

FINISHED FILE

ASIA PACIFIC REGIONAL INTERNET GOVERNANCE FORUM  
EVOLUTION OF INTERNET GOVERNANCE: EMPOWERING SUSTAINABLE  
DEVELOPMENT  
MACAO 2015  
3 JULY 2015  
ROOM 2  
14:00  
SESSION 50 and 60  
THE C TO L OF DIGITAL RIGHTS: CONSENT, LITIGATION AND  
CITIZENSHIP  
SESSION 50 and 60

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>> BISHAKHA DATTA: Welcome to the session that we are just about to begin. C to L of digital rights. We will look at three aspects related to our digital rights. Let me introduce Shahzad Ahmed who is from Bytes For All Pakistan and Jac sm Kee from the Association for Progressive Communications and Bishakha Dhatta. Jac lives in Malaysia. So we are going to go through three different aspects that relates to digital rights. And to begin with let me hand the mic to Shahzad to start the talk.

>> SHAHZAD AHMED: Thank you. So the -- and we -- one part of the session we wanted to discuss the importance of research and (inaudible). So my conversation will focus on that. And then I'll talk about some of the research that they have done and provisions and -- it is okay. I can take it. Someone is

reading this. So I can probably be standing over here. So the campaign that we did, your feedback I can share here. So we are based in Pakistan. But this is what we work with. You can see page 3, conduct research and document evidence for evidence-based policy and to help policy change and capacity building for the stakeholders, people who work with. Quickly coming on to the topic, what we have been learning so far for us, so we got ourselves involved in communication in early 2013. This -- then we got our first petition in Pakistani. So the learning so far is that research and public interest mitigation, I mean it is extremely -- this is one (inaudible) for policy change. If you conduct research and pursue this, this is one day off getting some policy change. That evidence-based research is extremely important for public interest unless your (inaudible) hard evidence, then we reject it.

So that is actually extremely important. We also learned that research should be backed by authentic institution because we face this. But when presented research to them, we found the Government we said that this is our possibility. And come up with this research. So we had the same research based on (inaudible). That would be show it to them and this is done in combination with the University. This is how we will do that. That would still be part of our time. Completely minus the -- across the whole discussion.

It is also important that we focus and invest in to Networking. Networking which I find authorization. Not only on the national level but the regional and global level. Online campaign is extremely important. You get in to campaigns and different activity and social media, much more than that. You need to reach out to people. Get yourselves involved in to different activities, physical face to face. Also we learn that we can take online, it is extremely important that we have visual and interactive multimedia. That helps matters or other open statements or public statements. Infographics and posters and banners on social media. List a few of the important research that we did. First of all, Internet landscape study. First ever indigenous effort to map Internet governance. We were citing or referring to international, you know, resources that I mean other (inaudible) have said no, have our own data report that is prepared by local offices.

We have developed this study. This was simply used in the litigation process. Then we had (Off microphone). For Internet freedom case it was extremely important to establish kind of successship. So we did this research and then resulted in a story. Netsweeper story available online. You can find our website as well. So this research was extremely important. Hard evidence with no or technical details. FinFisher report,

this report was -- this research was conducted by the citizen lab. This is also something which (inaudible). So that is welcome. Then we did a hate speech study. So first ever structured research on speech. You will be happy to know that the first time we came to know how research can be so important and useful that -- so we -- (inaudible). He wrote a landmark decision on correction -- protection of minorities in Pakistan and this roadmap involved (inaudible) by the Government, but how do you improve this situation of minorities in the country and the chief justice gave two opinions, citing our efforts to this report. That is how important research. It is published and just about the code but also like to use it.

Expression restricted, this is a study that maps all laws in Pakistan. And then we also arranged a kill switch study and mapping of laws in the context of Freedom of Expression of the religion. So quick few activities that we have done. So current cases in courts, one is Internet freedom. So Youtube has been banned in Pakistan for three years. In September it will be three years. Visual 2013 issue public statement and Facebooking, we need to do a bit more, go a bit further to get something on this topic. So that is why -- that is the first time that we went to the high court and the largest complaint, this petition. Received 22 hearings. It took like one and a half years, probably more than that and we got CM from (inaudible) in our favor. However, the -- since we (inaudible) and it is a very vague one liner like blocked Youtube. It is not proper words.

Okay. We need to go to the Supreme Court. Now at least it is in the Supreme Court but hopefully very soon we get again and then we will resolve this issue. The second case that we are targeting is digital surveillance. This was based on the initial FinFisher report and based on that report challenge the Government surveillance in Pakistan is ongoing.

The third case is communications surveillance. We know that Pakistan is a third party service happening not only by national agencies but international agencies. We sued (inaudible) and we asked for explanation of how and why and when is being surveyed and litigation trafficking in and out of Pakistan. So we have (inaudible). That's not in our favor by the way, but the case has been referenced to Human Rights. So important to see -- we will have a hearing on this and we expect a very important case as well.

