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A NEW INTERNET ERA

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RIGHT TO BE FORGOTTEN (RTBF), PRIVACY, ANONYMITY AND  
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>> WINSTON ROBERTS: Good afternoon, Ladies and Gentlemen. Sorry for the slight confusion. We found that the names on the name plates were wrong in some cases.

Okay. Come in. Come in. Come in, everyone. Come in. I think I should wait for a few minutes. I am glad to see so many people here. We -- you probably -- you probably notice that the listing of the title and the speakers in the programme is not quite what you see here. Don't worry about that. We have made constant improvements as they say.

So the title of this workshop is now the Right to be Forgotten, I put it in quotation marks because it is -- well, it is a phrase which is evolving -- Privacy, Anonymity and Public Access to Information. These are all hot topics in the legal space, in the information community and in the Internet and in constant subjects of discussion among countries in the region.

And this workshop started out as a stream of four workshops which got pushed together. So we have been dealing with an interesting question of how you combine different perspectives on all of these subjects which are all related but which are different. And in the end we concluded that we should not try to aim for a complete satisfying

synthesis of all of these things. Well, if we can find that that would be good. But I don't think we need to try. What we need to do is simply have an interesting discussion about these questions.

And then the people you have here whose names I have listed on the screen Kyung Sin Park from Open Net Korea; Monika Zalnierute from Australia and Yasuyo Inoue from IFLA and Smita Vanniyar from Point of View and Nighat Dad from Digital Rights Foundation and Jamael Jacob from the Foundation for Media Alternatives. If Sarvjeet Singh is in the room, maybe we have lost him. We lose people all the time. Freedom of expression.

Now what I want to do, first of all, is give the microphone to each of these speakers in turn starting with KS and ask each person to say a couple of words about their -- the organisation that he or she works for and then give some perspectives on the right to be forgotten, privacy, anonymity and public access to information in cyberspace. Come in. And then maybe explain some of the legal perspectives on these issues in his country or her country. And after two speakers I'll stop and I'll just ask you if there are any questions from the audience. And then we will go on to the next two speakers. So I don't want to hit you with all of the speakers all in a block. And then come back to questions right at the end. I will do that -- I will do some questions at the end, of course, but I will try to intersperse time for questions between the speakers.

Okay. First of all, KS, would you like to give us your reading of the situation with these hot topics and introduce yourself first?

>> KYUNG SIN PARK: My name is Kyung Sin Park, but you can call me KS. I am a law professor at the University and I lead a non-profit organisation called Open Net Korea that has worked for free and open Internet.

Right before forgotten is a -- it can have different definitions but it can be defined as one's ability, one's legal capacity to suppress or sanitize search results about him which contain -- which contain true and public information about that person.

Now defined as such the problem with the recent wave of right to be forgotten it is based on the concept of data ownership. Not based on any widely accepted notion of privacy. So according to that concept one owns data about himself or herself regardless that data is public or private. So right to be forgotten ends up protecting public facts about that person. That I did not pay someone wages three years ago, no one would consider it private. Yet according to right to be forgotten I own that data. So I can ask Google to suppress people's access to that information. I did not pay taxes a few years ago which led to enforcement on my house. I own that data and I can suppress people from searching for it. That's how right to be forgotten operates. But this is a question. Do you really own data about you? Consider this statement. Actually powerpoint should have -- yeah. There we go. All right. That's me. That's my Twitter

handle, too. So you can follow me. Yes. That's good.

Now consider a statement, consider a statement John the husband beat up Jane the wife. That's also data. Now John regrets and is embarrassed about it and wants to keep it low but Jane is still mad about it and wants to make it a lesson for John and the likes. So wants to publicize it. Who owns that data? Who owns that data about the wife beating and who should have control whether that fact of wife beating is shared with others through Google search or other platforms? There is really no answer to that. So as we can see the concept of data ownership which usually underlies any good right to be forgotten conversation turns out to be a mistake.

