Post-session Report: WS 109 – Analyzing the Causes and Impacts of Internet Shutdowns

Session title: Analyzing the Causes and Impacts of Internet Shutdowns

Date: December 9, 2016

Time: 12:00 PM – 1:30 PM

Session organizer: Arjun Jayakumar, Prasanth Sugathan

Chair/Moderator: Arjun Jayakumar (Jr. Policy Director, SFLC.in)

Rapporteur/Note taker: Nehmat Kaur (Counsel, SFLC.in)

List of speakers and their institutional affiliations:

- Brett Solomon (Executive Director, Access Now)

- Nicolas Seidler (Senior Policy Advisor, ISOC)

- Amos Toh (Legal Advisor to the UN Special Rapporteur, David Kaye)

- Hibah Kamal-Grayson (Senior Policy Analyst, Google)

- Rajan Mathews (Director General, Cellular Operators Association of India)

- Nanjira Sambuli (Digital Equality Advocacy Manager, World Wide Web Foundation)

- Gisela Perez de Acha (Public Policy Manager, Derechos Digitales)

- Jan Ryzdak (Global Network Initiative)

Key issues raised (1 sentence per issue):

This session sought to examine the singular issue of Internet shutdowns i.e. disrupting Internet access to large sections of the population during times of social or political turmoil, and to analyze the general nature of reasons cited for shutting down the Internet, as well as the impacts of short-lived or prolonged Internet shutdowns from conceptual and factual perspectives.

If there were presentations during the session, please provide a 1-paragraph summary for each Presentation:

As the session was styled as a panel discussion, each panelist opened with a 5-minute presentation on the general topic. Below are highlights from the eight presentations that were made:

- Mr. Brett Solomon began with the definition and scope of Internet shutdowns, and touched upon the situation in Gambia, where more than 50 Internet shutdowns have been reported thus far. He spoke of how the rights to freedom of expression, opinion, association, privacy, and secrecy, all are directly impacted by Internet shutdowns, and also drew attention to recent studies that highlighted the significant economic impact of such shutdowns. He called for an

end to Internet shutdowns and stressed the role of movements such as the #KeepItOn civil society coalition, which fights to keep the Internet open by tracking disruptions and creating a pool of data to be used to review and respond to shutdowns.

- Mr. Nicolas Seidler spoke of the concerns over full network shutdowns, partial shutdowns and website blockings, and how they impacted the notion of trust – a foundational pillar of the Internet. He observed that a single Internet shutdown is enough to plant the seed of unpredictability and take away trust, which is hard to earn but easy to lose. He said the economic costs of Internet shutdowns highlighted by recent studies, while being very useful to advocacy efforts, are only short term effects whereas the loss of trust is more of an opportunity costs when it comes to the Internet.

- Mr. Amos Toh spoke about how Internet shutdowns can be blanket and surgical, how the reasons behind shutdowns can be incredibly pedantic at times, and how Governments have devised means to institute shutdowns while evading scrutiny. He said that there are difficulties in detecting shutdowns that need to be addressed, especially when it comes to elaborate surgical shutdowns that involve throttling of networks etc. He also highlighted two challenges in this domain, namely "flash shutdowns" i.e. short-term disruptions that end by the time responses are even contemplated, and the cross-cutting impacts of Internet shutdowns on multiple economic and social rights.

- Ms. Hibah Kamal-Grayson said Google is very concerned about Internet shutdowns, and tries to supply as much of its own data as it can. google.com/transparencyreport/traffic for instance shows recent and ongoing disruptions of traffic to Google products around the world. She also said it is critical to address the economic and social rights-related aspects of Internet shutdowns in a holistic manner as these are all interrelated.

- Mr. Rajan Mathews pointed out that mobile operators in India are licensed by the Government, which means they stand in the shoes of the sovereign in a manner of speaking when conducting business. From an ethical standpoint, he said there are a number of nuances to consider such as individual vs. social rights when shutting down Internet services following Government orders. He also went over the situations in which Internet services are disrupted in India (national security, mob control etc.), and said the operators have unfortunately not developed ways to carry out shutdowns in more surgical, narrow ways, though this is something they are looking to do.

- Ms. Nanjira Sambuli expressed her concern that if we say it is alright to shut down the Internet (even surgically) in the interest of national security or to counter insurgency, we risk normalizing such practices. She said the debate is a deeply political one involving many kinds of flawed logic, and that it is important for this reason to engage more with the Government, especially those who issue shutdown orders, to better understand why they think such measures are necessary.