So I was mentioning about the campaign and the visual medium and how we do it, it is very important for us. So this was the first -- this was closer than we did -- we focus (inaudible) and one thing to raise awareness. One more thing is extremely important we have certain challenges you can mention

in the end. So from Washington Post to the papers in the UK, because of the (inaudible) in Pakistan. Then I mean we wanted to establish that -- they say that we got it for movie but these are the things that you don't want Pakistanis to see on that topic. A poster that we have issues, share huge and then -- we wanted to raise more awareness about youth. So we did that censorship is not a solution. It is a problem. We are -- okay. This is a solution to (inaudible) peace and harmony in the country and if you open Youtube it will cause chaos. That was our response. Then this one was (inaudible). So we had the -- they were saying that (inaudible). So instead of channel communication, (inaudible). But based on the story that young woman she got her (inaudible) because she could not reach out to her doctor, communication topic at that time. Then these kinds of posters and this was also I mean -- coming to talk about online rights. And this was about -- so that's it.

So challenges. I mean when we -- a lot of -- we put in a lot of effort for technical and legal support. Metadata case of technical and legal report. Need our help as well. So nothing to worry about. There are a lot of support Networks who can help you with. Have been using a lot of help and support from ABC. And there is a medical/legal defense initiative and have been supporting through technical leads. So -- and then on what you say not --

>> (Inaudible).

>> SHAHZAD AHMED: So there are approval. We don't have to pay any to that. Only when we have support to technical and legal means. And this is what we have been doing. And other challenges that physical security and digital security don't serve a problem. There are other support for this. There are nonstate actors who are on the other side of the table. We say that physical security and the user security is a challenge for not only the (inaudible) for the SOC organization as well. And authorities/media, -- I mean they say okay. No impact. But that's how we -- they would bring that. First of all, go story to make your life much more miserable. Defamation by Governments and different authorities, to undermine our efforts. So that's all for the moment. So it has been very productive, visual experience so far. Could raise awareness, more people in the Network. We could really build the campaign around it. And see -- Bishakha, could I talk a little bit about what happened in India, and that was a huge success? We have seen different stories that activists have used the public interest for very important policy changes. So that's that from us. Thank you.

>> BISHAKHA DATTA: Great. Can we give Shahzad a round of applause?

(Applause.)

>> BISHAKHA DATTA: Thank you. Okay. So I will go next and Shahzad explained the two proposals that we had sent to the Asia-Pacific regional IGF. One came from Bytes For All looking at litigation of online Human Rights and the other was a proposal that came from our organization where we had consent in the Digital Age. So this is a happy instance of India/Pakistan partnership. So first to talk on a couple of things that Shahzad was talking about which is (cutting out), which is supporting from Civil Society on the expression and -- against this section. When they had guidance and initiative, (cutting out).

Saying that it was very -- has rights which confuse us and this launch (inaudible) the Supreme Court (inaudible) should be brought in the end. So this goes back to what Shahzad was saying the power of mitigation sometimes can move other things. So moving on from here actually issue of consent which is also somewhat related to litigation. I am going to talk about consent and what it means. The first thing I want to say we -- at the formal level we talk about consent. When your private information becomes public online without your consent. It comes in many, many different ways. And what's happening with consent is that it is sort of related to but at the same time it is very below a lot of key Internet Governance concepts. Whether we think of data security, free speech expression, digital trust. Consent is one layer deeper but it is actually underlying them all and giving you some examples.

Now the first time that we significantly heard of consent mentioned in the digital sphere is actually very a prominent book written by Rebecca MacKinnon who is both part of global voices as well as a number of other digital rights fora. And she wrote a book in 2012 called Consent of the Networked and what she said in that book -- hang on. Here it is. She said that our freedom in the Internet age depends on whether we defend our rights on digital platforms and Networks in the same way that people fight for their rights and accountable governance in physical communities and nations. And to quote her she said it is time to stop thinking of ourselves as passive users of technology and instead act like citizens of the Internet and take ownership and responsibility for the future.

And this is a very influential book where she puts forward the preface whether it is intermediaries, platforms, Governments. They need to seek the consent of the Network to not assume that consent is there.

So moving on from here looking at about how this interacts I think the first question is really terms of service. All of us when we use applications we use signs online. In the case of applications of who we don't have a choice when we download the

application who says we want to -- big things and you have to click you accept in order to download that application. But from a rights perspective I think the question that's worth asking is can we see (inaudible) if that is consent. If you do not have any choice whatsoever when you download an application and the only thing you can do is stick -- like accept the ticks, what is your choice let alone consent? That's the first thing.

