

ICANN69 | Community Days Sessions – European Union Policy Overview : Internet Infrastructure, Business Interests and the Role of ICANN
Wednesday, October 14, 2020 – 10:30 to 11:30 CEST

CHRIS MONDINI: Greetings, all, and welcome whatever time of day or night it may be for you. I'm Chris Mondini, the Vice President for Stakeholder Engagement at ICANN (the Internet Corporation for Assigned Names and Numbers) and also Managing Director for Europe, newly installed in Brussels.

My employer, ICANN the organization, coordinates and administers the domain name and related addressing systems for the Internet, along with a number of technical and contractual partners. And as I'm sure most of you who are joining us know, these are important because the Internet, as a network of voluntary networks that agree to interconnect, looks to us—the users—and to our devices like a single global expanding network because these networks agree to use common standards, protocols, and above all an addressing system that keeps them interconnected.

And this system is not static. It evolves; it changes; it innovates. And because of that, ICANN also refers to a community—a community that convenes to make policies and innovations in domain name and related Internet addressing. It gathers stakeholders from across the Internet universe from ordinary users to governments to Internet Service Providers, technical and security experts, intellectual property rites advocates, academics, and of course governments and business.

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.

And largely today, we'll have representatives of those two latter groups who play a very important role in ICANN's work.

Today, we are going to be talking about public policy in a very important region of the world. And, as you can imagine, in such a complex system, public policy conducted by governments on behalf of their citizens have potential impacts across all of these players in the Internet and domain name universe. And so, we are very lucky today to have some deep subject matter experts on how public policy effects not only the interest of businesses who use the Internet, but also all of the players that depend on the underlying systems, such as the domain name system, that keep it unified and expanding and whole.

Before I go on to introduce our true host and talk a little bit also about meeting logistics, I'm going to try something which is a survey for the attendees. We have two questions, and I'm going to ask my team if they can display the questions there on the slide. And I believe we're going to put them into the Zoom room and ask for participants to respond. If you've signed up for this session, you likely know all about what we're talking about here.

The first question is, which EU initiative will have the most impact on you and your organization?

And there are three choices listed there. I'll give everybody just a few seconds to click on the answer, and well see from the group who's joined if there's any particular interest on any particular initiative. I think I have a sense of what may be the winning answer.

And then if I could ask the second question next—or do I need to display the answer to the first question first? I'm not sure about the functionality, but if we can put up the second question so people can vote, that would be great, too.

On what aspect of the Digital Services Act are you most focused?

And there are some issues here, for those of you familiar with this topic. And I suspect some of our attendees may have a special interest in one or other of the issues listed. So, we'll give everybody a little bit of time to submit an answer to that question.

All right. Now I'm just going to check. Let's see if we can display the answers. Again, relying on my team to help.

The EU initiative that will most impact people's organizations by far is Digital Services Act, but NIS Directive is a healthy second place.

And the next question—let's see what the response was. Liability regime is an aspect of the DSA upon which our attendees are focused, but of course it looks like each one of these has some close followers. So, that should help to give an idea of some of the things people here on the call are interested in on the Zoom.

Let me now just run through some of the session logistics and the agenda before turning it over to our host.

The session, as you've noticed, is being recorded and will be archived. We're very grateful to have interpretation in Russian, French, and Spanish; so I ask speakers to be clear and at a measured pace when

talking. We are under the ICANN agreed Standards of Behavior, and these are all documented. I will ask Magaly, who's helping us on this session, to post instructions into the chat onto the room.

An important note about asking questions: probably the easiest way to ask a question is to type it into the chat, but if you do, please type in capital letters, QUESTION, before and after your question so we can differentiate it from the regular chat. And also, if you have a comment that you would like one of us to read aloud, you can type capital letters, COMMENT, and have your comment read.

With that, I'll just go through the slide here. It's the agenda. I've covered the logistics. I've taken the survey. We'll have our host introduce our speakers who will give some perspectives from both the EU and ICANN.

We've left quite a bit of time for questions and comments, and if there's time we'll talk a little bit about how businesses participate at ICANN, and certainly how to join the Business Users Constituency.

