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A NEW INTERNET ERA

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>> CHEEKAY CINCO: Hi, everyone. We're starting the session. Hopefully more people will come in after they've had lunch.

I'm Cheekay Cinco. I'm from EngageMedia and I'll be moderating this panel. It will be quite an informal panel in the sense that we'll give our panel of speakers about 10 minutes' maximum each to speak and comment on the questions that this panel is going to be dealing with for the next hour and a half. Then we'll open the discussion up to the crowd for questions.

Basically this panel titled The Future of Internet Rulemaking Through Trade Agreements is to tackle questions around how trade agreements can be opportunities perhaps to include other public policy issues such as Freedom of Information and censorship laws and how do trade agreements like the TPP or the RCEP or all of these acronyms impact Internet users in the Asia-Pacific Region. Are there opportunities to include open Internet and Internet rights in negotiations in these trade agreements? How can governments be maybe develop new models of trade that incorporate, you know, Internet rights and Internet type principles. The main question we're asking in this panel is how do these trade agreements effect Internet users and the rights and freedoms of internet users in Asia-Pacific.

We have a great group of panelists for this session. We will start with -- I'm trying to mention your name properly -- Tran Hoang from EZLAW. You have a presentation, thank you.

>> TRAN HOANG: Is there a pointer for the remote?

>> CHEEKAY CINCO: The remote --

>> TRAN HOANG: Hi, everyone.

I was planning to have my presentation last for an hour and they asked me to do it in 10 minutes. I'm going to speak very quick. Today my presentation is mostly about a very, very detailed subset, about flow of information.

First of all, to recap, the Internet is an open network of networks that consists of millions of private, public, academic, business, government network. That's the Internet. The information is the currency of the Internet. The Internet lack of openness and transformcy, this is a critical component of the Internet to be a successful tool for creativity, innovation and of course for Human Rights advocating.

Let's talk about what is a free flow of information, it is a Human Rights idea that involves the freedom of expression and challenging the act of national censorship, filtering and fragmentation of the Internet. Now let's talk about the restriction of information flow.

Because the government, they recognize the full potential of the Internet, many, many governments have a restriction of information flow in the Internet. The restriction of information flow could be in many different forms. It can be the technical blocking of access to the entire Internet or to a website or a licensing requirement of the legal order and the list can go on.

I can give you some examples in Vietnam. For example, the website blog spot or BBC, they're mostly blocked in Vietnam because the government thinks that an Article from the website has harmful effect to the people. Another example, on my first 2016 protest in Vietnam, Facebook was mostly blocked.

Now, because I'm a corporate lawyer, I'm going to talk more about from the perspective, from the business point of view. Buying online, downloading video, free information flow, however as a matter of fact, even if money is not involved we always participate by moving information across borders. When we use the WhatsApp, when you watch a video from YouTube, Netflix, when you're making a comment on a friend's timeline on Facebook, the information from the server based in the U.S., the U.K., whatever country to the other mobile device in another country, that's the flow of the information. Nowadays almost all companies have to utilize the use of commercial data flow on the Internet to reach the customer inside or outside of a country. The common denominator can include all kinds of information, website, video, photo, news, map, any means that are able to go in that direction and the communication across the Internet. Because of that, for the company, any obstacle to such commercial data could make it hard for

a company to advertise and sell services and lower productivity and operations relying on the Internet give an unfair advantage to the local company and of course it can damage the nature of the Internet, the natural Internet that can slow down trade and economic growth. Because of that, as the Internet grows and the global economic is more connected companies want the free flow information or at least the free flow of commercial data. It should be a concrete rule applying for all governments.

How to do it? The best way to approach such a growth is through the next generation of the trade agreements that talk about importing, exporting goods, but it also is about forming and shaping the policymaking in the nation. This is a new set of rules importing and exporting information so -- I'm talking about TPP. TPP is a first trade agreement to carry free flow of information.

So now let's talk about how the TPP, talk about the free flow of information. TPP has language that would prohibit country from blocking, censoring or filtering cross-border transfer of information over the Internet. You can read it from Article 14.11, open party shall allow the cross-border transfer of information by electronic means, including personal information when this activity is for the conduct of the business of a covered person.

I will dig deeper into Article 11 to understand Article 14.1. You have to understand what is a service supplier in TPP. Article 14.1 says a covered person means a service supplier of a party as defined in Article 10.1.

Now we have to go to Article 10.1. Why do they do that?

Article 10.1, so this service supplier of a party means a person of a party seeks to supply or supplies a services. Then the list of the definition can go on. As you can see, the TPP does not require the service supplier must interact financially with a customer. It is a TPP rule that also covers the Internet -- Shit, 5 minutes -- to provide cross-border service to user for free.

Let's go back. The rule only applies to activity that is for the conduct of the business. Most people when they go, they do this work, they think now it has to be about money. The TPP only protects the information that covers money things, for big corporations, for companies, everything must be money. Is it? Now think about that. Nowadays, technically the conduct of business does not need to have to do with money. As I say, you always go to the Facebook to chat with your friend, to leave a comment, you read the news from the website, you watch free video from YouTube, that's a conduct of the business for Facebook and YouTube company. They get you -- they're getting information from you by you going in their website. You -- they sell the advertisement because you are freely using a free service. That's a business conduct.