Now with websites it is a little different. With websites as we know whether we go to Facebook or anything, very unique terms of service, right? Which none of us bother to read because we go crazy. We sat and read the terms of service. These terms of service are meant to actually from -- protect the platform from legal liability. So they are constructed and written from the platform's perspective. They are not written from the user's perspective but again the question comes up and here I wanted to think of the concept of informed consent. There is a whole concept offline, like, for instance, when we go and say for surgery, we are to read a certain thing and say okay, I understand what the surgery is about and I understand what the risks are about and consent to the surgery. I will not hold the medical facility responsible. Now there at least it is written in a way that people can understand and in the Digital Age interestingly offline there are attempts being made to use digital technology to get informed consent from populations that cannot read or write. Right? So if you can't read or write now we are using video technologies where you can actually read that form out and then that person can hear it and video record them. And if they don't want their face to be shown you can audio record it. These are things that are being done by medical facilities around the world. On the one hand we have digital technologies we use to get consent from many, many people than could ever get because there is so many populations in the world who all deserve to give consent. But at the same time a very strange situation online where all of us are signing terms of service which we never read, and therefore which we philosophical sense do not really consent to. Now you could say and that -- well, it is your fault. You don't read it.

What I would say to you is I would like to read out what the office of the privacy commissioner in Canada said in 2013. The office of the privacy commissioner moved very clearly in 2013, particularly in the context of digital consent and terms of service, consent is considering meaningfully when individuals understand what organizations are doing with their personal information and understand what they are consenting to. And there is a clear descriptive accessible privacy policy if the terms of services of policies are legalistic and to affect for ordinary citizens of people to understand that does not

constitute meaningful consent in the eyes of the privacy policy.

Governments are slowly starting to take note of this because one of the issues was always like oh, my God, we have this giant terms of service. If it is so complicated and difficult to read that you would have to hire like a Ph.D. student or a lawyer. You can't constitute meaningful consent, but what we as rights activists, once the first helpful pieces sort of policy making that we -- this is from this office here, office of privacy commissioner in Canada. Now so we don't -- these are questions we have to discuss but just to let you know that we are thinking about it.

Now to sort of bring the whole consent question down even more deeply in to our own lives and say the strange coincidence, and there is a very simple little box that you click when you agree to take their WiFi which is we don't agree with the term free expression but it is very clear, it says I agree to XYZ and ABC and that I understand that by agreeing some of my views may be sort of controlled by the authority, et cetera, et cetera. So it is very clear. We may not agree with the differences and then -- it says if you accept it, agree; otherwise disagree. So tells you that it is very, very important. We often have intermediaries which tell us the risk, too much language or just not clear enough. How can we possibly know what it is.

Okay. So now just a few more examples and, you know, also see very day-to-day manifestation of violations of consent. One in India recently a doctor put up the photographs of his patient's tumor after an operation on social media without his consent. Right? When the patient found out he was actually furious and insisted it be taken down but -- and that again breaches the patient/doctor confidentiality. So similarly we have three examples from gender. One of our Ministers in India, a woman, education Minister recently went to a shop and while she was trying on clothes in the changing room she suddenly felt that like she saw a camera lens and she suddenly realized that there is a hidden camera in the shop that is recording her changing without her consent. Because she was a Minister she kicked up a huge fuss and then, you know, the authorities started taking note of this. This is bigger stories of these kinds of cameras in changing rooms and hospitals. Or cell phones being placed on the divider. Very routine everyday type of violation of consent.

Similarly two other cases likely not dramatic. One is the more grammatic, images of sexual interaction of women are put online without their consent. In India we are seeing visions called rape com. There is a complaint where 90 cases of actual gang rapes of women. These are 90 separate women who have been gang raped. Those gang rapes have been filmed on cell phones

and these have been uploaded without their consent. It is being passed, passed, passed, passed. Three violations of consent. No. 1 rape is a violation of consent. And gang rape is a violation of gang. 3 distributing that film is the third violation. Layer after layer of consent. And I think the complicated thing I am telling why it is a complicated thing who do we hold comparable here. Frankly suppose we assume that one of these rape videos has traveled between a hundred thousand people. Who is responsible? Can we live with the old notion of one person being responsible? No. But are we going to say a hundred thousand people who have consumed this have done something criminal? So are we going to criminalize consumption of media? You see how complicated it is, and can the law alone then be with these hundred thousand because every little forward is sort of violating consent. Everyone who looks at it and forward.

So here are some of the cases where I think to sort of take off on what Shahzad was saying and thank you, that was a very useful trigger actually, I think we need a combination of law and culture change. On the one hand certainly in the case of the supreme -- these 90 rape videos which are at the Supreme Court and I know there are some cases like this in Pakistan as well, there, of course, we would like some sort of action to be taken against the rapists first. Because the interesting thing is that when you film -- when somebody films a gang rape video they are also unknowingly creating evidence because you see the faces of the people who are raping as well. So it is a very complicated situation. Whether the courts will admit this is evidence I don't know. I am not a lawyer. But it does constitute evidence.