Speaking of which, it is now my great pleasure to introduce the chair of ICANN's Business Users Constituency. She is the head of AT&T's Brussels' office and leads European and Political Affairs for AT&T; and also the Digital Economy Committee within the American Chamber of Commerce to the EU. She's someone I've had the great, good fortune to work with for many years in ICANN in engaging with the businesses who participate there.

It's my pleasure to introduce Claudia Selli. Claudia, I ask you to join us on the screen and take it from there. Thanks.

CLAUDIA SELLI:

Thank you very much, Chris. I hope you can see me. Thank you for the very kind introduction. And welcome, everybody, to our outreach session. I'm very pleased to see so many of you here today. It means that there is a strong interest, indeed, around the topic that we're going to address.

But before we start and before I introduce, of course, our guests of honor, I wanted to briefly explain the Business Constituency which is really the voice of commercial Internet users within ICANN. As you can imagine, of course we represent small, medium, as well as large businesses; and businesses rely today probably even more so on a stable and reliable Internet to do business, and also for e-commerce experience.

So, that's why also we're very much engaged in ICANN and why all these topics are crucial for us. We represent businesses from all over the globe, I would say. In fact, we are very dispersed in terms of geographical representation. We have businesses from Africa, from the U.S., as well as Europe and Asia; and we also have a strong diversity within the Business Constituency. And we are one of the very much engaged constituencies within ICANN with a lot of comments put forward from our end.

But without further ado, I would like to introduce Pearse, which is our guest of honor and is the director in DG CONNECT of Future Networks, a department which basically really looks at the development of important policy; and it's the center, as well, of expertise for other departments within DG CONNECT.

Pearse, you have a strong experience, of course, in DG CONNECT. You have been previously, in 2014 as well, the Deputy Head of Cabinet of Commissioner Kroes, and you have been following all these issues for many years. The idea of today is really to give an overview and inform our participants about the European upcoming initiatives and to discuss, also, the impact that those are going to have within ICANN.

So, with that, I would like to pass the floor to you, Pearse, if you would like to share with you some introductory remarks around what's coming next and what are the initiatives that the Commission is looking to adopt. Thank you very much for accepting our invitation.

PEARSE O'DONOHUE:

Okay. Good morning, everybody. Thank you very much, Chris. And thank you, Claudia, for that introduction. It's great to be able to speak to you in rather different circumstances from the last time in which I met with the business community.

Before I get into the points that Claudia has touched on, I would have to say why we are having this new way of working, and what is the impact that is having on everything that the European Commission is doing.

Because among the many lessons that we've learned, COVID has shown us once again just how important the Internet and connectivity is, and therefore why we need to keep a close eye on how that whole ecosystem works and how it treats individuals, treats groups in society; and how it works for business, particularly SMEs and all of those sectors that are suffering enormously because of the confinement and the shocks caused in the economy. So, that's why, more than ever, the work that we do together is so critical.

And now I'm used to talking to your community and I'm used to also to being asked immediately, what are the regulatory initiatives that we take? But I think it's very important to put this in perspective. First of all, an awful lot of the work that we do in this area—whether it's the details of technology governance, the running of various systems, the economy and the rules applied behind the running of the system—often they are self-regulatory or co-regulatory. And we don't enough talk about that. And that's very important when we are getting to talk about platform responsibilities and the framework in which these ever-increasing Internet environments—which are platforms, etc.—work.

But for once, just to take you out of your comfort space and into an area where I hope that you as organizations are looking, is that as a response to the crisis, the Commission and the European Union has decided for the first time to take a revolutionary step in actually going to the financial markets and borrowing against the European budget

for credit in order to have an investment and spending program for recovery and resilience of up to 750 billion euros.

And that money would need to be targeted by the member states working together, but in collaboration with the European Commission, on sectors to help them recover; but also on new ways of working. So, the digital technologies, the Internet, and the data economies would be vital for our recovery and moving us to a new economy, a new situation in which we'd have, looking forward, resilient and innovative technologies and sectors of activity

And that's where all of you will be involved and will have a responsibility to play; and we hope, also, can benefit for your business, for your association, for your sector—but also for the communities that you serve and for the citizens and small businesses who benefit from the various services that are going on.

