

GLOBAL INTERNET AND JURISDICTION CONFERENCE 2016

NOVEMBER 14-16, 2016 · PARIS, FRANCE

Summary by the Internet & Jurisdiction Secretariat

The first Global Internet and Jurisdiction Conference of the multistakeholder policy network Internet & Jurisdiction was held on November 14-16, 2016 in Paris, France. It took place at the Ministerial Conference Center provided by the French Ministry of Foreign Affairs and brought together over 200 stakeholders from more than 40 countries. For the first time on a global level, senior representatives from governments, businesses, technical operators, civil society, academia, and international organizations specifically addressed the future of jurisdiction on the cross-border Internet. The conference was institutionally supported by the OECD, the European Commission, UNESCO, the Council of Europe, the Slovak Presidency of the Council of the European Union, and ICANN.

The Global Internet and Jurisdiction Conference firmly placed the topic of jurisdiction on the Internet governance agenda, as recommended in the 2014 NETmundial Roadmap for the Future Evolution of Internet Governance Ecosystem. It fostered trust across stakeholder groups and bridged the policy sectors of legal cooperation, digital economy, human rights, and cybersecurity. Over the course of three days, participants collaboratively framed issues of common concern, exchanged on existing efforts to address them, and discussed related operational challenges. As an outcome, stakeholders identified concrete areas for cooperation to help the development of shared policy standards and frameworks for legal interoperability and due process across borders.

A high-level Advisory Group supported the Internet & Jurisdiction Secretariat in shaping the agenda, identifying relevant participants, and structuring the preparatory process. The conference format eschewed formal panels to enable a high degree of interactions. Stakeholder Plenary Sessions on Days 1 and 3 were dedicated to respectively setting the stage and mapping the way forward, while in-depth discussions on Day 2 were carried out in three parallel workstreams: Data & Jurisdiction, Content & Jurisdiction and Domains & Jurisdiction.

A CALL FOR MORE COORDINATION AND COOPERATION

As connectivity and Internet penetration increase worldwide, so do jurisdictional tensions. Preserving the global character of the Internet while ensuring the respect of the rule of law(s) demands innovative cooperation mechanisms as transnational as the network itself. Addressing the jurisdictional challenges on the Internet is critical to prevent the escalation of a legal arms race detrimental to the benefits the cross-border Internet has brought to mankind.

The Opening Session of the conference highlighted the urgency of finding coordination and cooperation mechanisms to better establish legal interoperability and due process across borders. Former Swedish Prime Minister Carl Bildt stressed that “how the jurisdiction challenges on the Internet are addressed will define our digital future.” The OECD Deputy Secretary General Douglas Frantz emphasized: “The stakes are high. The question is not whether we should do something about procedural interoperability, but if we can afford not to.” UNESCO Assistant Secretary General Frank La Rue highlighted the need for more cooperation to promote human rights online and ensure Internet universality for the achievement of the 2030 Sustainable Development Goals. Google Vice President Nicklas Lundblad stressed the need for governance innovation to find operational solutions, while Nnenna Nwakanma of the World Wide Web Foundation called upon participants to work together to build the basis for an inclusive and open digital society.

The participants recognized that no actor or stakeholder group can solve these challenges alone and that uncoordinated efforts or inaction come with a high cost for the future of the digital economy, human rights, and cybersecurity. They concluded that there is a need for more effective cooperation among all actors: enhanced multistakeholder dialogue is essential to ensure better policy coherence and jointly develop policy standards and operational solutions. Stakeholders underscored the instrumental role the policy network Internet & Jurisdiction could play in that regard, and affirmed their commitment to work together.

BUILDING A COMMON UNDERSTANDING

On Day 2 of the conference, stakeholders participated in three parallel workstreams addressing the following questions:

- **WORKSTREAM I: DATA & JURISDICTION** How can transnational data flows and the protection of privacy be reconciled with lawful access requirements to address abuses?
- **WORKSTREAM II: CONTENT & JURISDICTION** How can the global availability of content be handled given the diversity of local laws and norms?
- **WORKSTREAM III: DOMAINS & JURISDICTION** How can the neutrality of the Internet’s technical layer be preserved when national jurisdictions are applied on the Domain Name System?

Each of the three workstreams focused on the fast increasing number of direct cross-border requests to private actors regarding: access to user data, content takedowns, and domain name suspensions. Such requests simultaneously involve more than one jurisdiction, based inter alia on the locations of users, Internet companies, servers, registrars or registries. Discussions and different reform initiatives have emerged across regions and policy sectors to contribute to solving these new transnational challenges. Each workstream provided a unique opportunity for participants to present and map ongoing efforts to ensure better awareness and coordination. Stakeholders subsequently framed problems together and addressed concrete operational challenges to legal interoperability and transnational due process that urgently require solutions. Surveys were conducted to identify priorities for joint action in each workstream.

