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Internet Governance Through Multi-Stakeholder Bodies

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P R O C E E D I N G S

MR. WEST: So, our next panel is going to discuss Internet governance through multi-stakeholder bodies. The moderator for this panel is Danny Weitzner. Danny is the associate administrator for the Office of Policy Analysis and Development at the National Telecommunications and Information Administration. Danny.

MR. WEITZNER: Darrell, thanks so much. And let me just add on behalf of NTIA our thanks to Brookings for pulling together this terrific discussion.

So, I'll introduce the panelists in just a moment. To give us a little bit of context here, I think that you can see from the opening panel we have a bit of a framing of the substantive policy challenges that face us, the issues that at least we in the administration feel are really, really leading questions that we have to address in the Internet environment; copyright protection, cyber-security, the global free flow of information, and commercial data privacy. It just so happens that the Department of Commerce's Internet policy task force is working on all those four issues, and so these questions are very much at the top of my mind.

From the second panel, from Phil Weiser's panel on transparency, what you heard was the institutional challenge. You heard from Rabbi Mark Cooper that the era of detailed agency rulemaking is over. There's a lot of Clinton Administration resonance, it seems, in this room. But I think we have to take that awfully seriously from someone like Mark at the Consumer Federation of America, whose lifeblood, in many ways over the last 20-plus years, has been to engage in just that detailed agency rulemaking at both the federal, state, and sometimes even local level on behalf of consumer interest.

And so I think that leaves us now with the question, now what? If we don't have this -- our normal process, the traditional process that we're all used to of legislative authority given to expert regulatory agencies around which we have lots of advocates clustering to develop rules, what do we do?

This panel is an effort to begin to answer that question. And I certainly subscribe to the notion that we're not getting rid of that traditional regulatory style altogether, but that the

Internet seems to call for some additional mechanisms.

I want to just frame a bit of the motivation of this panel by citing another Clinton Administration official, the chairman of the FCC, Reed Hundt, who when we were all first starting off looking at our policy agenda at NTIA, Reed Hundt came and gave one piece of advice that I've really taken to heart. He said if you're looking at how to have a long-run impact on the direction of policy, you have two choices, basically: You can make rules, or you can make institutions. And what he pointed out quite simply was rules change. Administrations come and go, policymakers come and go, but institutions actually have a way of sticking around. And that's sometimes a good thing, sometimes a bad thing.

But we're really here to look at on this panel is the question of how we can create a new set of institutions that can allow us to make progress in a balanced manner on the substantive policy issues that we've talked about.

We have an extraordinary panel. It's a panel full of people who I've looked to for guidance over the course of my career and who have tremendous accomplishments in this area. I'm going to introduce them very briefly and then turn to each of them for a short framing statement.

To my immediate right is Peter Swire. Peter is a professor of law at Ohio State University. He's both a scholar in the privacy area and the cybersecurity area, and in housing finance, as it happens. That's why he ended up as a policymaker at the National Economic Council at the beginning of this administration, where he provided me personally tremendous guidance.

To my immediate left is Ernie Allen. Ernie is the president and CEO of the National Center for Missing and Exploited Children. NCMEC is a congressionally-chartered organization whose mission is to protect children who -- both online and off -- in a whole variety of context to be a little ecumenical. I think it's fair to say he's a godfather, really, of this multi-stakeholder model and the effort to advance important public policy goals in complex global environments. His organization, as you'll hear, really pioneered a style of working with law enforcement, working with industry, working with technology companies, and working with

advocates towards a really vital goal. And we'll look forward to his thoughts.

In some sense, the simple question for this panel is how do you bottle and replicate what Ernie's been able to accomplish.

To my right is Joe Waz. Joe is the senior vice president for public policy at Comcast. Joe has seen the evolution of his company and of the cable industry from being just the cable company to being the triple play to big companies that's in a wide variety of information and communication businesses. And he's now wrestling with questions of how to build a new governance framework in the Internet environment. We'll look forward to hearing from him.

And then finally, to my left, Leslie Harris. She's been -- who is the president and CEO of the Center for Democracy and Technology. Full disclosure, I was a founder of CDT. But Leslie's been a leader in the Internet civil liberties arena from before there was an Internet at the ACLU. (Laughter) She was a teenager at the time when she started. (Laughter) But what that means is that she brings really extraordinary perspective and an extraordinary range of accomplishments in the area of building coalitions to advance civil liberties and other important public values in very complex and rapidly changing technology contexts. We're going to turn to Leslie to hear about her efforts in the global free expression environment.

So, I want to begin by asking Professor Swire to give us perhaps a little bit more with his scholarly hat on, a perspective on how we ought to think about the process of creating institutions in this Internet policy environment. So, Peter?

MR. SWIRE: Thanks, Danny. And thanks to Darrell and Brookings for hosting this.

The structure of what I'm going to try to do, in a lot of ways, comes from work that people did in the 1990s. Again, I wrote an article on self-regulation markets and legal enforcement in 1997 back when the Department of Commerce was trying to figure out how to do self-regulation and markets for privacy. Of course, they're doing it again and there's a lot of reason for that.

There's this area of constant technical change, but the underlying intellectual structures don't change nearly as quickly, and so I'm going to try to put out a couple of ways to

think about when multi-stakeholder groups are likely to succeed or not succeed.