So, when we then get on to talk about the things that I know that you want me to talk about, I have to put it in that framework. We can't have those conversations with you anymore of just, "What rules will you impose on us?" unless we, the Commission, as well as you, the business users, actually think in the context of economic recovery. But also, protecting the citizen and protecting the small businesses in that new context—in the context of the importance of platforms.

We have seen, and we've even discussed in our High Level Internet Governance group, issues of DNS abuse; of the inevitable attraction to criminals of people's worries about facemasks and COVID protection

and vaccines, etc.—people seeking to exploit individual and group weaknesses to their advantage, despite the fact that this is actually such a serious societal matter.

And that’s why, when we look at—for example, the regulation of platforms—the first thing is that while there is a discussion about competition/market power/access, it is also principally focused on the huge economic and social power which the Internet and individual platforms, software platforms, software services, and individual websites can have in this new reality.

And that’s why we have to focus on these issues, but we have to do so responsibly because, of course, we cannot and will not allow ourselves to destroy innovation—to actually cut ourselves off from those very digital tools, from those data technologies, from those new services which are essential to economic recovery.

So, sorry. I’m from the Commission. I’m paid to tell you that, and I really wanted to make that message clear to you so we can have the discussion in the current context.

So, what’s coming up? Well, you’ve already flagged what you think are the most important issues, and you’ve already flagged in your sondage what you think are the most important of those issues. So, I’m not going to pretend to argue with that. I do understand. I totally get the interest that this community and all of the ICANN community has in the Digital Services Act, for a very good reason. It does address directly some of the key issues that you are working with on a daily

basis and which will affect your business and the environment in which you conduct your business or your association activities.

So, we are planning to present the Digital Services Act package at the end of this year after carefully evaluating the situation. And I think that it is important that there has been—maybe you will say, “For once!”—sufficient warning that this was coming. Even before the new Commission president—von der Leyen’s Commission—came into office just under a year ago, we were already having discussions on this issue. And I remember the first person to use the name was in a stakeholder discussion in Washington, of all places.

There has been a time for detailed and proper public consultation, and we’re very grateful for the input that we’ve received from all of you because that does of course help to focus our thinking and to improve the quality of whatever steps that the Commission then subsequently proposes.

Let me go back to what I was saying earlier on. The main goal of the Digital Services Act will be to ensure a fair, competitive, and innovative digital economy while, of course, protecting the fundamentals—protecting the individual, the citizen—and ensuring that that entire ecosystem operates in accordance with European values as you see in our founding charter and treaties; so thus creating in itself a level playing field where everyone is free and, what’s more, very welcome to operate in that playing field as long as they respect those rules.

Europe is open and will remain open to all of the innovation and to the services that we can see are being developed globally. The service providers—European or non-European; it doesn't matter—need to act responsibly, and they need to give us reasonable reassurance that they—that you—will mitigate risks, such as those relating to illegal content, of course, including hate speech, terrorist offenses, or child sexual abuse materials; but also, of course the more standard (I'm afraid to say), but for no means acceptable, fraud and misuse of intellectual property, etc.

That goes for all products and services which are put on the market, but also that products sold through the Internet—sold through platforms, physical products—and the system of delivery is also in line with product safety, with consumer protection rules, etc.

So, we have evidence of practices that are harmful. We are not, as we would say in my country, tarring you all with the same brush. We know that this is a few bad actors. We know that nearly everybody in this ecosystem has a vocation and an interest to operate at the highest standards; but we're also aware that imposing, in some cases, those standards—by creating clear rules—we make it impossible for those who would seek to undercut fair competition by cutting the corners, by breaking those rules.

DNS abuse is one very important topic; again, something we've discussed in our community—in the HLIG and with the wider stakeholders. And we are launching a study on that in quarter four. Some of you have already seen the announcements. It's a scoping

study. It really seeks to give us greater clarity and understanding on the magnitude and types of DNS abuse.

As an example, as you know we are ultimately responsible for the operation of the .eu TLD, and in our close cooperation with the registry we see the number of and the peak in registrations—or attempted registrations—for addresses and names relating to COVID since the beginning of the COVID crisis. And when challenged, a surprisingly large proportion of the potential registrants have simply stopped because they were being challenged. So, we can't impute or assume ill intention, but certainly we can suspect that within that group of—at least speculative registrations—that there were some plans for illegal activity.