In addition, a plenary session on “The Future of Territoriality” discussed the impact and potential risks of applying traditional territoriality criteria to assert or enforce national jurisdiction on the cross-border Internet. It highlighted the necessity of finding balanced modalities and criteria in that regard.

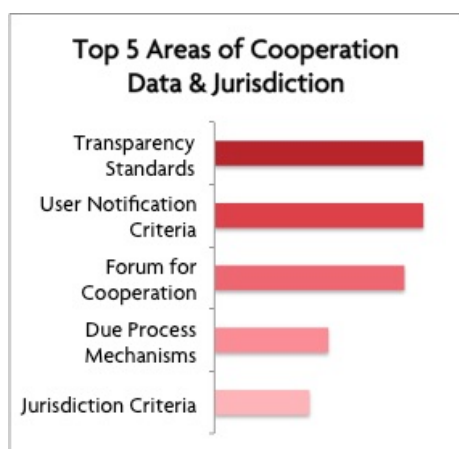
A ROADMAP FOR ENHANCED MULTISTAKEHOLDER COOPERATION

Discussions and survey results revealed four recurring core priorities for cooperation across workstreams:

- **Forum for Cooperation:** Participants emphasized the need for neutral dialogue spaces and the benefits of the Internet & Jurisdiction policy network to help them build trust, exchange information and expertise, coordinate among ongoing initiatives, and collaboratively develop solutions.
- **Shared Vernacular:** The development of common definitions and terminology was identified as a priority to build a shared understanding of how to address jurisdiction challenges on the Internet.
- **Transparency:** To promote accountability and understand trends, participants concluded that it is important to better standardize transparency reporting from companies and explore how governments could produce equivalent reports.
- **Best Practices and Policy Standards:** Stakeholders called for the joint documentation of existing practices in order to collectively develop policy standards and due process frameworks for cross-border requests.

Data & Jurisdiction:

Beyond improvement of the current mutual legal assistance system for criminal investigations, stakeholders discussed situations where the only nexus of connection with a foreign country is the



use of an intermediary incorporated there. Ongoing coordination between reform processes in treaty-based organizations and bilateral negotiations is needed to avoid fragmented standards regarding submission procedures and determination criteria. Participants discussed the use of standardized request formats and submission portals. They encouraged a particular focus on standards for user notification, modalities for the authentication of requesters, and the establishment of single points of contact. More work also needs to be conducted regarding criteria of territoriality for defining jurisdiction, privacy and encryption, as well as appeal and redress mechanisms.

Content & Jurisdiction:

Stakeholders acknowledged the challenges and human rights implications incurred by the growing responsibility bestowed on private actors dealing with large volume of cross-border removal requests. Participants highlighted the need for standardized transparency reporting, including by governments, and the documentation of best practices to ensure proportionality and prevent overblocking. It was affirmed that common definitions for terms such as defamation, harassment, hate speech, or violent extremism



are necessary. The creation of a database of authenticated points of contacts for requesters and requestees was considered beneficial. Affordable cross-border redress, dispute resolution, and notification mechanisms were identified as key to guarantee due process. It was further concluded that the judiciary must be better involved in policy discussions on content removal requests.

Domains & Jurisdiction:

Cross-border domain suspension requests are increasingly sent to technical operators because of the



content or activity of websites. Participants stressed the urgency to discuss an appropriate procedural framework in a multistakeholder manner and the need to develop common terminology on requested actions and their corresponding determination criteria. They found that abuse of the DNS itself and certain manifestly harmful content can justify global domain suspension under due process guarantees, but that action at the DNS level is disproportionate in most other cases given its global impact. Better metrics and transparency reporting on request types and volumes are required for sound policy discussions. Particular attention should be given to the development of standards and accountability mechanisms regarding “trusted notifiers.”

THE WAY FORWARD

The key message of the conference is that addressing the transnational jurisdictional challenges posed by the Internet requires ongoing collaboration between all stakeholders. The roadmap for cooperation will help structure the upcoming work of the Internet & Jurisdiction policy network. The Internet & Jurisdiction Secretariat is therefore committed to:

CONNECT

- Facilitate ongoing collaboration among stakeholders in accordance with the areas of cooperation collectively identified by stakeholders
- Promote policy coherence and coordination between different initiatives, policy sectors, and regions
- Increase outreach to ensure inclusion and raise awareness across stakeholder groups and regions

INFORM

- Enable evidence-based policy innovation by continuing to monitor and document jurisdictional trends in the open-access I&J Retrospect Database
- Produce relevant research and analysis in conjunction with the academic experts of the I&J Observatory

ADVANCE

- Foster a common understanding of priorities and challenges among stakeholders
- Catalyze the development of policy standards and frameworks

The list of participants, detailed program, session videos, and photos from the conference can be consulted at <http://www.internetjurisdiction.net/event/2016-global-internet-and-jurisdiction-conference>.