Next. So one attempted justification is relevance. The story was like this. We cannot own data about ourselves but we can suppress people sharing of data about us that are, quote, "no longer relevant", unquote. So the slogan of right to be forgotten goes like people don't have to know about everything about others. Or about -- or people don't have to know everything about one another. But relevant to whom? Relevant from whose perspective? John who has bitten Jane ten years ago may find it irrelevant, find his past irrelevant because now John is a completely remade person, but Jane may find that happening ten years ago is still relevant to teach a lesson for him and many others. Also third party, like activist may find it relevant that a former wife beater has turned out to remake himself and turned out to be good to give people hope that harmful habits can be broken. But right to be forgotten justifies clocking of this valuable information or potential relevant information by measuring relevance from only one perspective, the perspective of the data subject. So in this case the perspective of John.

Next. So some people say that the milestone of relevance is public interest. In other words, the postings that are in view with the public interest will not be suppressed from search results because the public is interested in it and therefore it is relevant. But let's think about public interest. It is what the public wants and takes interest. But people are diverse. Some people are interested in, I don't know, right now Pokemon Go while others are interested in killing sprees released by ISIS. Whose interest represents the public interest? In the end the public interest can be defined only to be an averagetarian concept which is decided by a collectivity, not by an individual. That's fine. But it goes against the idea of freedom of speech which is a plural, which says an individual should be allowed to speak their minds as long as they do not harm others even if what they say may seem offensive to others or may seem totally out of whack for others or may sound radical to others.

As long as those things do not pose a clear and present danger of injury to others, like hate speech would do, individuals should be allowed to speak their minds, access whatever they want to access and share what they know despite what a majority of people consider

sound, desirable or, you know, for public interest.

Next. Now a lot of impetus for right to be forgotten comes from a desire not to discriminate people for their past mistakes. The idea is to prevent discrimination by shutting down the information about people. Right? Prevent discrimination by shutting down the information about people.

Let's consider that. So yes, if you don't know that I am a tax evader you cannot discriminate against me for tax evasion when you do your business dealings, when you choose your next business partner. And if you cannot search for postings about my bad services to my clients, you cannot discriminate against me for being a bad lawyer when you are looking for your next lawyer.

If you don't know that I was a child sex offender you cannot discriminate against me when I'm applying for kindergarten jobs. Is this a proportional way of fighting discrimination? Is this a true way of fighting discrimination? Yes. One convenient way of prohibiting discrimination against LGBT would be banning people from talking about other people's sexual orientations, period. Or suppress Google searches about sexual identities. But is that a true way to -- a true way to build tolerance? Isn't the world better if people know people's diverse sexual orientation and yet embrace them? Is that a true way to fight discrimination? Yes, I agree that expunging criminal records is important for rehabilitating people. And the state has legitimate interest in promoting rehabilitation by expunging those records, but that's not a right to be forgotten.

Now editing the official records is different from prohibiting private people from sharing what they know about others. It is one thing to expunge the official criminal records of the Spanish lawyer in Google Spain. But it is completely another to band people from talking about the fact that he has gone through house auction.

And think about it, what's the real source of evil discrimination? Not discrimination for their -- not discrimination for people's past conduct but discrimination for obvious traits, like race, gender, religion, the things that you don't need to do a Google search to find out. Now so right to be forgotten does not help fighting discrimination in that regard. Now if you suppress Google searches, another evil from right to be forgotten, if you suppress Google searches about people's weakness will continue to live under a misperception that all of us are good. People are good. People don't have weaknesses or less weaknesses than there actually are. And that makes -- that makes it more dangerous because now there is a wealth of information about people's weaknesses. If any one weakness is exposed by mistake or by some third party, even if it has been kept confidential by the data subject, people will jump on it because there is really no other -- no other weakness of others that they can talk to. So right to be forgotten ends up fuelling bigotry.

The latter presenters will talk about anonymity and I am trying

to put anonymity in to context. I think anonymity is what we need to fight discrimination. Next. To fight discrimination many people go online, yes, almost done, or -- many people go online as they should to fight discrimination. But by remaining anonymous people can keep themselves safe from Government censorship or keep them from the tax of chores. Now to -- to keep anonymity there has to be a strict regulation on how the Government or third party can access your identity data and the laws about anonymity are very weak. And I am very concerned about that because anonymity is a privacy about identity data. So there is no reason to give any less protection than privacy on the content of communication. Because as long as it has been kept confidential it should be protected.