So, these are reasons why—starting, of course, with ourselves—we have to ensure that DNS abuse is tackled and, I insist, by all players in the ecosystem. It is not acceptable to use that some would say, “Well, we can't do that. We don't have the power.” Everyone has a role to play, and if there are legal rights or if the powers are missing, well then that's the sort of thing that the Commission will seek to put in place so that there are sufficient tools for intervention, for notice and takedown, for proper governance of the Internet in real time.

There were a lot of questions asked in the public consultation about non-hosting service providers, about registries and registrars. I'm sure we can come on to some of those questions in the Q&A session. We are now analyzing the responses in great detail in order to make sure that

we can deal with these issues coherently when we make the proposals.

So, this is [part of] shaping Europe’s digital future. You can still play a role in the DSA as it is negotiated by giving your legitimate and welcomed views to the final version of what comes out. But of course, I would stress that this is not something, by its nature, which is going to make everyone comfortable; and of course, it will, in some cases, impose costs.

This is for the protection of our systems; it is for the protection of the individual and the citizen; and, of course, it is something where we want to make sure that it is fair and that it does not only ensure, but it seeks a greater level playing field with regard to how Internet services, how platform services, are used and availed of in Europe.

I won’t spend more than that because I don't want to take too much time, and I know we will have Q&A. Just to mention briefly some of the other initiatives, some of which appeared on your first slide with regards to the poll.

As you know, there is work going on with regard to an amendment to the Network Information Society Directive (the NIS Directive) which is very important simply, first of all, to make sure that it stays apace of technological and market development; but also as we have seen over a series of issues—in some cases, mini crises over the last few years—the areas in which the NIS Directive needs to be reinforced; but also, where there are justifications for greater powers to be available to

national regulators as well as the Commission in some small number of cases in order to be able to intervene to mitigate risk, but also to intervene when something is quite clearly not going well.

We have the evidence proposals which are making their way through the system. If there are any questions, I'll try to answer. It's not a field of specialty for me.

But the one that I did want to mention very particularly is, of course, the work that we're going on e-Identity. You would have noticed that President von der Leyen, in her State of the Union speech, put a great emphasis on this need for a fair, independent system of identification to give trust to the user and to ensure, also, that the safe and secure identity in order to access—but also to have transactions online—is something that we don't want in itself to be dependent on your giving over data or to be dependent on one single system.

It has to be agnostic, but also independent from the commercial models in order to ensure that we can give that trust and security to individuals; that their personal data is secure, but also that they retain it and do not have to swap personal identity in exchange for online services.

So, this is something where we will be working with increasing vigor to ensure that based on the existing eIDAS regulation, that we actually strengthen and improve that system while at the same time...

And again, I wanted to step back out so that we—I, but particularly you—don't just focus on regulation. A lot of this will be in the context

of the work that we are doing already with the community of innovators and researchers in the Next Generation Internet Program to develop the technologies for independent search, perhaps, but particularly for reliable, autonomous identity (secure identity systems) online—perhaps linked to eIDAS; perhaps linked to .eu, perhaps linked to something that we haven't thought of yet; but which will, in itself, not become a bottleneck, but the way, but which will give that trust but also give the independent certification to the suppliers and providers of service as well, of course, to the users.

And lastly, quickly—sorry for going on too long—I know that yesterday with Olivier [inaudible] and the team, you already had some discussions on WHOIS, etc., and it's sort of a relief for me that I don't have to start with WHOIS for once. It doesn't mean that we've lost sight of it or that I don't think it's important; but, of course, in the context of the NIS Directive in the DSA, we will also look as to how we might facilitate the implementation of an adapted and advanced WHOIS system at the level of ICANN, at the level of the gTLDs as well as TLDs in order to facilitate what has been a very difficult process.

In other words, we will not be touching on anything to do with the GDPR, but if we can make it clearer just why it is so important for legitimate actors—starting, of course, with law enforcement; but others that we've already spoken about before—have access in a controlled and transparent way to registration information for legitimate purposes.