The flow of the TPP information, pretty much every flow of the information now in the Internet where TPP is effected, the it Chinese

government could not block TPP, could not block Facebook or could not do anything else because those types of information even is not good or bad for the government themselves, it is still there.

I was talking a lot then -- we don't have that much time. I'm talking about Article 14.13, so Article 14.13, no party shall require a covered person to use or locate computing facilities in that party's territory, blah, blah, blah. That's the rule that's repeated, the data protection in the region. What's that? Normally the government often requires that the data be stored in the country so that they can control the content of the information. The way it is delivered. This is everywhere, Vietnam, China, other countries. Okay.

With the rule in Article 14.13 the company can now make sure that they do not need to invest locally in order to deliver the information to the country.

2 minutes, I know.

Exceptions -- give me 2 more minutes!

Exceptions. Okay. The TPP member who uses the information flow, it is necessary for national security, public, moral health, yes, yes. So this government, the Malaysia government, they can say because of my national security I have to block this information. Maybe it is but maybe they cannot, with the reliance on the exceptions, but not all well.

My conclusion, something is better than nothing. I have to agree with that. TPP may -- any joint agreement, it may not be the best tool to promote the free flow of information, but it definitely could bring must-needed human issue, that's long-term. TPP will expand to South Korea, Indonesia, Thailand, maybe even Thailand. Thus the very first free flow of information rules in TPP could have a significant spill-over effect on the Internet openness and how the government deals with cross-border information flow.

Yes, not even 10 minutes.

>> CHEEKAY CINCO: Thank you. We'll hold questions until the end of everyone speaking.

The next person to speak would be Anahita Mathai, a junior fellow from the Observer Research Foundation.

>> ANAHITA MATHAI: Good afternoon, everyone. The two major trade agreements that are about to come into play, the TPP and the RCEP, and between the two they contain about two-thirds of the world's population and even more of the total of GDP. A thing that's clear is that the implications of both agreements will be very wide ranging simply because of the number of people that are effected.

Do the agreements really reflect what those people want? It is difficult to say that because negotiations for both agreements were conducted in secret and commentators had to look at leaked documents which is ironic because both may end up criminalizing whistleblowers. Given that context that only a small number of interest groups were involved in crafting the documents it is hard to say that they'll

be good for the wide number of users affected. This is particularly true because these agreements have implications that go beyond trade whether data protection or to impact on climate change and global health. These agreements are trade first agreements. They place the highest value on free and unrestricted trade and all other concerns are given only secondary importance. Part of the reason for this is that trade agreements have become the latest form of political maneuvering, the question of membership in one agreement affects the other and the members have an impact on what values are going to be a part of these agreements.

With the TPP and RCEP the obvious sort of players on either side are China and the U.S. battling it out. Neither one is explicitly excluded from the other's agreement, but the way that they have been crafted, one is not going to join the other.

The TPP is the first and largest trade agreement to address digital rights issues explicitly and it is all about harmonization. So it will open up markets including the most valuable market, the data market, by harmonizing legislation. There is some evidence that the U.S. will be pursuing the standards in the TPP which are higher than WTO standards in bilateral agreements taking the TPP standard even further than the countries which are otherwise party to it this is evidence if you look at the digital two dozen document from the U.S. Trade representatives' office. While that document deals particularly with the provisions of the TPP the USDR indicated that the U.S. will pursue those principals in bilateral and other trade agreements.

One of the most contention areas of the TPP had to do with the free flow of data which we have just heard about. The document called for data flows to be unrestricted so as to allow for free trade. Many analysts have felt that it did that at the expense of data privacy. Part of the reason for this, some potential privacy enhancing managers such as data localization is prohibited by the TPP. This is a big concern in countries where domestic privacy legislation is either weak or non-existent. If your largest trading partners of the world's most influential traders adhere to certain standards. You may be excluded from valuable trade deals if you're not on board with those same standards. The two most likely probabilities is that further bilateral agreement also come about to ensure privacy, for example U.S. and Australia have a deal, or that some kind of regional privacy framework will emerge to kind of match these trade agreements. However, for the TPP -- in any case, these arrangements will have to be TPP compliant. And how is that compliance decided? By a tribunal of trade experts rather than Human Rights lawyers. There is an evidence bias on how that framework will come about. This is an example of the trade first stance which could have negative effects.

Furthermore, by taking a tough stance on copyright infringement, these agreements further threaten privacy because when service

providers can potentially be held liable for the actions of users they will monitor to the user behavior with little restriction. In both the TPP and the RCEP documents that's not prohibited.

The RCEP is more flexible than the TPP on digital right issues the lack of acknowledgment of fair use agreements is troubling. The rise of trade agreements like the TPP and RCEP present a troubling trend towards forced harmonization of a wide range of laws. Rather than allowing, for example, copyright protection of Patent regimes to develop organically with the country's markets these agreements impose the most influential trading partner standards on everyone and hold trade as ransom.

Thank you.

>> CHEEKAY CINCO: Our next speaker is Shawn Tan from Aeste Works.

>> SHAWN TAN: It says this cannot be a right in itself, technology is an enabler of rights, not a right itself. Regardless of how we consider these to be inherent rights the way in which the rights and freedoms are exercised is only through the medium of software. You can only enjoy the intent through software and with software, therefore any control or form of rollover software will optimally effect the online rights and freedoms. Software is primarily controlled with IP laws and so any change in the IP laws of a nation will affect online freedoms as well.

