INTERNET & JURISDICTION

A GLOBAL MULTI-STAKEHOLDER
DIALOGUE PROCESS

How to deal with Transborder Requests for Domain Seizures?

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Presentation for the ccNSO, Singapore, February 11, 2015

CONTEXT

Diversity of the ccTLD community

Domains accessible worldwide

Content legal in some countries, not in others

Transborder requests for domain seizures

Lack of framework, transparency and due process

CHALLENGE

The DNS perceived as content-control panel

Issues of applicable jurisdiction and norms

Main defense: ToS + national laws and procedures

Long-term sustainability of the defense?

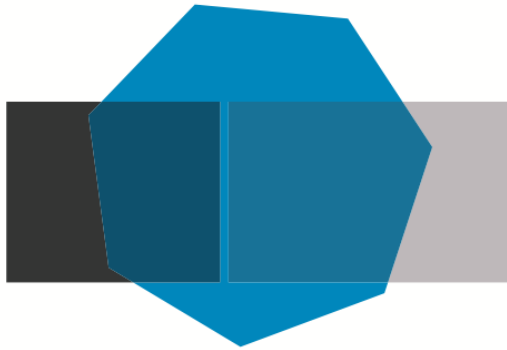Burden on operators (determination, resources)

Need for a sustainable procedural approach

1- THE CHALLENGE

2 - THE METHOD

3 - THE DRAFT FRAMEWORK

4 – MOVING FORWARD

INTERNET & JURISDICTION

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DIALOGUE PROCESS

Launched in 2012 with Paris-based Secretariat

Goal: development of a transnational due process framework
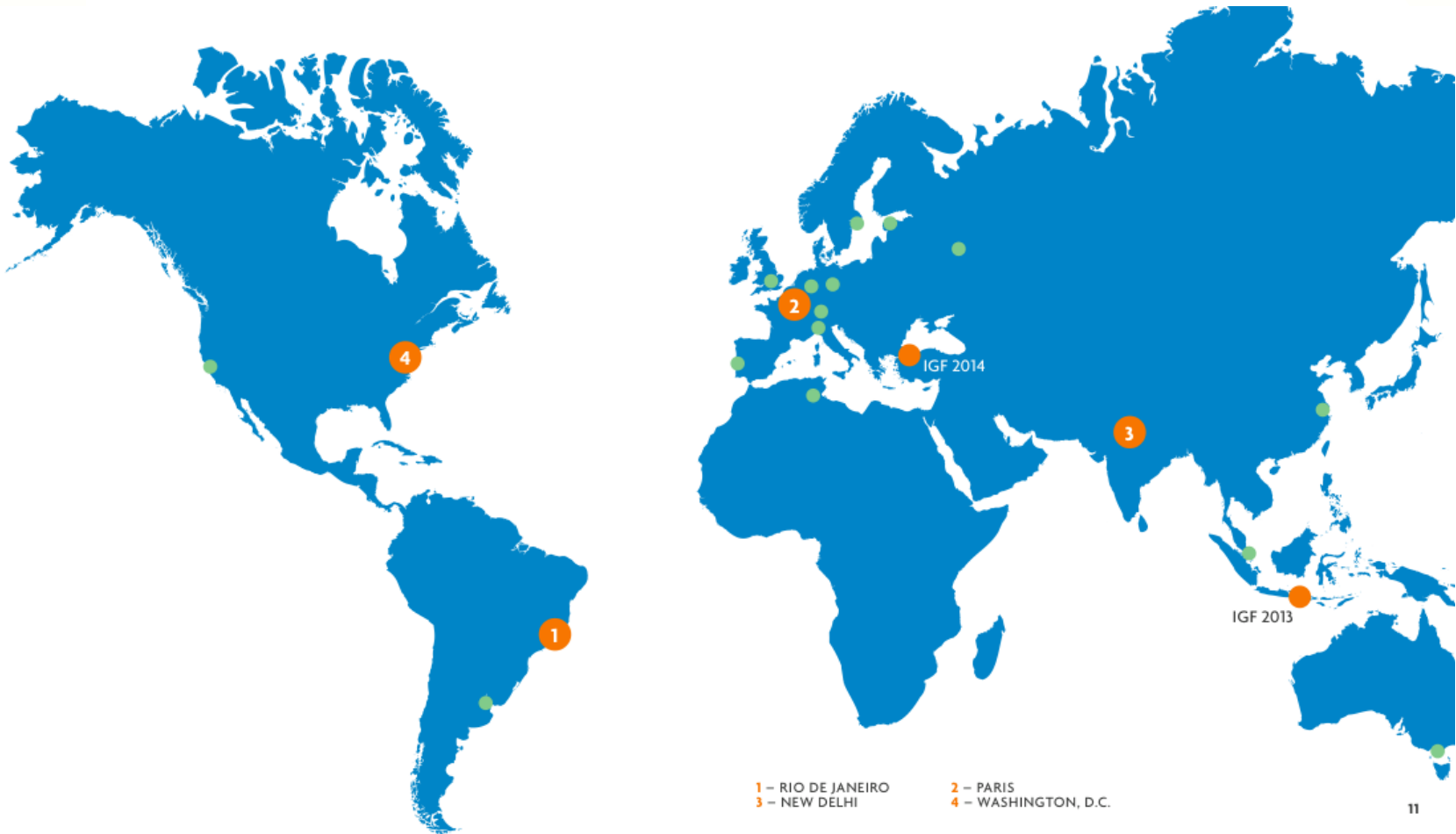
For Domain Seizures, Content Takedowns, and related Access to Subscriber Data