That's something where we need your help. Some of you have very strong views which might not necessarily be aligned with us with regard to the implementation of GDPR in this regard; but we, I think, all agree that if it is clear what is the purpose and we make it clear that those who cooperate and involved themselves in the system are acting for legitimate reasons and are fully protected and meet all the criteria of the GDPR, well that is a good thing. So, we hope to have your support. I hope the community can voice its support for steps in that direction.

I'll stop there. Claudia, I apologize if I've been too long. I look forward to the discussion of the group.

CLAUDIA SELLI:

Thank you very much, Pearse, and you haven't been at all long in the sense that there is a strong interest around all this initiative. And thank you for touching, as well, on the WHOIS. Of course, the business community is strongly interested in that and in getting clarity in the way forward. And of course, we're keen, as well, to respect and implementing in the correct way GDPR. It's very dear to our business and it's the way we can be able to trust to consumers. At the same time, the WHOIS has been an instrumental tool for us, so we'll be happy to continue working with you on that and support that going forward.

I am just looking in the room. If Elena is here—because I cannot see you, Elena. But Elena is the VP of ICANN, and she is responsible for

government relations as well as IGO engagement. Elena, you're based, as well, in Brussels. And so, thank you very much for participating.

One question I would have for you is—I would be very grateful if you can explain, as well—so, ICANN is a global organization, but you're based in Brussels and you are very much engaging also with government. I would like you to share with us which issues are important for you, and also what are you focusing on in terms of initiative?

ELENA PLEXIDA:

Yes. Thank you, Claudia, and hello, everyone. First of all, allow me to thank the Business Constituency and you, Claudia, for convening this session. I think it is really timely, given important initiatives that are unfolding at the EU level, and I find it very, very informative. And having the chance to have Pearce with us for this session is really a privilege, and I would urge everyone on the Zoom room today not to miss out on the opportunity to ask questions and benefit from his presence and his deep knowledge and expertise.

So, to your questions and to the wider context, if you will. Why is ICANN, a technical organization, getting engaged? And many would say, "Hey, this is an easy answer and it's just four letters—GDPR." Well, the GDPR was just one of the first, if you will, of increasingly more Internet-related legislation and regulatory initiatives. And this is not only in Europe, but worldwide governments, because of the

pervasiveness of the Internet in our lives nowadays—rightfully so to protect the citizens—are adopting or considering legislation.

Now the Internet has brought the world together in ways that were unimaginable 30 years ago—or even 10 years ago. At the same time, there are very real threats on the Internet that, of course, need to be tackled. The issues that often we are seeing legislation around the world that, while well-intended, it could have adverse impact on the technical underpinnings of the Internet.

It goes without saying that is unintended. Now, ICANN’s mission is to coordinate the Internet’s unique identifiers, with a view to contribute to maintaining one global and stable Internet. So, setting our expertise where and when relevant is, we feel, our responsibility in keeping with the fact that the Internet’s unique identifiers are global public resource.

And other technical organizations, as you’re already well- aware, in the Internet ecosystem are taking a similar approach. In fact, it behooves us all—the technical community, business, civil society, governments—to find better ways to work together than we have so far. There are very real issues that need to be tackled. At the same time the technology evolves, economic recovery needs to be a focus, as Pearse mentioned earlier. You name it.

So, what are the initiatives that we are following? We follow those initiatives and proposed legislation of potential relevance to the

ICANN community and to ICANN's technical role in the Internet ecosystem.

In that context, in the EU space, I would say there are three buckets, if I may categorize the issues—three large buckets: cyber security; platform regulation, apparently; and privacy and data protection.

With respect to specific initiatives? Apparently, currently the [DSA] is attracting our focus. The public consultation that the Commission held on the initiative indicated that measures that might be applicable to DNS services are being considered.

When it comes to privacy and data protection and related initiatives, if privacy is an initiative we are very interested in—depending on the policy choice on how to treat the processing of internal communications data and metadata and what kind of data the DNS have considered to be in this context—there could be an impact on some fundamental functionality such as traffic management. It goes without saying that when it comes to privacy, we, of course, follow closely any developments concerning the GDPR.

Concerning cyber security now, we're keeping an eye on the NIS Directive review for all the reasons Pearse mentioned earlier. Also, the overall umbrella, the EU Security Union Strategy is of interest to us, particularly where there is reference to cybercrime because that might also relate to the WHOIS.