- Ms. Gisela Perez de Acha went over the Internet shutdown incidents in Venezuela, Ecuador, and

Mexico during elections to bring out how such measures amount to direct/indirect censorship. She said Internet shutdowns as a means to prevent rumor-mongering during elections are clearly excessive measures, that state-owned monopolistic ISPs contribute to the problem by easing the institution of shutdowns, and that problematic laws that enable Internet shutdowns need to be examined. She also said we need to explore incentives to have telecom operators keep Internet networks open even if they run the risk of getting into trouble with national laws as a consequence.

- Mr. Jan Rydzak pointed out how Internet shutdowns are becoming more common in democracies, and is no longer a problem limited to non-democratic countries, though we can rely on countervailing forces to keep the impact of these shutdowns to a minimum. He also noted how an increasing number of shutdowns are instituted as preventive measures before incidents of violence/public turmoil even occur, how shutdowns are becoming more surgical than broad-based country-wide shutdowns like what happened in Egypt, and how various national laws enable arbitrary shutdowns of the Internet. He also stressed the need to account for inaction/inertia as enablers of Internet restrictions rather than just overt actions, greater focus on the role of telecom operators who are bound by national laws, and better implementation of international law and court rulings within national laws.

Please describe the Discussions that took place during the workshop session: (3 paragraphs)

The discussions at the session revealed a widespread consensus that Internet shutdowns indubitably amount to old-fashioned censorship. It was felt that there needed to be better common understanding on the scope of the term "Internet shutdowns", and that it should be understood to cover both blanket and surgical shutdowns of the Internet. It was also said that stakeholders must be mindful when engaging in the debate to not legitimize the practice of surgical shutdowns by accepting them in the name of national security and preventing insurgency.

On the question of whether the ideal responses to Internet shutdowns would be legal-centric or aimed at the broader mindset driving Internet shutdowns, the participants leaned towards the latter, though it was also noted that there several national laws in this regard as problematic as they are outdated and/or drafted without sufficient multi-stakeholder consultations. It was said that we are being cornered into reactive responses when in comes to reviewing and modifying laws, which makes it all the more essential to engage the Government on why they think things should be a certain way. It was also felt that there is a lot left to be done in terms of linking the rights-impact of Internet shutdowns to its economic impact i.e. it needs to be demonstrated that enabling free expression can lead to sustainable economic growth.

Some participants observed that it is necessary for civil society and other stakeholders to address their concerns on Internet freedom at the formative stages of laws, rather than wait for these problems to solve themselves. It was acknowledged by the panel that national security is at times a real concern and that thinking in bubbles will do little to arrive at workable solutions that are acceptable to all involved and mindful of all relevant concerns.

Please describe any Participant suggestions regarding the way forward/ potential next steps /key takeaways: (3 paragraphs)

As regards the next steps in the fight against Internet shutdowns, organizations were urged to join the #KeepItOn coalition, which already has over 100 member-organizations from around the world, and serves as an alert network that keeps everyone updated on legislations, shutdowns as they take place in real time. A best practice document is being drafted within the coalition to outline how telecom providers can stand up to Internet shutdowns, based on international law and practice. The coalition is also drafting a response kit for civil society actors, including model legislations, letters to legislators and regulators, arguments that work in response to shutdowns etc. Additionally, it was pointed out that the office of the UN special rapporteur on freedom of expression maintains open channels of communication with Governments and periodically sends them legislative proposals, which are also made publicly available. This was highlighted as a possible avenue for putting across concerns over problematic laws before relevant Governments and Government agencies.

It was felt by some attendees that it would be beneficial to have systems in place that let the public know whenever telecom operators are given executive orders requiring Internet shutdowns, rather than having to rely on information leaks and speculative reports. Seeking transparency/clarifications, seeking to delay, calling for meetings, reaching out to peers/other stakeholders, and pointing to the costs were all highlighted as immediate steps that could be taken by telecom operators when asked to shut down the Internet. It was also felt that having a one-pager that could be given to local law/policy makers in moments of crisis, which explains the issue's complex nuances in a simplified manner, could prove extremely beneficial for officials who are not very tech savvy and might be inclined to institute Internets shutdown as responses to particular crises.