There are various laws that are available and what affects us most is the copyright law. The TPP generally seeks to enforce stricter copyright laws and in the example of Malaysia the term is going to be extended by 70 years by the TPP contrast that with 20 years for Patents and 10 for Trademarks. This means that in contrast to normal property rights the people of Malaysia will not have any implicit right or freedom to access software for decades including software running critical online Infrastructure and services unless such access is explicitly granted by the copyright holder t copyright law is the new government monopoly over products and services.

The TPP also extends the copyright protection to related rights not merely to the software itself. Related rights include the infamous rights management, therefore it is not only the software itself that suffers protection under copyright law but also the measures in protecting the software. Rights management is a lock, and just like all other locks it is used for control. In terms of online rights, locks can be used to restrict access to information, for example, censorship. The TPP also makes copyright infringement a criminal offense. Neither Patent law or Trademark law provides for a criminal penalty. Copyright is the only legislation in Malaysia providing for criminal penalty with up to 20 years' imprisonment for breaking that management. The laws only impose a maximum of 7 years for real property issues. Breaking the padlock to a house carries a healthier penalty than steeling things from the house. This will naturally have a chilling effect. Combine this with price management, and we have the

basic building blocks for a control of the Internet.

However, I believe that is not necessarily all gloom and doom. Existing the U.S. may impose trade restrictions with any country for various reasons, including having a bad Human Rights record. That's sometimes cited as one of the possible reasons why Malaysia was upgraded from a tier 2 to a tier 3 in order to allow it to sign the TPP. There is a nexus or relationship between Human Rights and trade agreements. Trade agreements can be used as a mechanism to enforce freedoms if they choose to take that stance prior to using it as a tool to protect profits. If governments choose free access to an open Internet as an inherent right and make state policy to provide open access to the Internet then strict IP legislation may be used to preserve and protect Internet rights and freedoms. Taking a page from a book, software freedoms can only be enforced if there is strong legislation in place because the copyright framework uses the same provisions in the law to enforce compliance with software freedoms. This has been illustrated in the past with major companies such as some getting sued for non-profit entities compliance and, therefore, it is possible to use the same legislation process to enforce Internet freedoms and rights as it is to restrict it. As an example, it may even be possible just as a forethought to turn rights management on its head to rights and management.

That's a made up word. Okay!

Rights management, it is often used as a technological means to control the distribution of the copyright material.

Instead of using rights management to limit access to software information or data it may be possible to make it an offense to restrict the access to software information or data that's protected by rights or management instead. It can be seen as a tool to keep things out or keep things in. Since it is possible to charge someone for trying to break digital locks I would like to humpty suggest that it may be possible to charge someone for placing unauthorized digital locks as an analogy it is unlawful for someone to place barriers on public roads because it interferes with the Rights of way. That's why cars that are illegally parked are towed away. If someone makes data explicitly available as a restricted right it may be criminal for another party to interfere with a peaceful enjoyment of that right by circumventing the right management of the system.

Let's say someone designed a freedom router, a special router with firmware protected by rights and management and removed soft filtering capabilities for that router, and I suggest it is unlawful for someone to use that router to filter or censor Internet traffic as they have to work around the rights management system to work with the software to do so. It would be a criminal offense to do that. One step further, I suggest it would be illegal for someone to filter traffic to and from that freedom route router as well as it effects the way in which the router is meant to be used and circumvents the

right managements in place.

In conclusion, since trade agreements are already promoting stricter IP legislation I'm thinking we should find a way to turn this legislation around and to use it to enforce freedoms rather than to restrict it.

Thank you.

>> CHEEKAY CINCO: Our next speaker is Kim from Korea.

>> KELLY KIM: I'm working for a Civil Society Organization, but before I came to work here I worked for the Korean government, the Minister of justice. When I was working for our government I was involved in many free trade agreements between Korea and other countries. I may be the one you want when you talk about negotiations.

I want to relate to you my experience as a negotiator for our government where the Korea IPAs, what I felt and learned. I think many of you already know that we are very full FDA country, we have so many FDAs with so many countries, U.S.A., United States, E.U., recently Canada, China, of course Australia and New Zealand as well and in those active negotiations our country's interest is not really well reflected because as U.S. or E.U., those Western countries are leading the negotiation process and leading the international discussion or the trade agreement rules so I was really frustrated whenever I go to negotiations because there wasn't much room to fight for our country or our peoples' interest. Especially after we concluded Korea U.S. FDA which is very strong especially terms of IP protection and stuff. There was strong protections or -- I don't know, free the freeness we have given to Korea/U.S. FDA, after that the Korean government is kind of -- how can I say -- so Korean government is kind of -- needs to enforce the current FDAs and in that way in negotiations with other countries, especially Asian countries or other negotiations we're kind of playing U.S., United States role because we already have the FDA with the United States and -- yeah, our regimes, they're very similar to what United States enforced upon us. We have to -- we have to impose our IT draft agreement, it is more like -- it is really close to Korea U.S. FDAs and we have to enforce or compel these terms to other countries in our negotiations, in our steps. It was really frustrating, I was involved in IP protection negotiation and our law had to be transformed after we had this. One Act was transformed, reshaped after this in the year 2011. There were favorable or positive aspects of being introduced to the E.U. or U.S. copyright information protection regime because E.U., Korea E.U. FDA, we could -- E.U.'s Safe Harbor Provision for intermediaries under the commerce directive was introduced in the Korean law, copyright law especially or through the U.S., Korea U.S. FDA those were noticed under the copyright act that was introduced in Korea. Before the Korea U.S.A. FDA our copyright act enabled you to just take down content upon notice and there was no provision for counter notice and restitution of taking down the contents. Because of Korea/U.S. FDA this take down