The first frame here is market structure, market concentration. So sometimes we have monopolies and sometimes we have a few companies or entities, and sometimes we have lots and lots and lots of companies. And the chances of getting the industry to do something varies with the market concentration.

So, in the privacy area often is the question of whether there's been a set of promises that are enforceable. If you promise a set of things, then the FTC will come after you if you break the promise for a deceptive trade practice. And we've seen that happen sometimes when there's one company.

So, about 10 years ago Microsoft had a product called Passport. And it got into a tussle on enforcement with the Federal Trade Commission. And the answer out of that was a consent decree. One company can say, okay, here's the promises, here's what we're going to do going forward. And it's pretty easy to imagine a government agency with one very big leading company being able to negotiate that out. You don't need a law for that, you don't need a regulation. You get a series of promises from the one and it pretty much can work because you can really, really see that one company if it doesn't do a good job, and there'll be publicity enforcement.

Sometimes there's a few or several companies. In around 2000 there was something called the Network Advertising Initiative. And the biggest company in that was a company called Double Click. And at that point you could get three or four of these ad companies in the room and they had more than 90 percent of the market share.

You can have a meeting with four people in the room. You can have them all sit there, they can have meetings at the Department of Commerce, in the White House about what should happen. They can have different meetings with the FTC. They can have different meetings up on the Hill. But it's a manageable size, and if you have a market structure like that you can imagine getting to something like what happened there, which was basically an agreement among the 90+ percent. Here's how we're going to do cookies, here's how we're going to do things. And that can be negotiated out in a pretty understandable way.

But sometimes you don't have one or a few, you have a bunch of companies. An

example here is the Direct Marketing Association. So the DMA had a series of self-regulatory efforts over time. They used to run the telemarketing Do Not Call list. They had a series of privacy promise programs about Internet privacy and the number was a few thousand. So the DMA could have a conference and you could have all the few thousand people at a big conference in a big hotel.

It's much harder to get it in an office in Danny's building to meet with a few thousand people. I mean, Danny's got a nice office, but it's not that big. You can't have several thousand people.

And so when that happens, you need to have a series of intermediaries and you, over time, can get that industry to gradually get to a series of promises. And it can then actually apply to all the members of the industry.

But at that point you start to notice who's in and who's out. So, who's in are what Cindy Estlund, I think, called earlier today -- I hadn't heard this term -- the high-road companies are in, the ones who are willing to make the promises in public, and the low-road companies -- the little ones out there -- probably haven't made that promise.

In some earlier writing I used to call the big companies that were visible the elephants. It's very hard to hide if you're an elephant, right? But you have a thick skin, you have lawyers to protect you, but you're very visible. And so when it comes to the Internet and these multi-stakeholder things, the great big elephants have to play. They have to be part of the conversation.

But on the Internet, and for the direct marketers, also, you have what you can call the mice, the little ones who scurry around, who breed annoyingly quickly. Lots of new sites pop up, right? And they hide in the woodwork, they hide overseas where our enforcement isn't so good, and Howard Schmidt then says we need international, you know, strategies to go for cybersecurity.

So when you have a lot of these many players who can have a big effect and there's many, many of them and they're good at hiding, then it's hard to imagine that your multi-stakeholder process is going to do very well. Or at least you're not going to do very well at

closing down the spam kings or closing down the spyware providers, if they're coming from far away, et cetera.

So this market structure is just one simple way from one to many for when you're likely to succeed. I'll make two other quick points and then let other folks go ahead.

What I just talked about is when a set of enforceable promises is likely to work for the industry or the stakeholder group. There's at least two other reasons that are prominent for why you'd want the stakeholders to gather together.

One of them is they might have a lot of expertise. You might have something called the Internet Engineering Task Force. We have a lot of really smart people all over the world who try to have some process to get smart people to agree on things. And for that, that's not particularly a government strength. They might or might not have people from NIST or something there, but basically it's getting those smart people to do, and that's going to have a lot to do with the community norms of when that works or doesn't.

And then the last point is, sometimes you have what economists and lawyers and the states like to call network effects, where you're worried about interoperability. And the more people you can hook together, the better the whole thing works.

A great example of this in the history of the Internet governance is the domain name system, which started out in a professor's basement out in California. Then he had a bunch of buddies around the world who, like, worked together on the domain name system. And then it got really big, because domain name is how you get to the right URL, to the right WWW, whatever it is. And if it doesn't work it's extremely frustrating for the companies or for you or for anything like that.

And that evolved into something called ICANN, which almost nobody loves, but at least it's sort of been there for 10 years now or more, and it sort of works. And the point there is, when you have to actually interoperate in a way that I really have to get to the right web address. Over time, that expertise group and that let's-see-how-we-connect-it group tends to evolve towards more formal regulatory enforceable things, because having the route directory go down is just not a good option.

And so when it gets important enough to interoperate, then the multi-stakeholders off on the side isn't going to work and you tend to evolve more towards a government structure.

So that's what I have to say.

MR. WEITZNER: Peter, thanks very much. So, Peter's given us two scales on which to think about this question of what kind of institutions we need. A scale that has to do with size and accountability, and then kind of another scale that has to do with expertise and perhaps competence and ability to implement.

