of problems in governance. And there is no -- as Bertrand said, there's no defined international structure for addressing that issue. So far individual countries or couple of sometimes bilateral or -- I mean, some four or five countries cooperating. But there is no international mechanism. And what India -- countries like India seem to be pointing to is a mechanism like the U.N., an international mechanism like the U.N. And I think we need to, when we're addressing this, not just emphasize that the current ICANN system is one of the best or the current IGF system is a good one.

But especially -- and George mentions security. But that is the area that these countries are voicing their opinions most strongly. Because they are talking about the sovereign rights of states to protect their citizens. And that -- and yes, of course, as Bertrand said, no one country should be able to have control over any -- the sovereignty of any other country, but each country would like to ensure -- I mean, not all of the countries -- I think that some of the huge forces that are trying to organize something that is not friendly to ICANN, to phrase it mildly, seem to be pushing for the sovereignty of individual states. And that's something -- I mean, Keith, in the previous session, mentioned that we need to try to have a delicate balance between the sovereign rights of states and the freedom of the Internet and transparency and all. But that's something that we -- I mean, that's something that we haven't been talking about. And I think that's something that we should, actually, try to address,



whether -- I mean, with regard to cyber security issues. Because these countries have the administrative power and because ICANN and other organizations do not. Yes, European countries are saying that countries have sovereign rights. But they seem to be emphasizing the fact that it needs to be a multistakeholder effort. For example, technical communities having a very strong role or a very important role in cyber security. But -- but the other forces are trying to emphasize these sovereign rights of states more. And I think that's something that we need to try to address. I just wanted to point that out.

BILL DRAKE:

Yes. Thank you very much. Yes. Undoubtedly the politics of sovereignty and claims about sovereignty have been a driving force in the past decade in these contexts. And we'll undoubtedly hear this about NETmundial. And there could be more proposals like the one that the Indians are putting forward before.

I feel like I'm running quite behind, so I'm just going to look at the panel and ask is there anybody burning to have a -- can we really do a 30-second last comment each? Because I want to go to Larry Strickling next. Anyone -- no. Alice is fine, Bertrand. Bertrand, just quickly please.

BERTRAND DE LA CHAPELLE:

Quickly just to say to Jeremy that, actually, the expression clearinghouse is probably not set in stone in any way. The key question is what I was addressing earlier is precisely this issue network forming type of mechanism. And, if NETmundial were to bring some convergence of



perspectives on something of that sort is what we're trying all to build, that would be a big step forward.

BILL DRAKE: Peter, do you have one?

PETER MAJOR: Also addressing the issue of clearinghouse, it has been brought up in the working group on enhanced cooperation. And I hope it will be retained. Because I think this is a good way forward.

And, as for the role of governments in the IG ecosystem, I think it's extremely important and probably this will be also included in the working group because this is the essence of the working group itself. So, yes, we are going to answer these issues.

And I also want to just point out that in the GAC, the countries which you have mentioned are -- except Saudi Arabia, all of them are represented on the GAC. So we are moving forward in this direction as well.

BILL DRAKE: Thank you, Peter. I'm glad to hear you think that will describe the WCIT discussion.

Marilia, last word for you. And then we really will go.



MARCILIA MACIEL:

Thank you. I just could like to call attention to a proposal that was advanced by the Internet Democracy Project, which is a Internet society organization that talks about the clearinghouse. We are concerned about which organization we received outcomes that come from the IGF. And this clearinghouse on their proposal would work like a router that would send the policy issues to multistakeholder networks that would deal with very concrete problems. So it's a way that the issues would be discussed in a multistakeholder fashion that is distributed. It is a distributed model of governance, and I think it's a very interesting proposal to look at.

BILL DRAKE:

Thank you very much. We will be hearing a lot more about this at NETmundial, those of you who go. And we'll be hearing about it more beyond that. Whether in the plenipotentiary at the ITU or so on, the concerns of states and the search for alternatives will not go away. And they are highly relevant to ICANN.

I want to thank the panel for their interventions. I'm sorry that we went a little bit late. And let's turn it over.

[Applause]

[END OF TRANSCRIPTION]