provision could be introduced and now those people who got their contents taken down can issue counter notice and get their content, take down content reinstated. That's a part of the Korea, E.U., U.S. FDAs. It is very stressful. The trade negotiations are normally led by the commercial Department of The government so they are very concerned with their industries' interests and they don't really listen to Human Rights -- they're not really concerned with many Human Rights impacts of the trade negotiations. I think they should had listen more with NGOs and other stakeholders, particularly the people before completing the trade negotiation and it is very stressful. It is top-down decision making process so that the negotiators although we're very -- how -- how do I say? We're very well intentioned, our power is determined by the government, the top-down decision making process should be changed I suppose. Yeah.

One thing I notice, the lobbyists or negotiators were counselors to the negotiators, they tend to be lawyers from the U.S. law firms. I don't know how much impact they actually have. It was really concerning that those U.S. lawyers play a huge part in this international trade negotiation when even in our countries, the negotiations -- yeah, more -- more -- I'll discuss moreover TPP later as others have already had good points.

>> CHEEKAY CINCO: Our next speaker is Jon Lawrence from Electronic Frontiers, Australia.

>> JON LAWRENCE: Thank you.

Kelly, I think it is clear that Australia and Korea have had some similar experiences over the last years and I'll just do a bit of a background as to where we have got to and what's happening in Australia on these issues and what I think implications of this are.

As some of you may be aware, Australia was historically a very early promoter of sort of the concept of free trade. Our government dropped most of our tariffs in the 80s and 90s and, you know, the Australian government has been a strong promoter through -- historically through organizations like APEC and so forth in terms of promoting the concept of free trade. That's essentially I think embedded free trade it is a "good thing" into Australian policy and culture. It is just reflected and taken as an undisputed good.

Now unfortunately what we're dealing with here with things like the TPP and the RCEP and so forth, of course, these are not free trade agreements at all as our productivity commission says they're not free trade agreements, we refuse to call them that, they're preferential trade agreements and that's an important distinction to make. You know, if you start looking at it, as we have discussed some of the Intellectual Property issues of this, they're actually anti-free trade and restrictive. I think it is important that we remember that.

As you may expect, in a sense it surprises me to still be typing this in 2016 but the Australian government focuses on the benefits to our agricultural sectors in these sorts of agreements and largely

at the expense of, you know, as Kelly mentioned, nip sort of overall, holistic view of the net benefits of these sorts of agreements. Our current government has essentially put FTAs at the very center of the economic Agenda, we have signed one with Korea, Japan, China, these are all rushed through in the last couple of years with almost no scrutiny, no parliamentary oversight and the TPP is no exception.

In terms of Australia's current position in terms of kind of Internet freedom and speech and copyright, so forth, we're -- you know, we're an open, vibrant, stable democracy. We have unfettered access to Internet. These things are as much by accident as they are by design. Australia lacks any form of Constitution protection for privacy or free speech that our friends particularly in the U.S. and the European Union and even Canada to some extent enjoy. That's allowed the government in many ways not so much in this area but particularly in the areas of sort of national security and anti-terror legislation to really go pretty far off the deep end I would say. We have had something like 80 plus individual pieces of new anti-terror legislation in Australia since 2001 so there are genuine threats of freedom of expression and privacy in Australia primarily from that sort of terrorism context. That's -- that's always a big red flag that's flying when government wants to impose control. Apart from a limited of implied right to political speech that our high court determined is between the lines of our constitution, that's pretty much all we have.

You know, that's a risky point to start off with. Part of the challenge that provides for organizations like ours, we almost never have any standing to sue our government when we think they have gone too far, there is no constitution basis for that. That's something that unlike our friends DFF in the United States that are constantly suing the government for many reasons, that's not an option that's available to us. That's a concern. To run through copyright quickly. Australia at the moment we have a sort of U.K.-style fair dealing, very limited fair dealing exceptions that cover news reporting, parody, a few other things. There is a long running campaign to move to a U.S. exception in Australia, it was formally proposed in 2013 and our productivity commission, a very near liberal free market oriented government think tank has supported that proposal in a draft report that came out a few months ago quite strongly. We have had attempts of imposing graduated response games two, three times these have all got to the point of deciding who pays for it and it continued no further. With a bit of luck, I think we're closer to calling that dead in the water, but we continue to sign agreements that say we have to go after these things. We had a cite blocking law rushed through parliament last year despite the great critical urgency attached to that law and it was essentially done without any scrutiny at all the first cases took 9 months to be presented they're now before the courts and they're yet to be resolved, we don't know how these blocks will be put in effect. There are issues there.