I want to turn to Ernie Allen now. Ernie, as you'll hear, works on what is clearly among the more pressing problems just in the world that is protecting children, and works in an environment where accountability is awfully hard. There are a huge number of actors here and there, and it's also, paradoxically, to be an environment in which we tend to assume that law enforcement has this covered totally, right? I mean, this is -- if the police are not protecting kids all by themselves, what are they doing?

But I think that what Ernie has learned is that it actually takes a much more complex structure to work with law enforcement to enable them to be effective.

So, Ernie, what do you have to tell us about how to build institutions such as yours?

MR. ALLEN: Well, I think, Danny, first, thank you for the opportunity to be a part of this panel.

Much of what, I think, we have learned we've learned through evolution. You make the point about the role of law enforcement. Law enforcement is doing extraordinary work in attacking the issue of child exploitation, child pornography on the Internet. Light years from where we were a decade ago.

Yet it became quickly apparent that, like the war on drugs, this is a problem you're not going to be able to arrest and prosecute yourself out of. There's simply far too much of it, far little capacity of government.

And so what we evolved to -- and a little bit of history. In 1998 -- as Danny says, we're a

government-chartered nonprofit with a series of very specific tasks that we perform on that side, one of which is to operate the National Missing Children's Hotline. In 1998, we were asked to do something similar for the Internet. The then-Vice President Al Gore announced that the Center was going to become what he called the 911 for the Internet. We created a cyber tip line to take leads from the public.

Same year, Congress mandated electronic service providers to report suspected child pornography to that cyber tip line. So, we became sort of the central repository, the clearinghouse of data and information about those kinds of crimes and that kind of content. We worked, over the years, to try with law enforcement. Our primary role is to take those reports, try to identify where they're coming from so that we can identify the appropriate law enforcement jurisdiction, and then hand it off to that agency -- federal, state, local, or international -- for investigation.

But it was clear that wasn't enough. In the first place, child pornography images are really not pornography at all, they're crime scene photos. They're images of the sexual abuse of a child. And even when you successfully prosecute the offender, the photos stay out there forever, the photos of the victims. So, it was clear that like the war on drugs, you can't just attack the enforcement side. You also have to attack the demand side, and you have to figure out other kinds of approaches to at least minimize the re-victimization of the children featured in those images.

And so what we evolved into is a -- and whether this is self-regulation or co-regulation or where that fits, I'm not sure, but because, by historical accident, the Center was sort of the primary repository of data and information about this kind of content, what we tried to do was develop a system that provided, in a voluntary way, for electronic service providers to receive daily lists, daily feeds, regarding URLs containing the worst of the worst images. And by worst of the worst, the goal was to identify content that nobody thinks is protected speech: images of prepubescent children in the most egregious kinds of settings.

Now, we have critics who say, don't you care about 13-year-olds? Well, of course we care about 13-year-olds. But the goal here is to help companies develop a

mechanism for identifying the worst of the worst images in their system so that they, on a voluntary basis, can take action under their terms of use.

So, today there are 82 companies representing about 80 to 85 of the U.S. Internet industry who receive a daily feed from us of content, of URLs of the worst of the worst. And it's reviewed every morning at 3 a.m. If the image comes off, the URL goes off the list.

About six months ago we began to try to -- even though it's voluntary -- to track what companies were doing with the list. And the participants include companies like Google and Microsoft and Yahoo! and AOL and Comcast, the major players in the space.

What we found is over the past 6 months, 6,400 URLs have been communicated to these participating companies; 6,400 URLs have come down. Search engines are using the list to block this kind of content appearing in search results. The web-hosting companies, companies like Go Daddy and others, are using to block it upstream. So, it -- I think it's a process that is working, it is voluntary. We are playing a role of central clearinghouse, central resource.

One other quick example, Danny -- and I see my friend Mark McCarthy from Georgetown in the audience. Mark was at Visa four years ago, when we began to notice that commercial child pornography sites were containing credit card logos. And that purchasers -- in one case, 70,000 purchasers of a child pornography site that included, among its options, something called "Baby Rape," 70,000 purchasers were accessing that content and using their credit cards. I called the former FBI director, who was then at MBNA Financial, the largest issuer of credit cards in the United States at that time, and said how is this possible? And what he told me was we don't know what these transactions are for. I mean, they're not using a transaction code for child pornography subscriptions. If you can identify for us in a timely way where these sites are, who the merchant bank is, where the account resides, this is an illegal use of the payment system.

And so because of Mark, Visa and the other major credit card companies, major banks, major Internet companies, third-party payment companies came together in a coalition using our center as the clearinghouse, as the information clearinghouse. As we identified the sites, we would alert the companies, they would review it, take action under terms of use, stop

payments.

In four years, this problem has gone from a multibillion dollar industry -- based on the estimate of one of the participants of our coalition, an Asian company that hired Mackenzie Worldwide to do an estimate -- to a problem that the Treasury Department's Office of Terrorist Financing told me two months ago in an e-mail is effectively zero. And that's because these companies, using existing law in a voluntary way, sharing information through a central clearinghouse, effectively eliminated the ability of these people to collect.