As Pearse mentioned earlier, there's also the evidence proposal; and DNS operators are under scope, so that's of interest.

Those, I would say, are the key initiatives that we are following. I can get into more detail during the Q&A if there's interest. There are, of course, other actions; but those are the key initiatives at the EU level ICANN is interested in.

So, what are we doing exactly? And let me conclude the introduction we're at. First of all, in April 2018 we began to regularly report on legislative initiatives and developments around the world with a view to keep the community updated.

On February 2019 there was a charter that was published and in there it laid down ICANN's approach to such engagement, and my team—the government engagement team of ICANN—has started drafting and publishing papers containing a more comprehensive analysis of important initiatives. For example, we published one around the DSA; and, again, the focus there and the idea there was to keep the community informed and acquainted with important initiatives.

In terms of engagement, finally, our engagement is limited to providing technical information. When there is an engagement, this is just to provide technical information. ICANN is a technical organization at heart, and we have no say or view with respect to the direction of travel of any policy or any legislation. The only thing we want to do is share our technical expertise where it is relevant.

For example, we submit papers that might be relevant, such as the technical analysis that the OCTO team did on the letter the European

Data Protection Board sent back to BEREC; or we contribute to consultations, such as the consultation of the DSA.

We can get into more specific details on EU initiatives if there's interest since there is a Q&A. I just want to answer your question and give an overview of the approach ICANN is taking. Thank you very much, Claudia.

CLAUDIA SELLI:

Thank you very much, Elena. And with that, I will open the floor for the Q&A. And I'm looking at the room if we have already hands up, or else I will profit from the location of having the two experts here.

I saw a comment in the chat saying that the lobbying is limited to the U.S. legislator then. Was that a question or just a comment? Okay, it's both. If anyone wants to address that comment.

PEARSE O'DONOHUE:

I haven't understood the comment. Was it in relation to my rather off-hand remark about someone in Washington referring to the DSA? I hope it's a more serious comment.

So, in the absence of clarification, I just wanted to perhaps take this opportunity to say that our most important constituencies are businesses operating in Europe—just as we are seeking to legislate to benefit European citizens and European businesses (particularly smaller businesses), obviously they are our primary; but many of those

operating in this space are, by definition, not just European or are non-European.

It's a global Internet. That's one of our principles that we all agree on with regard to Internet governance; and therefore, we would respect and welcome—and have received—comments from all over the world.

CLAUDIA SELLI:

Thank you, Pearse. And maybe since you are there and you also talked about the public consultation of the DSA... Of course, I mean from what we are seeing, you received around 3,000 answers, so it's clear that it's a huge answers to analyze; and it's certainly many, many more than our previous consultation. I don't know if you can share that, or if you see a common trend in the answer. Or what were the main topics that maybe you've seen highlighted in the consultation? If there is anything that you can share. I understand, of course, it's probably premature and you're in the process of doing that.

PEARSE O'DONOHUE:

No, it's not premature because we've been going through it for a while. No, I need to be more honest and transparent with you. I have not read the consultation. First of all, it's another section of my organization—of DG CONNECT—in the lead on this. They have been doing a lot of work, so I have seen what I would call approximations.

As the team goes through the consultation, they seek to synthesize for themselves the views—the differing views, in some cases—that they're

getting. So, it would be very third hand if I were to say so. It's not that it's premature as such because a lot of the analysis has been done because we are now looking towards how this can be put into final shape in a draft proposal.

Perhaps the easiest way, the quickest way would be, from I've seen, is that from apart from the questions which Chris asked at the start and which featured and were then voted on by this audience where, of course, issues of liability did come up a lot, as well as [practical issues] as to how it would operate.

There were other groups—because there a lot of individual and [associations'] responses as well which were more targeted towards how do we ensure—telling us that we should or asking us how do we ensure that we prevent or move away from a situation in which a very small number of providers are effectively having a gatekeeper role for access to, or even use of, the Internet. And that was a very strong sentiment that was expressed by a number of responses.

And then there were questions about accountability. So, that does actually bring us back, to a certain extent, to the liability issue of who is and can we make those who should be considered responsible actually stand up and take up responsibility.