MS Dialogue Process and Observatory

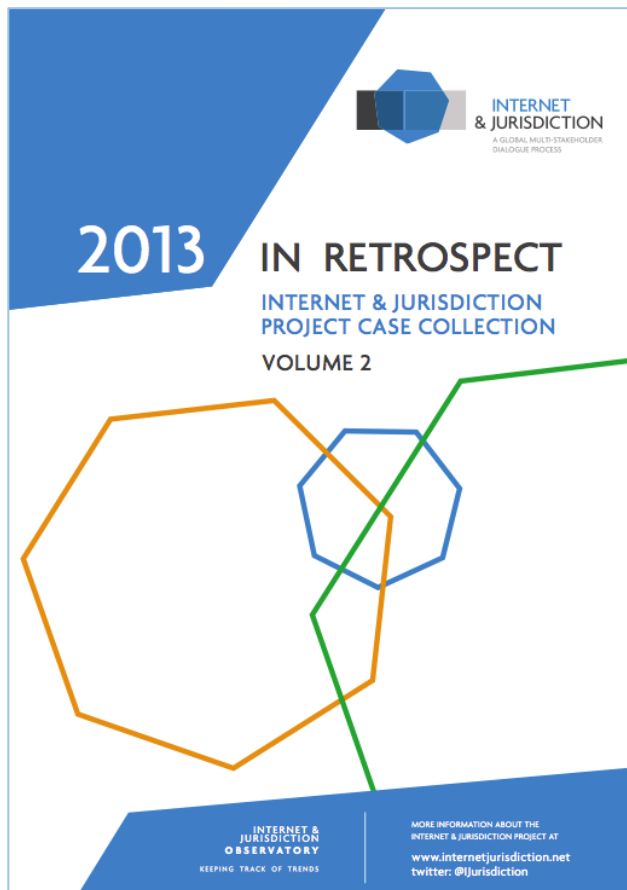Not-for-profit, with diversified funding

DIALOGUE PROCESS

1 – RIO DE JANEIRO 2 – PARIS
3 – NEW DELHI 4 – WASHINGTON, D.C.

IGF 2014

IGF 2013

11

52 EVENTS IN 19 COUNTRIES ON 5 CONTINENTS
MORE THAN 70 ENTITIES FROM DIFFERENT STAKEHOLDER GROUPS

OBSERVATORY

34 SELECTED INTERNATIONAL EXPERTS FROM
27 DIFFERENT INSTITUTIONS IN
15 COUNTRIES

INTERNET & JURISDICTION
A GLOBAL MULTI-STAKEHOLDER DIALOGUE PROCESS

2013 IN RETROSPECT

INTERNET & JURISDICTION
PROJECT CASE COLLECTION

VOLUME 2

INTERNET & JURISDICTION
OBSERVATORY

KEEPING TRACK OF TRENDS

MORE INFORMATION ABOUT THE
INTERNET & JURISDICTION PROJECT AT

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twitter: @IJurisdiction

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EMERGING NORMS

Responsibility of States for transborder impact (limits to extraterritorial extension of sovereignty)

The DNS is not a content control tool

No seizure of entire domains for 1 single content

Criteria for appropriateness (structural harm, entire activity illegal, ...)

Processes and technical ways to be respected

TWO PILLARS

REQUEST SUBMISSION SYSTEM

REQUEST HANDLING PROCEDURES

Request Format
Standardized via Markup Tags

Process Predictability
Procedural Norms & Criteria
Advice and Expert Groups

Mutualized Databases
Authentication, Transparency,
Legal Reference, Log

Dispute Management
Appeals, Dialogue Mechanisms

THE FIRST PILLAR OF THE DRAFT DUE PROCESS FRAMEWORK ENVISAGES A SERIES OF MUTUALIZED DATABASES AROUND A STANDARDIZED REQUEST SUBMISSION FORMAT.

