

**External Report of
5th European Dialogue
on Internet Governance
(EuroDIG)
Stockholm**

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for



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EuroDIG speaking, but not enough listen from classical spheres of politics

The European Dialogue on Internet Governance (EuroDIG) has become an institution by now. When meeting for the fifth time it attracted close to 600 participants to sunny midsummer Stockholm and received invitations by the next two hosts already, Portugal for 2013 and Germany by 2014. But despite the high-level panels and some political prominence, like the Vice-president of the European Parliament Neelie Kroes, Vice-president of the European Parliament Alexander Alvaro, (Liberal Party Group) in attendance, there is a gap between discussions at the meeting and the political and legislative sphere.

Alvaro confirmed to this reporter, the Dialogue is only followed by a handful of members of parliament. A core question, put before the main hosts, Swedish Foreign Minister Carl Bildt and the Secretary General of the Council of Europe Thorbjørn Jagland, how governments would share power and allow access to decision-making procedures by all stakeholders, was chosen to not be answered by Bildt. Jagland while clearly giving preference to representative democracy said there was a gap between the Facebook and Twitter sphere of activism – or even direct democracy – and classical policy shaping and decision making.

„One of the things we got from the second industrial revolution was the political parties we have today”. Jagland wondered what kind of political system would be the result of the Internet revolution..

Internet Governance – the obvious people and the less obvious people

Internet Governance – the governance of critical Internet infrastructure – certainly was not the main topic in Stockholm, even if Carl Bildt prominently rejected attempts to change the existing system in the ongoing negotiations at the UN. Bildt underlined „the multi-stakeholder self-regulating system has served the system and the world extremely well“, he said. „I would argue not to meddle too much with it unless we are damn certain there is a better alternative.“ In his final conclusions he warned that the global governance model of the net was under threat.

„It's been working well, it's now under threat by the obvious people, but also by some less obvious people (earlier he had mentioned China, Russia and Iran).” And he urged the European Union and the US and a couple of other driving forces behind the current system, to be more alert to the dangers and better communicate the success of the system.

A proposal to change the charging mechanism for peering and transit network traffic by the European Telecommunication and Network Operators association (ETNO) was discussed by many in the hallways. However the new ETNO Chair Daniel Pataki gave no detailed answer when British Government representative Jean-Jacques Sahel asked him if the proposal was a clear call for net neutrality regulation.

Pataki said that there were two parts in the debate; on one side there is the question whether one could have differentiation on the consumer side and then on the other side is the question how one could solve the asymmetry of the traffic volume from some content providers and how a network operator could handle this.“ There was only little participation in the EuroDIG from large telecom operators, and therefore not much reaction from their side... Michael Rotert, former head of EuroISPA, was furious about the ETNO proposal which, he warned, could very well result in more network filtering for charging reasons and abused for other aims by countries like China.

The role of ICANN and the core Internet Infrastructure was touched upon by several speakers.

While Minister Carl Bildt had referred to ICANN and also the Internet Engineering Task Force (IETF) as pillars of success for the Internet today, a stern warning came from Bertrand de la Chapelle, (French International Academy and ICANN Board member). That the DNS could become a content control panel if the trend of US law enforcement continued to enforce US copyright law against non-US domain name owners via their US-based registrars, registries or even ICANN.

National laws, borderless network – the trend for extraterritorial law enforcement

One of the sessions discussed the trend for extraterritorial law enforcement on the Internet. In recent cases, such as the RojaDirecta case, law enforcement was done via registrars or registries. The introduction of new gTLDs the number of registries sitting outside the US will increase. As a result, it was said, US law enforcement would be compelled to pull the trigger on ICANN, because the registries not under US law still are bound contractually to ICANN.

„They can go one step up to ICANN and then it's up to ICANN to politicize their own business or not,“ Staffan Jonsson, Senior Policy Adviser at Sweden's country code top level domain registry.se. There is the concern that for political and strategic reasons ICANN might go down that road. “They are slowly politicizing the infrastructure and that might be a headache for ICANN in the long run”, Jonson said.

A whole session was devoted to the growing trend of extraterritorial law enforcement which is not only fashionable in the US, but also elsewhere. One example discussed was the Swedish ‘snooping’ law, the National Defence Radio Establishment (Försvarets Radioanstalt, FRA), which allows the Swedish authorities to monitor all incoming and outgoing data traffic when crossing the borders of Sweden’s networks. A court case against the snooping law could help to challenge its constitutionality from a Swedish or European point of view.