Now, I'm not sure it's effectively zero. I'm sure Russian organized crime and others have come up with some creative way to collect money out of this that we haven't discovered. But, Danny, I think my view, from these two approaches is that in a voluntary way companies coming together to share information -- and maybe this is Professor Swire's high-road companies. Because, as I say, we have 82 participants, not hundreds. And they're primarily the largest companies. But the impact this kind of voluntary collaborative effort can have in addressing these kinds of problems that are clearly unlawful, and clearly violate nobody's rights of free speech, we think is working and is something that certainly should be examined.

MR. WEITZNER: Ernie, thanks very much. I think you can hear in Ernie's description of his really extraordinary work and an extraordinary accomplishment -- as Ernie said, number one, the clearinghouse role, which -- but I think also a prioritization role, which really comes out of the kind of expertise that Peter talked about. It's the question of understanding what's going to have an impact, how the collective action of the voluntary participants can actually come together to achieve a particular goal, to know to go to Mark -- I would have gone to Mark anyway. But -- we always go to Mark. But to know to go to the payment processors reflected a deep engagement with the problem, obviously, and the ability to mobilize that kind of action.

I think -- so again, I think there's the theme, really, of the collection of expertise in one place that can really help a very large group of entities function in a smarter way.

I want to turn -- and I guess what I would suggest is that between what we've heard already from Peter and from Ernie, there's clear examples of models that show that multi-stakeholder processes. We're going to turn to Joe Waz to talk a little bit about a new organization

that he's been very involved in putting together that's designed to meet a very politically challenging and sensitive issue, response to this issue, the net neutrality issue. And then we'll turn to Leslie Harris, who's going to talk about how it may be possible to bring these kinds of models into the global environment, which has its own set of challenges.

So, Joe, please.

MR. WAZ: Great. Thank you, Danny. About a month ago in this room David Cohen of Comcast gave a speech, a keynote, where he talked about Internet self-governance and the evolution of Comcast's involvement in the space. And the thing that really drove -- the event that really drove, precipitated our deep level of interest in this was the issue we had before the FCC, the so-called BitTorrent complaint back in -- starting back in 2007. And what we learned from that process is, you know, we were faced with a network management decision that we had made about how to manage certain P-to-P protocols at the time.

It was objected to at the FCC. We wanted to find a way to resolve the question, not litigate the question. And -- but there was nowhere to go, to have that dialogue in the United States. What we wound up doing, at the time, was going to the IETF that Peter referred to earlier, the Internet Engineering Technology Forum, and brought our ideas of alternative approaches to network management, ways to manage the bandwidth consumption of certain protocols or by certain users to a broader international dialogue.

As a result of that dialogue, we came up with a system called Fair Share, which does not manage bandwidth based on protocol -- or it's protocol agnostic, but rather based on individual user's consumption. And we vetted and went through the IETF process and then announced we would implement this plan. We actually announced we would implement this new plan some six months before the FCC, under previous management, decided to condemn us for the plan that we had chosen earlier.

But the thing we learned -- I think our main takeaway from it was, in the U.S. there really wasn't a formal, or even informal, domestic venue to go to to have these sorts of dialogues about network management and the interaction between networks and applications and services. We continued, over the years, to bring our questions and some of our solutions and our new network

management ideas to IETF.

I think many of you may be acquainted with something called Constant Guard, that we launched in -- piloted last year and have launched broadly now, that is intended to deal with bots and viruses and other threats to your Internet experience and the security of the network. We actually brought our ideas on that to IETF as well to have a dialogue.

Why IETF? It's an international engineering-focused, consensus-based institution. You can go to IETF, everybody has standing when you go to IETF, provided you can bring the engineering expertise and the capacity to engage effectively in the dialogue there. And it is a normative body. It gave us a place to go and say we are thinking about doing X or we have implemented Y. What does the Internet community think of this idea or of this innovation? And in our interaction with IETF, we actually were able to refine a number of our ideas.

So, the beauty of it from a -- as it relates to policy is, instead of a situation where you implement or practice and the only way to have a dialogue about the practice is a legal complaint process at the FCC involving lawyers and advocates and politics, you have a forum where you can go to and engage among engineers, among experts, and look to build consensus and develop answers together.

So, our -- in various dialogues with people like Phil Weiser, other companies in the industry, with academics, and others over the years -- over the last couple of years -- we began asking, how do we bring the best of IETF back home? How do we make this -- how do we create the equivalent of a domestic IETF?

And the notion that was developed is something called BITAG, the Broadband Internet Technology Advisory Group. Its existence has been announced. Its board will have its first meeting this month. I believe it's going to -- we've already had expression of interest from about 40 organizations. And the idea is to have a cross-section of the Internet community: Internet service providers and network providers, technology companies -- the Silicon Valley companies, for example -- equipment companies, content companies, and representatives of the Internet community at large, academics and NGOs and advocacy organizations in the room. And have those organizations be able to take questions or present questions for the BITAG to

consider.

The BITAG will work by empowering working groups, technology working groups -- engineers and technologists are welcome, lawyers like me are not -- and try to frame the question, develop consensus, and come back with recommendations, answers, ideas, alternative approaches in a timely fashion.

It's -- the point of the group is also to try to educate policymakers generally about network management issues and other technical issues and to serve as a sounding board for new ideas and practices. So, you don't have to go before BITAG with a complaint, you can go before BITAG with a question or an observation and try to tee up the dialogue.