The issues do group around fairly predictable sets. There were, of course, some very strongly contrasting views. I don't want to stereotype, but of course we could identify a strong business view on

one hand, and perhaps those from civil society organizations on another.

That's really all the detail I can give you, but it's, as I said, out of partial ignorance on my part rather than any lack of attention to detail which is being done by the team working directly on DSA.

CLAUDIA SELL:

Of course, and thank you, Pearse. I see that there are two hands up, so I will give the floor to [Jamin] for a question, and then to Wisdom.

UNIDENTIFIED MALE:

Thank you, Claudia. [inaudible] with LVMH. Thanks, Pearse, for your comments at the beginning. One thing that struck me was your stand in that everyone needs to be involved in fighting DNS abuse. Does that mean that you are also thinking about changing the scope of the e-Commerce Directive in the DSA to include a wider set of actors, or are you counting more on a voluntary community level approach?

PEARSE O'DONOHUE:

Well first of all, [Jamin,] thank you. Good to talk to you.

These are not necessarily issues that we would only deal with in the DSA (I think I need to say first of all), but it is certainly one, whereby looking at the current issues and the current weaknesses or barriers to taking direct action, that we have to see whether or not there is a need to engage the responsibility of other intermediaries who, of course,

are not in any way responsible for or engaged in malpractice—they are carrying out their business in good faith—but who, because of the position in the value chain that they play, may need to be called upon to take direct action.

And again, this was evident in the public consultation, but it's a discussion we've had for several years now already, and it came up again and again in relation to the different codes of practice which the Commission, the European Union, put in place in the last couple of years about terrorist content, for example.

It is that there must be a very clear legal framework for any of those intermediaries to be able to rely on, to have absolute certainty that if they do receive a request or an instruction, that that is entirely legitimate and that they do not have liability then in making the subjective decision. That does come into it when it comes to the actual analysis of content, but that's not actually what I was referring to.

I was referring to discussions in which those who do not have a view on content but do actually have the switches that can turn off, or not, individual sites (or perhaps pages)—and that, in itself, is a discussion as to what is the scope in which, for example a registry could take down an individual site or whether we would have to take down an entire domain. Those sorts of issues are ones that we are still looking at.

So, yes, we are looking at the scope, but I don't expect that all of these questions will be dealt with in the DSA.

CLAUDIA SELLI: Thank you, Pearse. I know that Wisdom had the hand up. Would you like, still, to ask the question?

WISDOM DONKOR: Yes.

CLAUDIA SELLI: Okay, good. Please, go ahead.

WISDOM DONKOR: Thank you so much for the opportunity to ask the question. I'm speaking from Ghana. I'm going to ask a question in the context of Africa. A few years down the line, cyber security used to be an issue of all stakeholders, but looking at Africa, there's a trend now that, I think, if not addressed, is going to kind of have an effect on us. The trend looks like government in Africa is trying to take away the cyber security.

And then thinking about the cyber space in that they use it to their advantage and then trying to kick out all the other stakeholders. The trend that is going now mostly on election years and realize that cyber attacks and cyber security rises. You can have maybe a government

official put a few people together, and then you see them using the platform to launce an attack on [others.]

And when this issue comes up, or when it gets to the attention of the police, it goes and then hits a wall and the case dies. Nothing has been done. Now when an ordinary person finds himself or herself in this situation, quickly the law takes its course.

So, I'm thinking if the European Union can really look and see what it can do to help Africa (I don't know how) so that government—the playing field will be leveled for everyone to benefit from it. If someone is caught up in the net or something, the law should deal with that person whether that person is the president, vice president, or whatever position that person has in their government.

So, these are the issues that I think might affect us in a few years to come if not addressed. I would like to know from the experts what we can do for Africa to address this. It looks like our institutions are sleeping, and then the bad guys in government are using this to their advantage.

CLAUDIA SELLI:

Thank you, Wisdom. I don't know if anyone would like to comment. The question, of course, is very much focused on another region so I'm not sure it can be addressed. I don't know if there is a comment or a reaction to that.