Marietje Schaake, liberal Member of the European Parliament had called for such civil society initiated court cases as a way to get clarity on the jurisdiction in the growing number of cross-border cases. Legislative initiatives to solve this problem would take much longer. There was also a need to develop scenarios for different variants of the problem as there was a need for differentiation between public, private and criminal law cases. Schaake noted that national governments were in many cases unable to protect their citizens’ fundamental rights against extra-territorial interventions, and in some cases EU governments even had signed away the rights of their citizens (like for the EU-US agreements on passenger name records, PNR, or banking data, TFTP).

Rolf Weber, professor of law at Zurich University, recommended “cooperative sovereignty” as a potential new concept and better integration of Civil Society into law making processes.

De la Chapelle has been arguing for some time already for yet another concept to overcome the mismatch of national jurisdiction and globalized services. Thinking of terms of service as new regulation there should be a better integration of the user stakeholders in developing or challenging them.

Call to move on Copyright

De la Chapelle during the territoriality panel observed that with regard to extending one's jurisdiction the US and the EU showed some sort of symmetry: “On copyright there's an extremely strong pressure for an extra-territorial implementation of US law and on privacy, it is an extremely strong European push for the extra-territorial application of privacy rules.”

Complaints against the US copyright industry (“Hollywood”) certainly were made during the copyright panel of the EuroDIG which was conspicuously consensual in its call for a reform of the copyright system. One reason for the near unanimity may have been the fact that no die-hard rights holder representative participated in the panel. WIPO had been invited, said Wolf Ludwig from the EuroDIG organizing team, but had declined to participate.

From former or current public servants, to representatives of the international library, the ISP or academic community and to citizen activist Jérémie Zimmermann from LaQuadrature du Net: everybody is for the reform.

Nigel Hickson, former British public servant and now ICANN VP for Europe, said: „The model is broken and governments have no idea how to take things forward.“ Hickson said that the Digital Economy Act in the UK had been in fact fought by civil servants, „We did not want to penalize 16 or 18-year olds that were doing file sharing – these were our daughters and sons.“ Yet the government had been under pressure from electorate, content owners and big corporations.

Stuart Hamilton, Director of Policy and Advocacy at the International Federation of Library Associations and Institutions (IFLA), criticized that in legislative initiatives like SOPA, PIPA, TPPA or ACTA the „public interest had been shunted to the side“ and flexibilities called for by the library community had not been updated.

On top of IFLA's agenda currently was a WIPO treaty on exceptions and limitations for archives. „But in that arena that moves at a glacial pace.“ While a treaty like ACTA moved quickly, he said. The blind people at WIPO had been waiting for 25 years for an international treaty. „I think the solution – though I cannot tell where we need to go to – is that we must have the voice of the users in every single copyright consultation being louder and louder.“

Elfa Yr Gylfadottir, head of division of media at the Ministry of Education, Science and Culture in Iceland who is in charge of Iceland's planning for a freedom of expression data haven (on which drafts she said would come next year), underlined what many Youth representatives said: As big companies were focussing on big markets, “this means that, for example Icelandic users who are hungry for content, not have iTunes, Apple TV and so forth. But you have savvy Internet users who really know how to get a VPN, an IP number from the US.” And while domestic alternatives were often expensive, there is the alternative of downloading.

Zimmermann said he certainly hoped, „that if we manage to kill ACTA in the (European) parliament, we will have a momentum with enough people participating in the debate so we can counter the influence of industry on governments. It was certainly time to move on in the copyright discussion. Zimmermann very much underlined the decision about a future copyright system was not just a question about “the legal architecture, but the architecture of society being shaped here.”

Privacy Debate inconclusive

The privacy panel at the EuroDIG was one of the most inconsistent, and perhaps more than other panels illustrated the difficulties of legislators and regulators to do their job. The session saw a fight between representatives of the three EU co-legislators (Parliament, Council and Commission) about who messed up the EU e-Privacy Directive's “cookie nightmare” provisions.

Vice President of the European Parliament, Alexander Alvaro, blamed lack of coordination and misunderstandings as reason for some problems with the recently reviewed e-Privacy directive and hope this could be avoided for the new Privacy Directive. A passage that would have made the use of a Cookie-enabling browser an easy way for users to give consent had been taken out by the Czech presidency and the European Commission, Alvaro said. „That actually showed what happens if bad

legislation due to a certain lack of knowledge in one of the European institutions hits the public: it creates chaos“, he said.

Rosa Belcaro from the DG Information Society confirmed that the e-Privacy Directive discussion was closed to fast, but said that the Commission was committed to check on the cookie issue, following up to a new opinion issued by the European Article 29 Party of Data Protection Officers.

