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# WHAT FRAMEWORKS FOR CROSS-BORDER ONLINE COMMUNITIES AND SERVICES ?

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## About

The workshop explored the tension between geographically defined national jurisdictions and cross-border online platforms, which span across multiple countries, as well as domain operators, which register and manage domains that are accessible worldwide. Recent cases including the 'Innocence of Muslims' YouTube video or the rojadirecta seizure by US authorities were analyzed to highlight the shortcomings of the existing system and discuss possible ways forward. In order to preserve the cross-border nature of the Internet and its services, the workshop confirmed the growing need to develop, in a multi-stakeholder manner, appropriate procedural frameworks to ensure due process and increase interoperability between cross-border online platforms, DNS operators and national jurisdictions.

## Main take-Away: The importance of Due Process

Panelists emphasized the importance of the principle of due process. In the absence of universal norms and harmonized laws for takedowns and seizures, due process emerges as a high level principle that could be incorporated into interfacing multi-stakeholder procedures to manage state-state, state-platform and in-platform procedures. Concretly, this requires clearly defined rules and well documented processes to guarantee openness, transparency, accountability, proportionality and appeal mechanisms.

## Discussion Highlights:

**Jurisdictional conflicts:** States increasingly assert their jurisdiction over cross-border online activities. However, what is legal in one country might be illegal in another. This can, in the absence of universal standards, lead to jurisdictional conflicts, if more than one country asserts its jurisdiction over platforms, servers or the DNS.

**Respecting 192+ national laws**: Cross-border platforms face the challenge to incorporate multiple national and sub-national laws and norms into their Terms of Service. In order to respect lawful requests from different jurisdictions, platforms develop new technologies for content localization based on cc-TLD migration and geo-IP filtering.

**Extraterritorial Extension of Sovereignty**: Some countries can extend their jurisdiction over foreign countries and their Internet users, due to the incorporation of cross-border online platforms (e.g. US or Ireland), the location of the domain name operators (US State of Virginia) or the location of servers.

**Ex-Parte jurisdiction**: In some countries, including the US and Belgium, courts can rule in the absence of the defendant, who can be a foreign citizen, according to their national jurisdiction. In the case of cross-border activities, this constitutes a major challenge to due process.

**Censorship**: In order to enable a clearer debate, a distinction is necessary between legitimate take-down requests and censorship (when due process is not respected).

**Layers**: There is a distinction between actions targeted towards the DNS layer operators (impacting the routing system) and requests made to platforms hosting content.

**Forum Shopping**: Plaintiffs seek to file lawsuits with courts that have in rem jurisdiction over cross-border online platforms or domain name operators.

**Granularity**: More granular approaches to content takedowns based on interoperable procedures between countries and platforms might decrease general nation-wide platform blocks.

**Long-term sustainability of rules**: It is important to make sure that principles are established at a sufficient high level to ensure they can withstand the test of time and the rapid rate of evolution of technology.

**Terms of Service as community Guidelines:** How can the users be associated with the development of these guidelines?

**Minimal harmonization:** We encounter at the global level issues similar to the classical harmonization debate among the members of the European Union. Total harmonization is not always required; sometimes a minimal set of rules allowing mutual recognition can be enough.

**Jurisdictional arms race:** The unbridled application of national sovereignties on a cross-border infrastructure can actually harm the exercise of sovereignty, in particular to the detriment of countries without Internet operators on their soil.

**Responsibility of States:** A corollary of the recognition of sovereignty is the responsibility of States for potential transboundary impact of their national decisions.

**Multi-stakeholderism:** Appropriate frameworks for cross-border online platforms and DNS operators need to be based on a multi-stakeholder consensus.

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Video recording of the workshop is available at:
http://www.internetjurisdiction.net/events/past-events/igf-baku/frameworks/

The transcript is available at:
http://www.intgovforum.org/cms/2012-igfbaku/transcripts

For more information about the Internet & Jurisdiction Project, please see the web site:
www.internetjurisdiction.net