So yes, we would like this to be used as a way to convict the rapists. At the same time if we really want to stop that culture of sharing this kind of thing I don't think that can be legislative because you are never going to find the original person who put this online. So you can't keep on arresting people, move forward. Therefore you are arrested. You need to bring consent back. You need to change the culture. You really need to get people and that's where the law stops and culture change begins. You really need each person like, you know, to look at this clip and say oh, my God, this is a real woman being raped. And think as opposed to just how we flex forward all of us. So that's culture change.

To take you from the flexibly forwarding to saying no, this is real. Can I be sharing this. That is culture change and that doesn't come with law. You are talking about changing what is in your head. These are two common actions that we need to go with. And the last thing that I want to say here is that we

do actually have quite a progressive section under the IT Act in India which is post Section 66(e) which says that any image of your private parts that is circulated without your consent whoever circulated can be held responsible. But here again think about it. One is we just discussed it may, in fact, be able to figure out who is held responsible or find one person, may be a hundred thousand people sharing it. The second thing -- interesting thing which I want to keep in mind is that often as we know in the Digital Age with cultures of sexing and cultures of exchanging images for your own pleasure, right, including images of like which are intimate in nature where man and woman exchange images for their own private pleasure. That's totally fine. When you exchange an image consenting with somebody else it is totally fine, but when it slips outside your control through nonconsenting distribution that's the part that's the problem. Think of Section 66(e). If you are a young woman in India, can you go to the cops and say actually you know what, my boyfriend and I took these pictures of ourselves having sex for our own pleasure, but now somebody has leaked them. The truth is in the private society we live in the court is going to turn to that woman and basically say that she is a slut, right? Because he is going to use morality and he is going to judge her and he is going to blame her instead of trying to help her. So the funny thing is that Section 66(e) is the least used provision in the IT Act. Probably because morality interferes so much. And instead people who experience these kinds of harms prefer to go to another section of the IT Act which is Section 67 where these Acts are portrayed not as nonconsensual but as obscene. If you go to the cops and say this is obscene, then the cop's morality doesn't backlash on you. If you say it is nonconsenting distribution or consenting production you are judged as a slut. Here are some of the complexities. Culture change is required for some. I hope we can have a discussion as Internet rights users what can we each do to bring this culture of consent online. Thank you. And now --

(Applause.)

>> JAC SM KEE: Okay. Really interesting things for me to -- interesting things for us to chew on and I'm not quite sure how to begin my input. It is not something that I just started thinking about in the past three days. Also flush out -- but one of the things that talking about in relation to cultures of communication and cultures of communication online and how shaping up in terms of how we engage with each other and the thing that is being pushed as the norm in relation to privacy and understandings of privacy is that there is no such thing as privacy. Want to be as public as possible. You want to be able to create a time, very public visible persona that is -- that

will somehow push in to some sort of recognition. It is very different from -- and that's unique from the life that you would live in different kinds of social interactions and engagement. And in this kind of online communications culture around privacy but it is not very private as any sort of -- no value in the (inaudible). That's -- the privacy in this is quite little.

Then how do you think about the whole notion of consent? It is very interesting. Why is this happening. And part of it I guess is the development of things like social media where also part of the economics of social media, it is about sharing. And then sort of create relationships and trust. Actually it was so difficult when you think about this privacy issue. Why is it so difficult to -- kind of interesting to see ourselves and somehow seen there is something about you that you need to keep private. And part of this is about the conceptualization of privacy. I think concept has also meant authoritarian which means about spaces. And we can sort of trace this back to some thinking about this in terms of biological and human behavior and how we think through the negotiation of this. So in terms of territories, actually (inaudible). You have the person which is yourself and the Internet and then between you and somebody else and then you have the public and privacy becomes a mechanism in which you negotiate what you want others to be able to access about yourself in relation to this -- this (inaudible). And usually this has also been how it has been understood.

Domains of privacy. So you have your person, your home, your correspondence and also the rights and applications. So it has all of -- it is always like ideas of space. On the Internet this doesn't work. Because when you are -- because how do you constitute space online and how do you make a difference between a person and spaces in which you occupy. Even in terms of whether a space is Internet or social or public. So say something as simple as Facebook. It can be deeply personal space because you are constructing notions of yourself and putting yourself out there in terms of personal data. So it is like constructions of yourself. Internet space, it could be a space where engage in interpersonal relationships with someone. That's where you hang out with people who you have never met. And suddenly you like pictures and it was a public and political space because that's where we are engaging. So in one way digital platform it is holding all of these complex relationships and all of these kind of like territories if you will. So then how do you think about privacy as something that is alive -- and organized and clearly I guess tested to negotiate the boundaries? And the other advice we have which is very, very good advice is privacy settings we have. That's it.