What I think is going to make BITAG work, what gives me hope is that, number one, the great expressions of interest across the board from the range of organizations I mentioned. Number two, we had to find the right convener. And to paraphrase an old Sarah Lee commercial, everybody doesn't like someone, but nobody doesn't like Dale Hatfield. (Laughter)

And Dale Hatfield has to be the most respected engineer in our space who, whether you've been with him or against him on any given issue, you can never doubt his integrity and his capabilities. And, fortunately, even with all the other obligations he's taken on, working at Silicon Flatirons and so on, Dale's been willing to step up to this challenge.

So, what I hope will be the case is that BITAG will build on our successful history with IETF, with MAAWG -- actually, quick show of hands, how many people know the acronym MAAWG? Okay, maybe about 10 or 20 percent. Messaging Anti-Abuse Working Group, which is a global -- another global organization, it represents about a billion e-mail boxes across the globe. And they're focused on all forms of messaging abuse online, from spam to viruses to bots, denial of service attacks, and so on.

Another example of a global organization -- and Danny, as time permits, here, I would like to be able to come back to a conversation about how official Washington interacts with a number of these global organizations. But another important global organization that I think provides a model for developing normative behaviors that we have to learn how to better leverage for domestic policy purposes.

MR. WEITZNER: Thanks, Joe. I want to just highlight from my own experience one point that you made, Joe. You know, the -- identifying Dale Hatfield, who we do, indeed, all love. If you're out there, Dale, hi.

I think that from my own experience working with organizations like the World Wide Web Consortium, the Internet Engineering Task Force, other organizations. These organizations -- and you see them represented on this panel. These organizations depend, on the one hand, on broad, multi-stakeholder participation for their legitimacy. But significantly they depend on individuals, both as participants, but also on leaders. And I think if you look at the history of the Internet, what you see is a surprisingly small number of individuals who have had extraordinary leadership roles. I spent many years working with Tim Burners-Lee, just one example, the founders of the Internet Engineering Task Force are another example. There are people in this room who've been involved in organizations like this.

And I guess I would just make a plug to all of you out there. Don't underestimate the vital importance of individual leadership, both in running these organizations but also in participating. Because we are still at a point, notwithstanding the global scale of the Internet, where I think individuals actually can have huge impact.

So I want to turn to Leslie Harris. And hope that you'll help us with two questions. Number one, the question of how to make the multi-stakeholder process truly multi-stakeholder. We've heard -- some of the organizations that we've heard about do tilt a little bit in the commercial direction, and there are good reasons for that. But I think that we all recognize, going forward, that for a multi-stakeholder policy process to have legitimacy and also sustainability it's going to have to really reflect a broad range of interest, both commercial and non-commercial.

And second, the question that I think Joe also wants to come back to is the question of how do you get this to work, globally. So, two simple questions for you.

MS. HARRIS: Two simple questions. I think it's interesting you asked the first one, because I had written down during the other presentations, what do we really mean by multi-stakeholder? Because rarely does that mean true and equal participation and decision-making

by the non-corporate participants, unless the stakeholders are government and participants.

And I think I've got some lessons learned from GNI. I don't think I have anything remotely resembling final answers.

So let me talk a moment about the Global Network Initiative, which I'll refer to as GNI, which is a multi-stakeholder initiative that's intended to help companies in the Internet and technology sector chart an accountable path forward when they are faced with demands from countries around the world to take actions that may violate free speech or privacy rights of users; and sort of the iconic cases of, you know, China requiring censorship on the part of its online providers or countries without fair process seeking information to unmask a blogger or a user from the companies who may be holding that information, things that may actually happen in democratic countries where a rule of law process has set some norms about when and how that should occur, but that increasingly happens, particularly in non-democratic countries. But these rules apply to all, where companies are faced with the possibility that they are engaging in something that could aid and abet a violation of human rights.

The center of the initiative is a set of principles and guidelines that were developed over several years of consultation. My years of living very dangerously among a very diverse set of stakeholders. And that included Internet and telecommunications companies in the room at the time, social investors, like the Calvert Group, for example. A wide set of NGOs, human rights organizations, free expression organizations, Internet civil liberties advocacy groups like my own, and very prominent academics and academic institutions.

And the commitments -- and I think this is significant -- in the principles and guidelines are backed up by a real accountability regime. That includes company reporting and some independent assessment, and the ability of outsiders to file complaints.

There are three companies -- and we are calling them today high-road companies, so I will -- Google, Microsoft, and Yahoo! -- who stayed in the room for the whole process and are now implementing the guidelines. And we'll be doing a first reporting back to GNI and we'll allow in some independent third parties in the next year.

GNI is now an independent nonprofit. It has a director and a board of directors.

And I think that what is significant for purposes of this question of multi-stakeholder is there is equal participation in governance of GNI between the industry and non-industry participants. We're certainly beginning to develop a global brand. There's a lot of interest from governments, enormous interest from other third parties around the world, even from the United Nations, and a lot of ongoing discussion with other companies.