I mentioned this in terms of national security, we have had some legislation in the last year. Quickly, we signed a free trade agreement with the United States in 2005 and it says essentially that imposed -- most of these copyright terms included in the TPP and RCEP, the copyright term extension, the non-take down system. Although we managed to mess up the implementation of the Safe Harbor regime, we have some legislation proposed at the moment that would fix that issue begin extending the Safe Harbor protections to all service providers and at the moment it only -- limiting. We have certainly have gray areas around the circumvental and blocking in the Australian law and the U.S.A. FDA, they sort of try to make it illegal and implement legislation, it hasn't, we're trying to get clarity on that because as I suspect it is in many countries these sorts of restricted trade practices which is exactly what this is, it is extremely unpopular in Australia. Any government that doesn't want to have a massive backlash from anyone under the age of 35 knows what they need to do about that. We have to propose legislation that was released in November, we just had an election, we're going back to the starting point but looking to fix up, as I said, our Safe Harbor regime to start the process of implementing the Marrakech Treaty for visually impaired people, which is an important treaty and a good example of how these sort of international agreements should be done, the all-inclusive manner rather than the preferential deals. Using itself in many ways, kind of a number of steps towards fees, exceptions. We have some optimism we'll see movement towards fees in the Australian parliament.

A couple of other points -- I know you'll wrap me up -- but one of the consequences of the fact that Australia has this engrained sort of positive approach to free trade and the fact that we have essentially I would say already given the farm away in terms of copyright and other issues in the U.S. free trade agreement is that the TPP has received little exposure in Australia mainstream media, very little parliamentary scrutiny. The RCEP is quite naturally almost non-existent within Australian policymaking at the moment. I was able to find one reference from a major Australian news organization about it, that was from the rural segment of our national broadcaster talking about the of effect for grain process, that was the only thing I could find about it. That's the sort of scrutiny and transparency going on in a country that's really quite an open country. There are clear issues there on transparency. We have a bit of optimism that our slightly new parliament may make an eradication of the TPP a much more difficult task than it was a couple of weeks ago. I think that government needs to think about what they thought they were going to achieve by calling the sort of election they did. There is clear opposition within Australia from, as I said, organizations like ourselves but more importantly from organizations like government, economic think tank, a longstanding opponent of the preferential trade

agreements arguing there is little to no net benefits to Australia in signing the agreements and that's partly to do with the fact that Australia dropped most of their tariffs a long time ago but they say they introduced more red tape and that they have significant risks. And two big issues in Australia with the TPP is the investor state dispute, settlement processes, and you may be aware of our packaging tobacco laws. There is a number of cases around that and that's a significant issue in Australia and around pharmaceutical procurements. Like many countries, particularly in New Zealand, we have a national pharmaceutical and the TPP puts that at risk. There are clearly issues here on transparency and sovereignty of national parliaments and issues around the fact that these Intellectual Property terms are essentially baked into the agreements is a form of what I would call policy laundering, many of them, if they were put out independently in front of the parliament which have zero chance of being past and yet we continue to agree to them because the negotiations are done by trade negotiators that don't necessarily have the expertise or the full range of understanding and these things tend to propagate and we lock ourselves into limited archaic and increasingly outdated IP regimes.

>> CHEEKAY CINCO: Thank you.

If you could move the mike over.

The last speaker is Dr. Hong from the Beijing Normal University.

>> HONG XUE: I apologize for being late. I had another session in another room. I'm very happy to join all of the other colleagues to talk about free trade agreement.

This is a big issue and especially for the big economies in this region when China is now one of the party in the negotiating -- in the negotiation process of the regional comprehensive economic partnership agreement, and I guess this is going to be the next big thing after TPP. I don't know if there will be a TPP action or not.

Like TPP process, there is no transparency at all. We want to know what's happened, and so far it seems only one chapter has been leaked, and that's on Internet property and we do want to know the contents of the eCommerce and hopefully that will be leaked again. And we are curious what is being negotiated two big laws are being drafted, one a Chinese security law, you have heard of it, it is now in the second reading of the Congress and I guess that this is -- this is very tough law. It is a strict legal requirement on the cross-border data flow. It is significant legal impacts on all of the business, who is going to operate in territorial China.

There is another law, it is actually going in another direction, but it is as important as the previous one, that's the eCommerce law. I'm a drafter for that law. The eCommerce law. It is interesting, it is opposite of the cybersecurity law trying to make the Internet as open, liberal, as free as possible. To be friendly to the business development so we see some constructive positive from that eCommerce law drafting which is interesting. The copyright law is now being

revised for the second time. It is in the process. The different stakeholder, very different interests so it is going to be a prolonged process and for the Trademark law it was revised two years ago. For Patent law, this was revised three years ago and is going to be rerevised again primarily because the Patent holder would like to have a stronger legal protection for exclusive rights and China has a new consumer protection law.

China so far has no personal data or privacy law nationally. This is a general legal situation. We were seeing a very complicated picture. It seems the different laws in different -- on different subjects are going in different directions. We are even more interested in whether the free trade agreements, China is participating, we have any impact back to the domestic law or the building up of domestic law would have any impact to the ongoing negotiation internationally. I note that at the beginning where a couple of the questions were to answer with respect to the free trade agreement, what is the impact to governance. To me, it is that this free trade agreement, the trade law, they're being built up and there is no way to stop it. I guess as many legal professionals suggest, why don't we analyze these international trade laws and see if it is possible to assess them from a positive perspective. Do they do any good to the Internet Governance? Could they contribute to a more frankly Internet environment? What I can see, there are positive elements actually from some of these free trade agreement that could possibly enable the more effective cross-border data flow and cross-border flow of information. That will enable people to access more information and knowledge.