And the tick box. That's the only device you have to negotiate a complex set of shifting down relationships. So maybe you need to flip it around and think about it differently but actually privacy is territoriality and privacy as domain is no longer helpful to think about in terms of understanding what privacy actually means in the Digital Age. What can privacy actually be in terms of our constitutional self and relationship in Digital and Network Age.

Legally, conceptually, how do we think about this. And we had -- before the APrIGF two days before general Internet Governance has changed. One of the presentations is about privacy and started to link privacy to human dignity and that's actually what privacy is for. If you do not have privacy, you have no autonomy. Without autonomy you have no self-determination and as such no dignity. And dignity is such a foundational Human Rights concept. Right? It is not just about who you are as a person. If you cannot live your life through dignity, it is the ultimate witness test for personal freedom. Do you have dignity in a personal space? It is not about you. It is also -- it is also an indicator for Democratic processes. It is also linked to (inaudible). If you have no dignity, therefore you cannot live life in such a way where you are able to exercise your choices with autonomy. And therefore have some sort of self-determination and without that you don't have privacy. One of those cryptal and (inaudible) rights. It is also a foundation right on its own. So shifting -- so -- if this can then help us just flip the thinking around a little bit. When you start thinking about what happens in -- why do you need privacy. You start externalizing this notion of privacy. A critical inherent part of the formation of the human being in this part juncture and what does it mean and what does it take to live life to our right of dignity intact in Digital Age and how do we test it. I think that's the important thing and that's the difficult thing. Because this is one of those, in fact, legal concept. It is one of those more federal concepts to try to pin down. What is the test for dignity. How do you know if the rights -- yeah. So self-determination and privacy has been violated. But I guess the point to be made is that the test to the right to privacy is also a test on -- of dignity. So a violation of that dignity is a violation of your privacy. And it is that kind of quotization. And then consent becomes an interesting legal concept and to think through. How do we then -- how are we able to see whether or not somebody's dignity has been removed. And consent becomes one of those things like -- because of viable legal concept because it does have that history.

Okay. Have you all having not consented to this and

Bishahka gave a whole range of this is in operation. Some things are incapable of consent. So, for example, when somebody is really taking you as -- there is no way you can consent to something somebody did to you. It is an act of violation. And some people are deemed incapable of giving consent. It is also about a power issue. And this is interesting in an online situation where it is you, the user versus the unknown giant of who you are trying to access the service from. It is a power of relationship when you think about consent in legal way. And then I was -- this -- I think it was a (inaudible) judge -- his name was not (inaudible). Because it was such a super star J. He gave all this very, very great judgment that had good support and good concepts behind it and a lot of the cases we had was about persons (inaudible) and then (inaudible). And then -- you and this person gave me this service of my car. Doesn't have some sort of responsibility to protect my car and then the -- it was nothing --

(Laughter).

>> JAC SM KEE: But that is such an outrageous exclusion of responsibility in order for me to actually reasonably put that as a (inaudible) of the car, do I put that sign big, like totally super big entrance with a big red (inaudible) so there is no error. Everyone can see this. Particularly support (inaudible) then they can decide whether or not you want to pop (inaudible). It doesn't make sense. This small printing and it is a mechanism we think of using -- all this thinking of -- especially because of the power of relation. And I think that is the height of it as well. So yeah, so this --

So I guess to end how do we start to think about mitigating. I guess how do we start setting up tests on the rights of dignity and dignity as linked to right to privacy online. And one thing which is extremely important as well we are discussing this is that any organizations with this right has to be exquisite and extraordinary and acute exception has to be made. And then exception to the norm which is the violation of it. And consent cannot be assumed. So we cannot presume that people don't want their right and privacy because by saying that people don't want their dignity which is outrageous. It has to be unequivocally changed.

(Applause.)

>> BISHAKHA DHATTA: Thank you. Okay. So I think we have lots of food for thought. We are all trying to give you sort of three aspects of digital rights that perhaps have not been given the same level of attention in other sessions but which very much influence and shape our experience as digital users, right? It would be great if we can have comments or questions or any sort of things that people might like to say from the floor.

>> I'd just like to thank you, Shahzad, for sharing the experiences, the complaints that you have there. It is interesting to see some of them. It just baselines our experience back home. You have a very bad, somebody says (inaudible) verified cases. Number of questions, would it be possible to find those cases in Pakistan as well because like some of the cases of surveillance they verify in the UK.

>> SHAHZAD AHMED: The case is also in Pakistan courts. Yeah.