So, what do we learn from this process? My lessons learned have to be very, very preliminary. Ernie talked about the evolution of these kinds of models, and if you are now a full, stood-up human being we have recently crawled out of the -- onto the land for the first time. (Laughter) So -- yeah, out of the muck. We're very -- but I think lesson one that applies across the board, if you're going to do this seriously, is that not everybody in the room starts with the same knowledge base with respect to technology. So, if we're talking about Internet's issues and solutions, or access to the same facts. And people in the room do not have the same resources to participate.

So, GNI spent the time -- we've gotten a lot of criticism. Why did this thing take so long to get stood up? One reason is that we spent an entire year in what was in some way a pre-negotiation dialogue on the technology, how it worked, who collect data, who had access, how it operated in a system like the United States, so that people could get if not on a level playing field at least a playing field where you could rationally participate. So, I think, you know, we talk a lot about multi-stakeholder. You have to take this into account, and there are going to be some things like the ITF or CDT is one of the few NGO participants that there are, you know -- there are some kinds of processes where the price of entry is deep technical knowledge. But it all can't be.

Lesson two is, technologists and companies don't know everything. And I think one of the things that happened over time in this process was that people opened the space to understand that the non-company stakeholders had their own facts and knowledge, and that that informed and enriched the process. They introduced the companies to human rights norms and thinking. They brought significant experience with earlier processes and models for corporate social responsibility initiative. Some fit, some didn't, but they also knew where the crash and

burns had been in the past.

There were rich bodies of work on the concept of human rights risk assessment. We know privacy assessment, we didn't know this. They understood the human rights landscape in a different way, and I think that those two bodies of knowledge being brought together created a richer, more credible product that reflected, at the end of day, expertise and knowledge and facts from all sides. This is really hard to do.

The other lesson, which certainly precedes the nice lesson about the product at the end of the day -- real multi-stakeholder initiatives bring people into the room for very different reasons. So the agendas, you cannot ignore how far apart, why people are in the room. And there were people in the room with one goal. We're holding companies accountable. There were people in the room -- we really got to, you know -- this is really complicated. We've got to bring all these people together so we can learn and share best practices. There were people who wanted to create a formal initiative, there were people who did not. And if you're going to stand up something like this, you can't gloss over that. You can't just say we're doing it this way. And I think that when consumer groups participated principally industry initiatives, it's very easy to say, here's the goal, give us your input and you're at the table. But your other agendas can easily get swept away.

So, lesson four, because of lesson three, is if you're going to do this you have to be prepared, all stakeholders, to lean very far forward in order to get to yes. And I will say that everybody in that room -- and certainly the companies who, at the end of the day, are the ones in the spotlight here, leaned very far forward to get to yes. And I think that is an opportunity, but I think if you're going to be serious about what it takes to do this, you've got to understand that.

The last one that I'll mention is, that leaning forward in compromising has its plus and it has a potential minus, because everybody who is not in the room does not have the two- or three-year benefit of very rich dialogue. And very hard-fought compromise, and they will very quickly start throwing things at you. And from the human rights perspective, those human rights groups that chose never to listen and hear continue to be, perhaps, where they were years ago, which is companies should just leave these places or you should always store your data out of

the country or all kinds of binary, this is the answer.

And companies not in the room are faced with looking at agreements on some very hard things, like accountability, that they were not privy to the dialogue. And that leaves, I think, a very complicated question is, do you rent a stadium to try to reach this kind of consensus? It was hard enough to do what we did, and some companies at the end of the day did not stay in the process. And I think that that's a very -- an interesting question for GNI going forward.

Here's the open question that puts it sort of in the context of what we're talking to. What ultimately will be the right role for government, whether it's a role with respect to GNI specifically, or more about norm setting in this space? The United States Government does not have a formal role in GNI. They have been very, very supportive. Not everybody's happy about that, but they have, as have some European countries.

There was a rationale for not having the government at the room at the time. You know, number one, after we've seen from sort of efforts to right those deep regulatory rules that Mark was talking about, we had proposals like GOFA in Congress that tried to create sort of black letter rules in a situation where those who understand something about this space understand it's not black/white, yes/no. And it just doesn't lend itself to those kind of binary solutions. So that suggested to us the private governance solution.

We were also concerned that it would be viewed as United States initiative, when our aim is to cede a global standard of care around the world. And -- but to be fair, I think there's a question about what that's going to be sustainable over time.

It is not clear that this should be entirely outsourced. You know, if you were to ask me where I am on the line of government action to totally private action, when rights are involved, government has a role. Secondly, companies step up and do the right thing when government is either setting norms or threatening norms. And, you know, even BITAG, which I support -- the CDT intends to participate -- certainly got legs from the net neutrality debate, even though we may not all have come out on the same place on that.

And so I think there's still a question about whether truly voluntary initiatives that may have some carrots, but very few sticks, like GNI, will be able to attract new companies or

whether, at the end of the day, some degree of high-level norm setting -- and, again, enforcement -- some kind of more co-regulatory model may emerge.

MR. WEITZNER: Leslie, thanks very much. I have a zillion questions for the panel, but actually think I want to open the floor up to questions from the audience.

And I think we have a microphone. So, please.

Could you stand up? Thanks?

MS. KING: Sorry. Robin King with USAID. I am actually wondering if -- there's a couple pieces to this question. And I'm not representing the free speech group, but I am wondering about a couple of the stakeholder groups that -- for instance, in processing the porn sites, the child porn sites, for instance. In my experience, there have been legitimate organizations who have been victimized by hackers and others who may have gotten caught up in those types of, you know, stings or caught.