The Commission official looking ahead to the ongoing broader Data Protection review in the Union (which contains a regulation for the single market and a directive regulating the processing of personal data by judicial authorities) also applauded the do-not-track technical standardization effort of the World Wide Web Consortium. „I think it's worth looking at it and thinking about how we can use these technologies“, she said. She also welcomed self-regulation efforts who could complement the planned regulation focusing on user consent and transparency.

„We should be able to control the profiling processes“, said Katarzyna Szymielewicz, speaking for European Digital Rights. Self-regulation, she said, was not enough and an easy differentiation between what as sensitive and non-sensitive data, as attempted for the coming new privacy regulation/directive according to Belcaro, was just not possible given the unlimited means to aggregate and analyze various personal data making even obviously innocent looking information „sensitive“.

From the business side on the other hand Pat Walshe of GSMA, the association of mobile telecom providers, warned against potential harmful consequences of regulation. In Germany for example, he said, because of strict consent requests for location data ended up to set such high barriers, „that you do not enter into that market.“

The GSMA has presented privacy design guidelines for mobile application development in March and Walshe recommended that there should be some choice for users to decide what risk they would take given that many were highly interested in benefiting from services based on profiles. Too much information for users with regard on privacy policies were confusing or even counter-productive, because users would just “click through” such information.

While industry representatives are more in for self-regulation, all parties did agree that a regulation on data protection for the private sector would be preferable to yet another directive, because of a more harmonized and consistent implementation in EU member states.

If member states will finally agree to allow a regulation was „another question“, according to Alvaro who said that the new privacy regime should be passed in the EU no later than the first quarter of 2014. He was sceptic if the right to be forgotten would be kept as it is currently in the draft.

A big elephant in the EU room when it comes to the privacy questions certainly are US based companies which currently are under close watch by data protection officials. Weber said the Swiss High Court just ruled for example that Google Street View could re-start its activities in Switzerland but certainly was subject to Swiss data protection law.

Schaake who is member of the US delegation of the EU Parliament said in the EU-US discussions on data protection: “Do I see convergence happening? No. I wish to, but no.” The US has been watching the development of the EU Data protection review closely, as US companies according to Reding's announcement are expected to comply to the upcoming Data protection regulation as long as they target EU citizens.

The S-Word: Security, the fight against cybercrime

Security on, especially for children, was one of the major issues addressed by several high level speakers at the EuroDIG this year, EU Commissioner (Digital Agenda) Neelie Kroes, touched on it in her [survey-](#)

[like opening speech](#). Her Majesty, Queen Silvia, devoted her [speech](#) exclusively to it, for her part asking for protection on one hand, but also for close listening to young people, savvy of Internet technology. According to Queen Silvia, one in two three year olds in Sweden uses the Internet – a rather astonishing figure.

The danger for children on the net, especially from paedophiles, also was the focus of session in fact dedicated to the large issue of public private partnership in the fight against cybercrime. Patrik Hiselius, responsible for human rights and freedom of expression topics at Telia Sonera, reported about the Swedish experience on blocking child abuse material based on a list by the Swedish police.

Since 2004, Hiselius said, there had been promises that the lists coming from the police (not a court or judge) would be checked, yet in fact, nobody checked this lists. After close to eight years finally there was an agreement between the operators obliged and the police to have a third, independent party doing routine checks. Telia Sonera had commissioned a study on the lists, of which the results are expected to come out soon. Now operators were searching for a third party who could do routine checks. By taking such measures operators hope that the system will be more trusted. According to several civil rights activists there is a growing fear that the systems would be abused for other cases, including for political reasons or copyright issues. Over 50 percent of complaints arriving at Google's doorstep were related to defamation, Marco Pancini from Google said.

A rather angry Alexander Alvaro warned against abusing the abuse of the child abuse topic in the session with EU Commissioner Kroes. "I've been working for eight years on counter-terrorism. And then I've been working on the digital question, and I am tired that child abuse has become the terrorism of the Internet. It has become the justification for blocking and censoring websites."

Yet there is more help law enforcement hopes to get from operators, with the EU Clean IT project, presented by But Klaassen from the Dutch Ministry of the Interior (see RIPE report Ljubljana), this time on being on the look-out for terrorists using the net.

More deputy sheriff-tasks finally have been placed on EU operators as a whole by the controversial data retention directive. The directive is currently under review with operators, including German IT Industry association Eco asking for a clear proof about the need of the stored data. Germany has not implemented the directive so far and decided to pay the fine set by the Commission for non-implementation. The German Minister of Justice certainly might have to make a new move if the Union decides against a reform of the directive. According to Belcaro the decision about reforming the data retention directive was not yet taken.