PEARSE O'DONOHUE: Well, Claudia, if I could answer very much under the [reserve] that you've stated. Obviously, from the work that I'm involved in, it's very much a European perspective, and I'm not entirely fully familiar with the threats and the issues that Wisdom has raised; but it is a very interesting issue. It's also very important, and so excuse me if this is more European than it should be but, of course, part of the European prospective is that we have to work together at a global level.

So, already in the discussions that we've had over a number of years about what might be initially labeled as cyber security measures is that already—even though there is a strong role for government—we have to be very careful about how extensive that is because first of all, as we've seen in other regions, cyber security can be an excuse for censorship, for control (particularly control of access), for limiting access to the global Internet, etc.

And that is something which we are strongly opposed to, and there's a very healthy debate here, still, as to whether some of the things we want to propose don't perhaps go too far. The same happened when we had these Codes of Conduct about illegal or distasteful content. Who gets to decide if the message that you put on the net is distasteful or it's simply, "I don't like it because it says something that I don't particularly agree with," or it's against my interests? And that is an ongoing debate; I think it's active across the world.

So, all I can say is that, [one,] it's something we should be discussing more, we can't have security in one region if we believe in maintaining a global Internet. It has to be a secure Internet across the world.

And then regards to the abuses, or a fact that certain actors may be misusing powers in this area for their own advantage, well that's something which really does have to be dealt with in the polity of the country and the region.

It's great news that we're going to be having the IGF in Addis Ababa in two years now; and that could be an occasion in which this kind of issue could be much higher on the agenda, and it could help us from other regions to have a much greater understanding, and then perhaps then practical cooperation with actors—with the full community—in Africa, for example, to have common responses to the issues that Wisdom was referring to.

CLAUDIA SELLI:

Thank you, Pearse. And there was a question in that chat, also, for you, which is I think a question very dear, probably, to the Business Constituency whether you can offer a suggestion on how ICANN can assume GDPR liability and handle the centralized WHOIS disclosures.

PEARSE O'DONOHUE:

I don't know if ICANN can assume full GDPR liability. That's been part of the discussion. And Elena may wish to comment on this, but it has been part of the difficulty from the start—and I even had to say it publicly and upset some people in Toronto last year—that we will not arrive at a situation in which other intermediaries (individual registries or registrars) are somehow exempt from liability.

What we can do is create a system in which their rights and their obligations are very clearly identified, and its compatibility with the GDPR, insofar as it affects Europe and European data are concerned.

And that's the situation which we are striving to get to in this work which has been painstaking, I know; but that option which I know is favored by strong elements in the business—but also the providers—community is not something that we have ever said is ideal or even entirely possible.

CLAUDIA SELLI: Thank you, Pearse.

ELENA PLEXIDA: Claudia, if I may?

CLAUDIA SELLI: Elena, please. Of course.

ELENA PLEXIDA: If I may comment. Yes, I can only echo what Pearse just said. This has been one of the very, very difficult [bit] from the very beginning. It is about controllership. And just to clarify that if we're talking about ICANN assuming liability, assuming responsibility, it's in the context of what Pearse explained. Having a system where their responsibility [inaudible] is very, very clearly defined in the sense that since it is

defined, then you know who is responsible for what and who is then liable for what.

If ICANN was to take any responsibility, that would only have to do with the processing activity of disclosure. It goes without saying that there are still other actors that need to adhere to their responsibilities according to GDPR.

And also, as a final remark, I need to thank the Commission for this effort so far, and for the continued support in all the efforts to clarify this question that are still pending. So, thank you.

CLAUDIA SELLI:

Thank you very much, Elena. Unfortunately, we are out of time. It's a very interesting debate, and we could go on, I think, for the entire day, but unfortunately, we only had one hour.

So, I wanted to thank the speakers for being there and for answering in-depth all the questions. I want to just let you know how you can get involved ICANN, and if you have any questions around the Business Constituency, please don't hesitate to reach out to us and to other people in the Business Constituency including Steve DelBianco or Jimson Olufuye. You'll find all the links that will take you through the process on how to join the Business Constituency here in this slide and on our website. I hope other businesses will get engaged and will have more questions for us.

Thank you very much, everybody. And with that, we will adjourn the meeting. Thank you.

[END OF TRANSCRIPTION]