>> Okay. So I take it you can learn a lot from (inaudible). Thanks for all this. And you talk about -- when you block services, it really affects a lot of people. It also happens during -- cycle an example, for instance, in the Philippines. In January Pope visits the country. So really strict about the security because lots of people wanted to see him. But what our Government did was to ask the telecommunications companies to block -- (inaudible). Focus there. So really cut off and -- so that is something that people -- a lot of people did not complain about. They were complaining yeah, they were pissed off and they sent messages and posted pictures to show that they seen the Pope. But at least it is not just that. In case a lot of people especially those that are in the areas as well but -- there might be emergency cases. And we want people to send messages to the community if you need to. So that is a -- I was just surprised that not a lot of people saw that as something that this (inaudible) also be -- you are not able to fully mitigate. It was mentioned in the news but people were happy that, you know, complaining that much would impact. For me that was rights violation at the same time. So yeah. These things happen.

>> SHAHZAD AHMED: Okay. So the first thing is that for the (inaudible) places, courts as well. Communication in these cases educate. You heard yesterday there was a story how the UK was fined and atmosphere international. This was based on the case that we filed and it is based on field research and it was joined by amnesty and liberty and then all those different organizations. There is a bigger story today BBC has about it. That's one thing. Other than that when Kill Switch happened in Egypt. No Government would not dare a case in that country. I mean a lot of countries probably like (inaudible), how -- and it is actually in light of the Government. Otherwise I think it is -- it is sheer violation, several Human Rights violations and I can give you examples of Pakistan. Even though there are regular cases now. Every national (inaudible). It is actually on the ground proper security, you know, and even help, rather exercising Kill Switch or banning. This is how Governments or authorities would try to hide behind these kinds of things.

They have done their job. In many cases providing other (inaudible). So this is very unfortunate. But if you take time to the court, yes, I -- some of the challenges as well. But someone should quit as well. There might be a bigger view but then we -- I mean as activists, as society organizations we probably have this responsibility of mandate as well to bring them to the court for accountability purposes. So I think that more and more having looked at successes that India has recently seen. So with India, in India they could get these kinds of judgments or in other countries as well. So it is going to be probably a part for all of us to move on this and (inaudible).

>> BISHAKHA DHATTA: I am going to add a couple of things. One is responding to something that Jac was talking about public/private domain, territoriality and the other is actually Shahzad apart from the 66 AK switches from definite success, if we go back to rely on the kills concept of the Network and how we need Network users to think about citizens of digital domain and behave like people who seek to get their rights, I think another example from India which is actually quite interesting even though we don't know what is going to happen yet is the very fact that in the research consultation by the telecom regulatory authority asking for opinions around Net Neutrality there was more than one million e-mails that were sent. Second it is not like some highly -- it is neither light nor entertaining or not something that frankly your average citizen wants to sit down with breakfast what is non-Net Neutrality. To be able to characterize this complicated concept and those who went to the session yesterday on Network Neutrality realized how many ideas and to characterize this in a way that people can understand makes sense of including through the use of video comedy. We have a group called (inaudible).

So a lot of things were used and here I know it is going to happen but I think it is an interesting example that you need people to start thinking about this. Can't be a small group of people who are activists. It has to spill in to the broader domain. And then just one thing that when you were talking, Jac, that struck me, I think the moment has also come. Like I know in the offline world we think of public and private as very distinct spheres. It is quite clear that in the digital -- the public and the private are not that distinct. And I think some of the most nuanced work that I read is an anthropologist called Danah Boyd who wrote a book It Is Complicated: The Social Lives of Networked Teens and she talks about how -- two concepts. One she talks about how because social media is both simultaneously public and private. She has what is called an invisible audience. What is an invisible audience. Suppose you are a teenager and you put out something that you have a new

girlfriend. The people that you are putting out on Facebook are friends also. At the same time your family are also there on social media. They are for the purposes of that particular post your invisible audience. You know that they are there. Now the interesting things she talks about when somebody from that invisibility, suppose you are like hey, I am with this guy and put up a photo of yourselves. Suddenly your grandmother who only sees but not expecting her to comment if she suddenly comes there and writes a comment saying oh, he is so good looking, something like that. Then Danah talks about how the concept of collapsed contexts. Yes. Suddenly your context collapses because you -- even though you know these people are lurking, are directing a communication to a subpart of your audience. I did this once to a niece of mine and it was like the 85th person who put a like. She had a new boyfriend and -- this sort of freaked her out. Meant for her friends.

(Laughter).

>> BISHAKHA DHATTA: Because I am the aunt. But then the previous -- so what I am trying to say is maintaining the publicness, the privateness and whatever, again legislation can play a role, like many different things can play a role but some of it is just us and users understanding that this space is different. And we have to respect boundaries in a space where everything is there in the same place seamlessly. So it is sort of that.