Also, to filling the legal gaps internationally with this fact to cross-border consumer protection and the personal data protection, we have so many international conventions and treaties, international property protection that's already mature, the international law subjects but to respect to consumer protection and privacy and personal data so far there's no very comprehensive worldwide international law. If this free trade agreement can at least regionally cover up these legal gaps I guess that's positive. I have used the example of TPP chapter 14 on eCommerce, I could see a couple provisions is thoughtful and could be very useful for this cross-border consumer protection. For example, for consumer protection with respect to digital products. I know many countries are struggling to characterize digital products as goods or services and what consumers have difficulty in asserting their rights when they receive these products, especially the cross-border environment, they do need the legal basis to make their claims and also a TPP eCommerce chapter has one provision to enable the access and use of the Internet in the cross-border environment. I guess that's directly facilitating the free flow of information through this free trade agreement although it is primarily for economic purpose but it could do the public good.

I use these examples to show that these free trade agreement, even though they were drafted without transparency and accountability, if they could be utilized more positively and constructively possibly it could actually facilitate to the governance of the digital economy of things.

I have used up my time.

Thank you very much.

>> CHEEKAY CINCO: Anyone have comments, questions for all or any of our panelists? The floor is open.

>> (Question).

>> CHEEKAY CINCO: Can someone translate for us?

>> HONG XUE: I can volunteer to help. All right. Sorry. I understand the first part.

(Speaking language other than English).

I guess the gentlemen asked a critical question. He said if one territory joined a TPP agreement does it mean our legal and judicial system should be consistent with the other territories, for example, Taiwan is a different legal system with mainland China and the people can even remove their top leader and that doesn't mean that once we join the TPP we have to be consistent with Chinese, political system. I guess the answer is no. That's not the case. That's not the case. The TPP has nothing to do with the political system.

>> TRAN HOANG: I can answer your question a little bit.

First of all, talking about not the political issue, but the free trade agreement cannot affect the political -- the political structure in the country. But it may indirectly effect the policymaking anything related to the law and enabling affecting the political decision in this country.

For a few examples, environment, IP, Internet law, labor law, talking about the labor law, in TPP the TPP rule require every country must allow the labor and worker to have the independent union. That's not the case in Vietnam at the moment. Because of some political decision. The TPP, is it going to be effective, it must allow the independent labor unions in Vietnam, that's going to change, effect many aspects about the life of society, economic and even political decisions and the way how the government works. Yes, directly, no; indirectly, maybe.

>> KELLY KIM: The political part, it should not.

The legal system, we actually -- I already said that our copyright was transformed according to reflect U.S./Korea FTA. We had to introduce those U.S. legal copyright regime especially like criminal enforcement regime so it does -- it is trade negotiations; trade agreements do effect the domestic legal systems. It is really important that negotiations should be transparent and the stakeholder's voice, they should be her, it is really hard to renegotiate once signed, closed trade agreement. It does impact and effects legal systems of a country.

>> SHAWN TAN: I want to add one sentence to say in the case of the TPP the only -- it requires the signatory countries to amend laws but they have strict time limits on when the laws have to be amended. Typically, within 2 to 3 years the laws have to be amended.

>> I'm from Korea Progressive Internet.

I think it is a very risky idea that we can utilize trade agreement for heightened criteria of our society in terms of what it is, Freedom of Information or free for all information or environment or criteria or labor criteria.

First I'm not sure the trade agreement will have -- the trade agreement can make the free flow of information because if it's not the free flow of personal information because as I know the trade usually in general trade agreement have been barrier to free flow of information by enhancing the protection of Intellectual Property so I don't think trade agreement can enhance the free flow of information. Of course it can enhance the free flow of information but I don't agree with that.

Second, even if it can include the provision about that, I don't think it's a right way to promote free flow of information because it is a public policy and I think trade negotiation is not a good place to discuss about the public policy in our society. I think we need -- there's some area we need to set a global standard for public policy but trade agreement is not a good place because it is not an open platform and not allowing other stakeholders to participate in the discussions even if it can have some good, positive aspects for society, I don't know if it is a good way to discuss about that.

>> TRAN HOANG: Thank you for giving me an opening now so I can comment. I have two comments.

First of all, talk about the free flow of information, Google, Facebook, Microsoft, all are packing up for the TPP, mostly because of the principle of the free flow of the information. First of all, we need to talk about -- first of all we need to talk -- understand why do we have a free trade agreement? Originally free trade agreement is a type of agreement that only can help freedom of good that's realized, rising the barrier for importing, exporting the good but nowadays companies and people, they consider information and service to be good because that's a company that they surely want to have the free flow of the information because with the free flow of information they can share more goods, more service, advertise more things to many, many other nations without investing locally. That's a fact. Technology, it is always changing, always involved, so free flow of information, eventually, it is the principle for the whole world and now that is my opinion. That is -- now, the second opinion, it is about using the trade TPP and RCEP, it would not be the best place to have the rule for the free flow of information. Yes, I agree that -- I agree that TPP and the free trade agreement, would not be the best place but we don't have any other better option. Without the TPP -- TPP,

it is a first agreement between the nations that directly deal with the free flow of information. Now we have to talk -- we to think about the nation, the governments, what do we want, what do they want? We want profit, we want benefit. In short, we want moneys from each other. That's the purpose of the free trade agreement, but we the people, we have to use the desire of the people, the desire of the government to be -- to make those types of agreements to be to our advantage.