So my two questions are really about due diligence in verifying all that information. And due process for those who are victimized but are doing legitimate business. A lot of us have heard about hacking sites. The CIA, for instance was at once hacked. And also small businesses who may not have the resources to put in place some of the regulatory or compliance things that may come up in these norm setting groups. So, just my question is about --

MR. WEITZNER: Thanks. And I think we'll take maybe two more questions so that we can think of them together. This gentleman right here, and then over on the side.

MR. ALTMAN: I'm Fred Altman. And I wanted to go back to something that Mark Cooper differentiated between the policy setting and the enforcement. And I'm wondering what are the differences that organizations that set policy, the companies and the government regulators need to do in terms of responding to consumers terms of enforcement versus policy.

MR. WEITZNER: So the question about different roles for enforcement functions and policy setting in these organizations, please.

MR. MEEHAN: My name is Josh Meehan with Romulus Group, a consultancy firm. Mr. Allen, your group is obviously phenomenal, but I feel like one of the reasons it's very

obviously phenomenal is that it does incredible work on an issue that people can widely agree really needs to be handled.

But the model that you're talking about, in particular, of aggregating data through kind of clearinghouse and bringing stakeholders together. I have a question about that kind of model. Because if you apply that to, let's say, something as maybe more controversial, less agreed upon, let's say abortion issues or maybe something related to terrorism or what have you, I just wonder, so what are some of the legal issues that you've seen just kind of come up when you're dealing with this kind of aggregation of data? And do you think that the model really transfer that well, just generally to all issues? Or do you really feel that there needs to be sort of a social agreement beyond a legal one that you're dealing with something that has to be handled directly?

Thank you.

MR. WEITZNER: Okay. So those are, I think, four important sets of issues. The question about how transparency and due process works in these multi-stakeholder environments, especially when there's some enforcement or action-taking component.

Questions about whether everyone will have the resources necessary to comply with the rules that come out of this process. The question about how enforcement functions will work, and then I think really underneath the last question is a question about where do we get the principles that drive the multi-stakeholder agreements? Do we expect those to arise out of the multi-stakeholder process or, as was suggested on the previous panel, is there a role, perhaps, for government in establishing some broad guiding principles?

Who would like to start? Ernie, go ahead.

MR. ALLEN: Shall I? Okay. Let me start with the last and then pick up a little bit of the first.

Absolutely. I mean, the issue will define how replicable the model is. And I think what we have learned from the process, what these companies have said to us is, there needs to be some central clearinghouse that provides them expertise or information that allows them -- because most companies are not going to have major enforcement staffs. Are not going to have

the capability to do it themselves. So, social values, clearly, need to be an element of that.

But I think there are lots of other issues where it is replicable. To the point about due process, at least from our perspective there are two levels to this. The first priority in all of this is law enforcement. Law enforcement investigation. So, that's where the primary due process issue resides. And, of course, law enforcement -- whether it's federal, state, local, or international -- has got to do the necessary investigative approach to make sure that the person who is being pursued is, in fact, responsible.

As it relates to our voluntary effort with electronic service providers, the premise is not that someone is being held criminally or otherwise legally responsible for what they're doing. The question is, is the presence of that URL, of that image -- Microsoft and Google are helping us develop even more surgical tools that enable us to focus on very specific images instead of larger URL content. But the whole premise is, is the presence of this content on that system a violation of their terms of use? Companies remove content all the time. The due process is really between the person whose content is removed and the ISP or the content hoster or whatever.

So all we're doing is alerting them to apparent content that meets the worst of the worst criteria with no instructions other than, they take that and use it in the most appropriate way within their company, whether they're scrubbing their systems and making sure they're not hosting it or whether they're blocking it from coming up in search results. So I think they're really two separate pieces.

MR. WEITZNER: Thanks. I want to turn to Peter and then Leslie on the question of source of principles. Peter, you talked about a variety of different voluntary multi-stakeholder environments. What's your view about where the guiding principles ought to come from?

MR. SWIRE: So, that's more general than I have any answer for. Where do guiding principles come from in life is a very broad question. (Laughter) But I'll put that into a manageable regulatory frame in a second.

I think that in the privacy debates, where I spend a lot of time, there's been a lot of talk over

the years about self-regulation. And a great deal of confusion around that term. And so, one part of self-regulation is where do the rules come from, or the principles? You can think of that as sort of the legislative function, where do the rules come from. And in a lot of privacy policies, the companies have written their own rules or whatever.

But then there's another thing, you might think of it as the enforcement or judicial function is, how do you enforce against it? And there there's been a government that steps in. For instance, the Federal Trade Commission. There's also the press and the advocates who step in, and this was in the last panel talking about how crowd sourcing can help us find out violations. And so the self-regulation and privacy has been where the rules come from for companies' practices. Self-regulation has not been in the United States at the level of enforcement. So, that's just a confusion people often have.

Let me just also make a quick question on the small business. Over time in the privacy debates we didn't used to have a threshold for when the small businesses kicked in. And that meant, for instance, selling customers lists is prohibited under a lot of privacy proposals. But does that mean the Girl Scout cookie list can't go to next year's Girl Scouts? And if we thought that you had to give a privacy policy out when you sold Girl Scout cookies that would pretty much end the privacy efforts in America, right? Because that's just over-regulation.