REQUESTER POINTS OF CONTACT

REQUESTEES POINTS OF CONTACT

Platforms and DNS operators could each designate the addresses they want requests to be sent to. By default, the resulting database would leverage publicly available information regarding administrative contacts.

A limited number of points of contact per country could act as request validators upon emission to ensure the authentication of senders. One or several databases – to be managed by recognized authorities – would maintain the list(s) of these agreed gatekeepers and references for verification.

REQUEST SUBMISSION FORMAT

TRANSPARENCY DATABASE

Non-confidential information contained in the requests could be automatically collected upon emission. Data about time, origin, destination and request type would feed into a common database in an open data format that enables third parties to produce transparency reports.
This database's format would build upon current practices in transparency reporting by platforms and operators to ensure compatibility.

A set of agreed markup tags could ensure the structuring of requests and enable interoperability between requesters and requestees (the platforms and DNS operators) across different internal procedures and systems.

The format would enable embedding due process standards including the compulsory reference to the legal basis of requests, as well as the design of system interfaces.

Non-confidential components of requests would feed into the transparency, legal reference and log databases.

LOG DATABASE
This common database would keep track of the request IDs and timestamps of individual requests without storing their actual content. Providing traceability and reference, it could also facilitate potential reviews and audits.

LEGAL REFERENCE DATABASE

Verifying that requests have a legitimate and documented legal basis is a key requirement of due process. However, keeping track of the diversity of national regulations and procedures is a time-consuming and costly task, which at present is duplicated by platforms and operators and out of reach for smaller entities.

In partnership with experts, the regime could maintain a mutualized legal reference database of applicable laws and procedures, fed by participating countries and kept accurate and up to date through a crowdsourcing effort.

PROCESS PREDICTABILITY

PROCEDURAL NORMS AND CRITERIA

In the past years, some best practices, procedural norms and decision-making criteria have implicitly or explicitly been the basis of actions by various requesters, requestees and courts.

With the help of background work from the I&J Observatory, participants in the Project intend to jointly document these emerging trends to provide a common basis of mutually agreed references to enhance the predictability and procedures of the transnational request-handling process.

ADVICE AND EXPERT GROUP

Based upon the identified procedural norms and transnational criteria, panels could provide, upon request, non-binding advice to requestees on individual cases in situations of uncertainty.

An expert group could be created to help document further the joint set of procedural norms and criteria and steer discussions to update them as needed.

DISPUTE MANAGEMENT

APPEALS

In addition to the ex-ante notification of users, the existence of appeal mechanisms is a key component of due process. Without suppressing the right of recourse to national courts, a transnational appeal system could provide easier and less costly avenues for redress in cases of procedural and substantive complaints.

Further work within the dialogue process will be devoted to developing precise modalities of such appeals.

DIALOGUE MECHANISMS

There is currently no mechanism to handle situations where non-acceptance of a request leads to significant cross-border tensions, the blocking of entire platforms or domains and even diplomatic conflicts.

Pre-established channels of communication and the availability of mutually agreed facilitators providing non-binding advice could significantly reduce escalation risks and progressively build confidence between actors across borders.

1- THE CHALLENGE

2 - THE METHOD

3 - THE DRAFT FRAMEWORK

4 – **MOVING FORWARD**

NEXT STEPS

Two tracks in 2015:

- Technical specifications of the Request Submission System
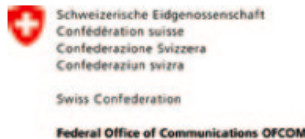
- Documenting Procedures, Criteria and Dispute Mechanisms

Identifying key actors for testing in 2016

FUNDING POOL

Gratitude for existing support

Increased resources needed for the next phase

SUBSTANTIVE FEEDBACK

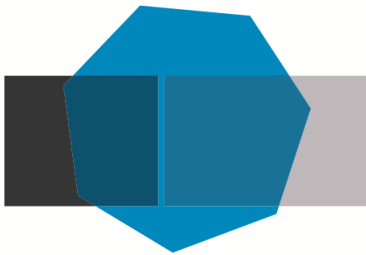Does this issue framing match your experience?

General reactions to the approach?

Concrete questions:

- What decision criteria do you use?
- Do you require a local court decision?

How to strengthen the interface between the I&J Project and the ccTLD community?

THANKS

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