I will give you an example. Vietnam, the law before we do not recognize any independent labor union, but because of the TPP we had to recognize the independent labor unions. Why do we have such rule? Why does the TPP requiring this nation to have independent labor union? It is not because of any issue related to Human Rights, no, free trade agreement will never talk about Human Rights because it is a trade agreement. It has to be about trading. Why TPP has that kind of group? Because the TPP, the country, the American, Canada, Australia, Japan, we believe that without any independent labor union that the cost for the labor in Vietnam would be so low, would be so low that we would take all of the jobs from Canada, from the U.S. and from Japan and attract more and more jobs to come to Vietnam.

How would we increase this? Ask them to have the labor union. Think about it. So at the same time we have a very good -- the other hand, the Human Rights problem has been solved and the same thing is happening and it is dealing with the free flow of information right now. We have to ask companies like Google, Yahoo, Microsoft, Google, Facebook, those big companies, one of the only companies that can help the free flow of information become real. So far in the future we will have more principle rule, more principle international law that's dealing with the free flow of information. That's not a trade agreement, but TPP has to be the first step.

>> CHEEKAY CINCO: Thank you very much.

Thank you for that presentation.

I think we have to be honest here when we talk about TPP and RCEP. Number one, if we're talking of transparency and we're talking of freer flow of information the negotiation hasn't been transparent. If we're talking a freer flow of information, then you could start by providing us access with all those draft agreements. Similar also with what's happening with others, it is a problem with trade agreement.

If we're talking a free flow of information for whom are we talking? Who is freer flow of information? Are we talking of the freer flow of information for big companies? Are we talking a freer flow of information of the marginalized groups, particularly women?

My third -- my second point, TPP and RCEP are basically modeled under the WTO and we know that WTO are perennial liberal and adopts the perennial liberal model. Under that WTO model they have the settlement disputes. I would cite the Philippines, for example, we spend millions of dollars because our government has been sold by another company because of the temporarily construction of our airport.

We spend millions of dollars to hire lawyers rather than allowing the funds to go to services like IT for example. I would like to call the attention to Internet activists here, if our country will be a part of the TPP and RCEP we're opening ourselves, opening our government for, like, companies -- I hope this will not happen -- for example, like Google, Facebook, Yahoo, to file a case, sue a case against our governments and we will have to hire international lawyers who are very much knows, the know hows of the trade agreements. I think one call which I think may be some of you that may be involved is how do we now connect this with the movement to come up with an obligation, I think that's also something that we have to also connect with in terms of the obligation of the State to ensure Internet right freedoms in our own country.

Thank you.

Anyone want to comment? Anyone from the panel?

>> I'm from ISOC. Thank you to the panel for the wonderful discussion. Thank you, Tran, for the passionate presentation.

I think we're all in a free flow of information. That may be a biased comment because at APrIGF, if someone comes in saying I'm not for free flow, it will be very rare. That may be a biased comment. We're all in for the free flow.

What we're not in for is -- I mean, where the parties are not given the level playing field, I think that's missing in the TPP. I mean, we have seen that in the past like with the Safe Harbor agreement between EU and the U.N. that the bigger brothers use these agreements. Are there any inherent clauses or any other mechanisms in TPP or other similar law which awards such things and the second thing, my question to the panel is there are other advantages of data localization. For example, we developed a local community, we develop -- we provide and we foster the idea of Entrepreneurship. Is there any other thing -- what are we getting as an advantage if someone wants to get in this agreement?

My third point, for instance, it is about negotiating. We all know that the major benefits of the trade agreements will be the companies sitting in the Silicon Valley. What are the benefits -- what are the benefits with the local entrepreneur in India or Philippines that will get once they're in this trade agreement?

>> JON LAWRENCE: You have raised a number of good points. The data sovereignty issue is one that we have given a lot of thought to as Australia has at least one law that requires data to be stored on shore and that is anything to do with personal health records. We have had to -- I know the Australian government was able to negotiate exceptions in the TPP to cover that and potentially one, two other issues. Instinctively, you know, I -- as I think you have said most people here would instinctively, you know, embrace the concept of a free flow of data and we don't want to be, you know, erecting borders on the Internet. Having said that, there are certain circumstances

where it may be appropriate for a government to have the ability to legislate, to require certain very sensitive data to be held on shore so that they can be certain about privacy protections. That's certainly arguable. There are exceptions. It is well-known that Google is a big supporter of the TPP because of this issue. That's understandable, it is in their clear commercial interests to do so. How does that effect our ability -- and this is as much of an issue in Australia as much as it is in any other countries as well, how do we promote sort of vibrant and competitive local digital economy jobs without kind of sliding back to the reflective protectionism which is a way of doing it. I think there are things -- this is part of the irony of the TPP for Australia, it is potentially going to restrict our ability to -- someone mentioned the concept of organic copyright reform. We're going through a position where we're trying very hard to reform our copyright act so that in many ways we can start to remove some of the hurdles that prevent successful entrepreneurs in Australia from staying in Australia and there are other issues of the availability of venture capital, another big one but copyright reform is a big part of that. The irony is that the TPP will potentially restrict our ability to do that which means that we're as I mentioned earlier rather than promoting a two-way exchange of trade and benefiting it is very much a one-way street and I'm challenged by that. I think we need to -- it is important that every country has strong local digital economy jobs that can compete internationally. I don't think every country needs their own Google by any means but there are certainly challenges with having, you know, single entities from wherever they are that control, you know, such significant market share. That's something that we need to look at.