>> SHAHZAD AHMED: I would also add Jac -- part of the campaign was (inaudible). In Pakistan in the two years we follow the same thing. Can we also help create a lot of resources, a lot of content as well. So visual and research. These kinds of campaigns are really much more in this context. We talk about human dignity and how validation. So thinking of broader Human Rights framework. So I think it is much more needed now. I mean just like very criticalistic campaign. And we produced (inaudible) people and posters and many different things but in other countries did that. So important thing should we take -- I mean continue with it or I mean what -- what other aspects because it is public versus private. It is going to continue to be a very, you know, issue.

>> JAC SM KEE: I think what's interesting about that campaign is who draws the line and the line is being drawn for us what is private and what is public and that is actually a call to Internet users to start thinking about where you want to draw and how do you draw the line and I think that's in a way returning the responsibility as well as the power to the user to start think actually about what constitutes privacy for you. And that is an interesting initiative, always kind of like push it in different spaces, especially spaces -- because in Asia

there is no such thing as privacy. Because that's good. There is the concept of privacy but -- that's where I think it is very useful not to think about privacy as space. They will end up in this culture. Nonsensical thing. People who have taught -- I live in a household with ten people. We are in each other's spaces. Privacy may be reading my book and don't disturb me. But this is a thing that I construct myself. When you link it much more -- and then it takes us out of space and what are the different things that you want to start to enable for this kind of exercise for self-determination.

>> BISHAKHA DHATTA: One more thing is that going back to the 12 people who live in a house, like one of the constituents of privacy you have your own little cell phone and that is sort of not to push it in to the space that is something that is private for you.

>> (Off microphone).

>> BISHAKHA DHATTA: Yes.

>> (Off microphone). So I think that would be like -- we are facing (Off microphone). We gave an example or not -- (Off microphone). So the most important one do not get between the offensive and (Off microphone). Have there been any peoples who find out (Off microphone). I don't know about the enforced (Off microphone).

>> BISHAKHA DHATTA: Definitely. Okay. So, you know, let me -- I think we all come in on this because it is a very fundamental and important thing. I think for me the example that I did right at the beginning is of shared signal, picking up question about a political leader on Facebook, right, and that being considered offensive to me immediately shows that like we have to be very careful when we talk of what is offensive and what is harmful and in my book they are totally different things. So, for instance, there are many things that do lots of things and if we are doing individually make a list of all of them we would have no social media left because everything would be offline. It would be permanently offended. But the thing is I do not think it is the place of the Government to legislate what is offensive. I think it is the place of the Government to take action where there is general harm, the place of laws where there is genuine harm that has been caused but there is actually many cases, quite a divide between what is offensive and what is harmful and, for instance, the former special Rapporteur on the Freedom of Expression and opinion had put together a five-part test to determine what is hate speech or which is harmful as opposed to sort of offensive speech which is not necessarily harmful. So one of the things that we are doing from our organization to answer your question is really trying to get people to understand the difference

between offense and harm and also to not take judgment. Like, for instance, we cannot decide what is legitimate and illegitimate. These are very subjective words, but if we use certain objective criteria either like Article 19 has a list of criteria, Frank Laruse to say that okay, in this case there is imminent harm of people being killed or something of that sort then you can label that speech as hate speech.

>> JAC SM KEE: Yeah. So I don't know if -- basically there has been quite a lot of -- has been quite a lot of -- it is a tricky question. So people have conversations and debates around where -- first of all, I guess Freedom of Expression is a very important right. It is one of those foundational and enabling rights. That is an important right. And then in the ICCPR Article 19 there is three specific instances. One if it is novel. So it has to be clearly defined and lawful, defined in law, satisfy several things. Public health and Network (inaudible) and how do we define that. And then it has to be necessary. So it is the best way to deal with this, is law the best and most necessary. So for something that is criminalization, is there any other way in which you can do this. That is my thinking around limitations to speech but then you have the question what constitutes hate speech. And this is where actually I found that the discussions around the (inaudible) plan for action very helpful which is basically looking at hate speech or insightful speech and insightful speech meaning that speech that can insight. So then we have (inaudible) speech or offensive speech which is absolutely part of that Freedom of Expression. So it is my absolute right to offend. I am sorry, Bishahka.

>> BISHAKHA DHATTA: But we are in public.  
(Laughter).

>> JAC SM KEE: So, you know, so offensive is okay. And then (inaudible) speech which is still problematic but not necessarily meeting the initiative -- for example, Errr and then you have speech which can result in discrimination. Criminalizing speech the best way to (inaudible). It actually doesn't do (inaudible). Discrimination has so many different images and then you have the insightful speech. Speech which actually does insight Internet violence. Contacts versus people, what is the content. So (inaudible) some of the thinking around but it helps to tailor our response. Often when we see something that we feel alarmed we want to criminalize. Same with the concept issue. But criminalization is not always the best effective response even for replication.

