IGF 2017: Terrorism: Security v Freedom?

Workshop Report

Session Title	Terrorism: Freedom v security?
Date	Wednesday 20 December 2017
Time	12:30 – 13:30
Session Organizer	**Maryant Fernandez**, Senior Policy Advisor, European Digital Rights (EDRi)
Chair/Moderator	**Luca Belli**, Head of Internet Governance Center for Technology and Society at FGV **Online moderator:** Pablo Viollier, Policy Analyst, Derechos Digitales
Rapporteur/Notetaker	**Aimilia Givropoulou**, Digital Policy Advisor Greens/EFA, European Parliament
List of Speakers and their institutional affiliations	**Elinor Buxton**, UK goverment **Stephen Turner**, Twitter, Global **Niels Lestrade**, Dutch Internet Referral Unit and National Police Intelligence Unit Cyberjihad, The Netherlands **Jamila Venturini**, Brazilian Network Information Center, Brazil **Estelle Massé**, Access Now, Global **Maryant Fernandez Perez**, European Digital Rights (EDRi), Europe
Key Issues raised (1 sentence per issue):	The panel was composed by a variety of speakers representing different sectors, which leaded to a multistakeholder discussion on the topic of terrorism and how each stakeholder responds to terrorist attacks in the online environment. In particular, the panelists focused on the effects on the rule of law, privacy and freedom of expression. Each speaker presented the viewpoint of the sector they represented along with how the respective sector responds to the issue at hand. In addition, the speakers expressed their concerns as regards the challenges that each sector encounters and proposed ways of moving forward.
If there were presentations during the session, please provide a 1-paragraph summary for each Presentation	A presentation was provided by Mr Niels Lestrade, who spoke about the work and tasks of the Dutch Referral Unit. Initially, Mr Lestrade referred to the tasks of the unit, namely the detection of content, the analysis and the notice and take action. According to his presentation, the unit focuses mostly on content of violent jihadism that is present in personal posts and professional media outlets. Between 2013-2015 the dissemination occured via public accounts while from 2015 a shift was noticed towards private encrypted channels. The nature of such content varies between cases that fall into cases of copyright, criminal law or public order (community regulation). The undesirable content tends to be shocking, offending and disturbing and often leads to a breach of contract, meaning the terms of service of the respective platform. However, the Dutch Referral Unit reviews and refers content on the basis of Dutch Criminal law which recognises both

	severe and less severe crimes. The presentation included a comparative table which provided information on the variation of standards between different national referral units and also EUROPOL.

Lastly, Mr Leatrade recognised the responsibility of the law enforcement to act in such cases but expressed concerns as well as they are not judges. Thus, he concluded highlighting the importance of respecting certain criteria in the course of each unit's process, and stated that judicial review would be very helpful in these cases. |
| Please describe the Discussions that took place during the workshop session: (3 paragraphs) | **Elinor Buxton**, from the public sector, presented the current state in the UK and how the government tries to tackle the issue. She highlighted the political significance of the issue and further highlighted that the best way to deal with terrorism online is through good and transparent legislation. For this to be achieved, she stressed that research and cooperation with multiple stakeholders along with the implementation of encryption, for example, would be key for the way forward. With regards to the Investigatory Powers Act, she acknowledged criticism expressed and recognised that it wasn't perfect. Yet, they are trying to fix parts of it.

Stephen Turner, from the private sector, presented how Twitter responds to terrorism online, highlighting the challenges encountered by companies who are called to tackle extremism and terrorism. He supported a societal approach and lie on partners to help companies deliver what they've been asked for.

Niels Lestrade, from the law enforcement sector, expressed the position of the Dutch Referral Unit. In his presentation he spoke about the tasks of the Unit and concluded with the challenges that they face. More specifically, Mr. Lestrade referred to the processes they follow as regards the detection of violent content, its analysis and the notice and take-down of such content. He highlighted the diversity of such content and expressed his concern as regards the excess amount of content online, which would inhibit the law enforcement's work.

Jamila Venturini, provided her view as an independent researcher. Despite the lack of "terrorist content" cases in Brazil, Ms Venturini shared her view on the fast adoption and implementation of the anti-terrorism law in Brazil just before the Olympic games in 2016. Taking this legislation as a starting point she highlighted the potential flaws of such legislation, such as vague wording, the extension of the law beyond its scope and absence of tackling issues seen in practice, such as the treatment of metadata. She concluded by expressing her concerns on the impact that flawed laws (with no evidence for needing it) could have on human rights and more specifically on the freedoms or speech, thought and our right to privacy. |

	Estelle Massé , civil society representative, referred to specific cases of legislation which proved to be flawed at a later stage. Through her examples she highlighted the fast adoption of legislation, the lack of proportionality in the provisions and how existing threats for our rights are being neglected. More specifically, she mentioned the cases of the Data Retention Directive, the PNR Directive and the EU-Canada PNR Agreement, along with the respective case law that followed. According to Ms Massé, the biggest threats are against privacy, data protection and freedom of expression, due to the often broad and unclear provisions, which could lead to the profiling of the citizens and the uncontrolled ability of the authorities to check the borders and existing respective databases. **Maryant Fernández Pérez**, European civil society representative. She addressed the challenges that the NGOs face. For instance, she compared the increase of funding for security projects and law enforcement agencies versus the reduction of funding for NGOs. She also talked about the negative outcomes of how terrorism online is being handled by politicians and some courts, leading to human rights restrictions. She highlighted worrisome trends on data retention, PNR, encryption, increase of surveillance powers, government hacking, cross-border access to data, criminalisation of speech, political pressure over companies to restrict legal content, criminalisation of curiosity, etc that turns citizens into "suspects by default". She highlighted that the voice of NGOs is not being heard enough and we are in a situation where we need to wait for NGOs to bring court cases to ensure the protection of human rights. For instance, in France the criminal offence for visiting terrorist websites has been declared unconstitutional twice thanks to the work of NGOs. The legislator did not listen to legitimate concerns and did not listen when the Constitutional Court ruled the provision unconstitutional.
Please describe any Participant suggestions regarding the way forward/ potential next steps /key takeaways: (3 paragraphs)	• **Elinor Buxton** o Research, collaboration and transparent legislation process. o Government meetings with home office and police. o Encryption as a fundamental standard to move forward. o More reading and understanding. • **Stephen Turner** o Leverage technology. o Cooperation with industry – engagement with civil society including NGOs. o Transparency on processes. o Digital literacy – empower women in technology and bridge existing societal gaps. • **Niels Lestrade** o Review content on the basis of and within the limits of the law;

	- Safeguards for law enforcement work including data protection oversight, judicial oversight and transparency **• Estelle Massé** - Responsibility by governments to protect citizens. - Effort for clarity in law and better binding. **• Maryant Fernandez Perez** - Leaders to take strong stands to defend and protect digital rights in difficult times. - Avoidance of premature, emotional decisions led by fear or opportunism. - Do not rely only on NGOs to bring instruments in compliance with human rights. Every actor should take responsibility. - More funding for digital rights NGOs. - Review content on the basis of the law, not terms of service (imposed on users & not democratically drafted).