>> Thank you to the panelists on speaking on the trade negotiations, and I really admire the work that you commence and you understand the subjects quite well. I think in the intent of free trade agreements it is openness and there's nothing that's secrets. The impact will go to you for sure.

The TPP text is open, right? You can read? RCEP is not far, it is going in that direction. In general, I would like to urge you to see the points of the text inside of this provision is way weak but they recognize nothing. I agree with what Jon mentioned, it creates a feeling that it is up to the country to decide what needs to be done and that is the intention but you mentioned the Marrakech Treaty. Most of them is application chapters. 82 countries already provide the provision agreements, do you think that this will exist in the future with the TFA trade facilitation agreement going back, most of them using only one word, channel, in protocol paper, it means must, you don't have other choice, that 330 Articles inside of the trade presentation agreements, 80% of it, it is channel. No one talks about the effect directly to you. For example, we help the commerce selling the tapestry that needs to provide the true eCommercial, they

have to make sure that they can prove that this endangered species from the plant is not collected from the wild and you have to get the information from the government in the facilitation agreement and it is to be in electronic form only. How can this be done? These other things I would also like to you look on another legal framework, trade facilitation agreement, Marrakech Treaty, that's all about the trades that may affect the commercial operators, the exporter, the importer, how the government is working on that.

Thank you and I think one of the -- the next round, it would be Vietnam and I will leave it also to open up to listen to all of you if you can manage to talk to the local authority, but in Auckland we talk to the Committees and they come to half a day session with us and they raise the concern and bring it back to the Committee when we discuss, especially eCommerce that I'm working on in Auckland we have in parts, we also talk to the communities and next round will be in Vietnam and that's in the next two weeks, two, three weeks, it will be Vietnam. If the Committee would come to talk with their concerns and things that need to be done I think that would be very helpful.

Thank you.

>> Hello. I do appreciate panelists introducing me to the TPP and also I want to thank for any sort of U.S. new source that's sort of never talked about the TPP other than NAFTA, I'm completely unaware of this thing. So again, thank you for introducing me to the TPP so that I have new knowledge that I can use in the future.

Quick question on whether -- someone mentioned before that the TPP allows foreign companies such as Google, Yahoo, companies based in the Silicon Valley to come into countries such as Australia, Vietnam, basically around an area to come in, set companies and to sort of take over domestic companies and to not kill off but diminish the importance of local entrepreneurship and then killing the idea of being generic because they bring a huge impact to the country that sort of says that we are the company coming in and you are going to use our services. My question is -- Australia, there are a lot of the start-ups every year. The question, will they introduce -- sorry. I have another point. I think --

>> CHEEKAY CINCO: Can you finish the point?

>> JON LAWRENCE: I can answer the first as you get to the second one.

Australia has a vibrant economy. We do have a strong start-up culture, nothing like say Silicon Valley or even, you know, what I have seen in the U.K. and some European countries. It certainly exists. There are some significant structural challenges in Australia. Australia, of course, it is a very large place with a very small population and that creates its own sort of set of difficulties. It is a small market, a difficult market to service because of the distances involved particularly. Where there is a number of great success stories

of digital businesses that have started in Australia, they all tend to end up in San Francisco and that's largely -- that's got as much to do with issues around availability of venture capital as it does about issues of skill shortages, copyright issues, so forth. There is a range of issues. You know, we have firmly believed that, you know, agreements like the TPP because they essentially lock in fairly restrictive, outdated copyright regimes will -- essentially they're not -- they're not going to cause, you know, these issues, they're just going to make them worse and stop them from being solved if that makes sense.

Google is a very, very strong presence in Australia. They dominate our search market in a way they don't in many other countries, like 80% of market penetration, and Google platform particularly across education, almost every university, most schools in Australia use Google and the Google doc suite, that's -- it is a great deal for them because of course it is free. There are certainly concerns I have around the extent to which particularly in primary schools, so forth they're looking at the privacy issues there.

As mentioned, I think that the challenges, it is how to ensure -- how to ensure that we have vibrant local digital economies without actually putting up trade barriers, that's not something I'm promoting certainly. The last thing we want to do is being putting up -- building digital borders on the Internet, you would rush me out of the room and get me out of here quickly if I started to suggest that. I'm not. There are challenges there as to how we do that, and I think even Google would be the first to admit that it is not necessarily healthy to have one organization, whoever they are, however well-meaning they do, but having that sort of market domination worldwide, I don't think that's healthy in any context.

>> CHEEKAY CINCO: It is 3:30 and we have a coffee break and then the next session starts at 4:00. I don't want to snowball the delay of sessions. I have to close this.

I would like to thank the Sinar Project and the Research Foundation. They organized this panel. I'm just filling in for the Electronic Frontier Foundation because I'm in the region.

Thank you all for the panelists. Can we give them a round of applause for a great job?

Thank you for the interesting questions and for listening in.
Thank you.

Have a good break.

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