>> SHAHZAD AHMED: Also one thing I would want to add is most of the laws in the countries they tackle insightment to violence or hate speech. So when it comes to online hate speech

you don't need any further laws or any further, you know -- because -- yeah. Governments and authorities hide behind that. But we have seen that there are nonstate actors, pretty powerful. When they go against minorities or they go against authorities. So what happens is (inaudible). And it is real, but still -- on the other side, if that or at least -- work can cause them (inaudible). So we have seen that this discussion also, this notion of hate speech, perhaps used to bring more -- rather helping supporting people in the society. So I mean we need to be very careful about this as well. And frequently (inaudible). So Frank always says that hate speech can be dealt with with more speech. To be able to get more speech we need to provide safe spaces for these people. That doesn't happen. So that is something which I mean Governments and authorities need to provide two laws or change it or maybe we talked about culture -- so -- so how we can build a sustained, develop these spaces it is a challenge. Thank you. Okay.

>> BISHAKHA DHATTA: One more question. You wanted to say something.

>> I was going to say examples on (inaudible). So I think (Off microphone). So Nepal is big (inaudible) in India. (Off microphone). The power of Internet is there. So as far as the Internet grows more powerful as Government we face this (inaudible). I think -- I will focus on the previous discussion. So any -- should have some programmes, authorities have these statements here. What the democracy and I think there were -- what I found is -- so peoples and impact authorities also (Off microphone).

>> Good.

>> This is more complicated. (Off microphone). These educative statements, Committees and authorities. So if we have certain model programmes we have done then it would be better to know. It is not any --

>> BISHAKHA DHATTA: Yeah, yeah.

>> So I don't know if there are any more programmes that we have done.

>> BISHAKHA DHATTA: Can I suggest something? There is another question and I think we have exactly five minutes left. If we can take the comment and question. Yeah. Then we can --

>> I want to say (Off microphone). The concept of contract. So my question is that together with data protection mechanism can we offer contract mechanism, also play a role in Government or a service provider. And the answer is yes, in what way should it be applied.

>> BISHAKHA DHATTA: Good question. So should we -- if there are no more questions should we do a quick wrap-up one by one?

>> JAC SM KEE: Yes.

>> BISHAKHA DHATTA: So listen, I think this is actually a useful way of looking at outside contractors. And I think one of the things as far as I know it hasn't yet been looked at it like this, right, in the digital rights space because it is the --

>> JAC SM KEE: There has been some -- there has been some movements around Civil Society to look at consumer rights as a way to respond back. And this includes things like looking at -- so you know a lot -- the example I gave basically a condition is so onerous that it cannot constitute a binding contract. You have to go above and beyond in order to make this an informed consensual agreement in to the contract. And then there is things like where they are starting to rate applications based on the -- this really great initiative looking at how (inaudible) fair terms of service is in relation to protection of user rights including privacy and then rate the sites. So based on particular sets of criteria. It is looking at this unfair contractual terms that they are talking about and how this is expressed in terms of rights. This at the layer of laws and layer of technical design. So maybe talking about privacy by design we can also maybe start thinking about dignity by design. Right? And how to create technologies that also then does not assume that -- does not assume that you are really willing to give data even if giving of data is supposed to serve your interest. Smart cities, all these things are things that we think about. There has been some initiatives but maybe pushed more and the lack of consumer groups in Internet Governance has helped. Can I add to that slightly different consent? From a design perspective this -- we are seeing a number of sites which host content where some of the -- again this has been a very complicated thing about how much of it is consensual and some are nonconsensual. Some sites are starting to flag -- if you are coming to this site and it is an adult site or (inaudible), either they are saying that everything has been moved like. Like all the actions that you see enacted that is the consent of the actors.

On the sites you have actors themselves after a particular -- coming back in their towels and saying well, we acted this out. It was done with our consent. Did you enjoy watching this, et cetera. This is a move at the content level to consent. Another option if we were to think of something like pornography, one of the things is that Governments are trying to band online pornography, et cetera. But a lot of the things is just rating applications. Could also rate -- site saying these are like dignity indents.

>> JAC SM KEE: I like it.

>> BISHAKHA DHATTA: Grant for -- yeah, so dignity index on sites like this. Poor dignity, put your parameters. Maybe something for us to work on.

>> JAC SM KEE: You look wonderful in orange.

>> BISHAKHA DHATTA: Must you make that public?

(Laughter).

>> SHAHZAD AHMED: I think -- yeah, so as we can see out of this session less than likely been -- so many more research ideas.

>> BISHAKHA DHATTA: Correct.

>> SHAHZAD AHMED: So many more complexities. So user level as well as policy level as well as (inaudible) research topics. The quality is that (inaudible) work together more closely to find some of the solutions.

>> BISHAKHA DHATTA: Yeah. So I guess in closing just thank you very much. I think you have really contributed well. From where we started, it has been such a wonderful part of the conversation. Thank you very much for coming.

(Applause.)

(Session concluded at 3:31)

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