So, the new versions of bills that -- the Rush bill that's out this year, and other -- have thresholds. Once you have a certain number of records in, then you kick in. But the Girl Scouts and the people that cut lawns in a neighborhood and the small businesses don't have to. So you have to find ways to make it workable for people who, incidentally, are in the space. But if you're big enough to really be having an impact, that's when the rules kick in.

MR. WEITZNER: Peter, thanks. Leslie.

Ms. HARRIS: So, to the extent I understand your very broad question, I -- you know, I think there isn't one answer about where the rules come from. I mean, if you're talking about an issue that there is either societal agreement or there is societal obligation -- the government has an obligation to protect our rights, it has an obligation to keep us safe. Then I think you have to tilt towards processes that inform the government solution, or processes that

lead to government norms with some kind of an enforcement.

So, for example. You know, in the privacy space, no. I don't think companies get to just make up those rules. But I think that what they've been doing in self-regulation, what the consumer community believes is the correct answer, can together create the set of norms to guide the space. And I think that's where you can think more about co-regulation. You know, you create a baseline for what people need to do, you encourage the sectors to engage and go further in some kinds of outside processes.

But I do think it depends on the subject matter. And I think it's correct that a process like NICMIC's does depend on there being an absolute societal view on the content. I mean, people keep bringing up NICMIC as, well, can't we do a NICMIC for copyright? That's the discussion right now. Can't we do a NICMIC for a variety of other things? And you always run into the question of either, there is no societal agreement or -- as the woman in the back of the room said -- you're dealing in an environment with a subject matter which you don't know it when you see it, and therefore there are some First Amendment and other kinds of implications.

So, I'm a great admirer of this model. It's how to extend it and where to extend it is more difficult than I think I would like it to be.

MR. WEITZNER: So, Joe, being near the front end of the creation of a new institution, leave us with some reflections about what do you think got the various players to the table and what do you think is going to constitute success such that it looks good both from the perspective of those who are sitting around the table and from the public at large, who I think your intent is to feel a sense of confidence and trust in the process going forward.

MR. WAZ: Right. Well, the debate about the preserving an open Internet has been around for the better part of a decade now, in one form or another. Probably longer. But the FCC actually did give us an articulation of principles of an open Internet arguably on two prior occasions.

One was Michael Powell's speech, I think at Silicon Flatirons in 2004, where he stated a four freedoms formulation for maintaining an open Internet. And then the following year, the FCC articulated principles of an open Internet as well. So we've been operating for five or six

years now under some notion of what the appropriate principles are, not as a function of legislation, not as a function of a formal FCC rulemaking proceeding, but sort of the acquired wisdom articulated by the FCC in a policy statement.

Our interest in giving more shape to these principles predates the current effort by the FCC to turn these principles into rules. And in fact, the whole conversation about BITAG dates back to well before the notion that the FCC might even consider rules. If there are rules put in place, as the FCC is now proposing to do sometime this month, I think BITAG will play an important complimentary role to that effort and hopefully will be a place where issues can be discussed and resolved and put in the context of Internet norms before they become a matter of complaint.

If those rules were not put into place, I think BITAG would still move forward with the same goal, which is to provide assurance that stakeholders can get together and, under the principles of the FCC previously articulated, be able to try to address questions and resolve issues before they become the basis of complaints.

Danny, I'd like to tap one other point. We talked about the issues of resources a couple of times. I think that's important to come back to, because especially for the NGOs, like Leslie's organization and others. In the context of BITAG, we've had that conversation. And the question of how -- we're now asking people to bring engineers to the table. Not every advocacy group has an engineer. There need to be perhaps more engineers than there are today, perhaps some more economists, and perhaps a few less folks like me, law graduates.

But I think it's going to be important for those funders of the NGOs to take seriously the need for NGOs to have the capacity and have the capability --

MR. HARRIS: Your lips to God's ears. We've been trying for years to get them to understand that it -- for NGOs to participate seriously. I mean, we can't be the only one on the table because Rabbi Cooper's daughter works for us.

MR. WEITZNER: Joe, thanks. I think that's a terrific note to end on. We're going to transition to the next panel. Mike, I'm sorry. But you could probably ask the same question to the next panel is my next guess. Because you're very clever.

But let me just close by observing that I think that what we've learned is that there's a lot of learning here about how to make these multi-stakeholder processes work. That people have put a lot of time and effort into them, that we understand a number of the piece parts that are necessary.

I think one thing that we understood just from the last round of discussion and the last round of questions is that guiding principles are really important. In some cases we have those guiding principles because they're just understood in our society. We protect children, as an example. In some cases, those principles arise out of the collective expertise of these organizations. That's the case in some of the techno organizations, where -- and in the case of Ernie's organization, where the knowledge that's contained in these multi-stakeholder organizations really helps society articulate just what its values actually are. And that's a very valuable contribution to make.

And in some places, there's a role for government in helping to crystallize that awareness and articulating a set of principles, as in the case of the net neutrality principles or perhaps some others that will be coming down the pike.

So, join me in thanking this panel and we look forward to the next panel.

(Applause)