So I'm out of time. I am going to talk about the Korean experience on promoting anonymity, but to conclude I want to say if what we really want is to fight discrimination, what we really need is privacy about identity, not right to be forgotten. Thank you.

>> WINSTON ROBERTS: Thank you, KS. Yeah, thank you for that. I think if you had other points then maybe when people ask you questions you can bring them forward later. The next speaker is -- sorry, pardon, Monika Zalneriute from Australia who is a lawyer, but I better ask you to introduce yourself very briefly in two or three words and then discuss some of the same issues from a different perspective.

>> MONIKA ZALNIERIUTE: Thank you very much for having me on this panel. So I'm Monika Zalneriute. I'm from the University of Melbourne. I have been working on these issues, especially data protection and privacy for a little while. And I guess without further ado once we find my slides I just would like to start I guess for heated debate if anything individuals really do not own their data. Just to continue what has been started. I think that had we owned our data we perhaps would be very rich each one of us and not the giant Internet platforms. Monetizing that data and avoiding any responsibility for costs associated with taking that responsibility that comes with it. Thank you very much.

So perhaps what I -- what I would like to make a contribution to this panel by looking at the similar issues and similar implications just from a slightly different perspective, and even though I'm a lawyer I think I would like to look at it from the critical political economy perspective. And the basic premise of my contribution is that, in fact, to an increasing extent the management of our fundamental rights including privacy and as a subset the famous right to be forgotten is increasingly and managed and mediated online by private actors, including Internet content and Instagram and various others as well as also various global Internet governance institutions. For example, I can do, in fact, govern and manage and mediate Human Rights online via their standard contractual clauses and Internet architecture such as domain system, algorithms and so on.

And these contracts that feature standard terms and conditions

of services be they with Facebook or Google or be they for your domain name, they often present such an illusion of choice for the users or domain name registrants. They must either agree to those services or they are not able to use the service or, for example, if they upload the content that is against those terms and conditions it will be removed faster than you notice. And so this phenomenon which I would like to talk and discuss further with the panelists and the audience is increasingly described as privatization of Human Rights. And famous scholars such as Laura Denartists has talked about these things. The private actors instead of public policymakers and the public do establish these boundaries on online rights to expression and privacy in accordance with business models that might be useful for them. Where it was in the past may be the Governments were more involved in to policy making in the digital environment. It is mainly these private actors do those things. And I would like to draw attention to several examples maybe that would make this more obvious. So, for example, the global free speech standard is, in fact, set by Facebook, for example, as it relates to the public nudity. That's why you cannot see female breasts on Facebook. Or let me be more precise, nipple. Whereas you can see a male breast and nipple without any restrictions. Maybe you have noticed this very -- I would say very clever and wise breast cancer video campaign on Facebook where it was actually a male breast used to talk about female breast cancer just because it is allowed. So none of us actually made this decision and it was never debated in any Forum that a female, for example, breast is against some sort of public morality. But nonetheless it is a de facto global standard which is there.

In a similar way but perhaps with more complexity involved, the famous right to be forgotten could be interpreted to be, in fact, the global watchdog for individual privacy and the right to be forgotten because the delicate balancing act what my colleague has just talked about who decides, whose interests are to take priority is actually left in the hands of the private actors to make this delicate balance between the competing values of public access to information and individual right to privacy. So these decisions on what is permissible and what is not are made internally behind closed doors, very often by subcontracted companies by these Internet platforms and the guidelines and criteria for such decisions.

For example, indeed how Google decided which links should be removed or which ones should stay. The criteria is not known to us and we cannot put any pressure be that legal or just public pressure. We don't have these tools of accountability and governance. And I think this leaves the private actors those Internet platforms with the most power and we -- in this situation we are actually caught -- sorry, this -- we are caught in this very strangely I do not find my -- okay. Here. And feedback loop where actually certain interests do align. And to break this loop it becomes very difficult

for individuals, for activists, for the Civil Society because policymakers and the Governments are actually quite satisfied with the current situation. And that's the way they delegate a lot of these mediation and moderation of fundamental rights online to these private actors because they can actually demand the data that they have of these private actors very often as well behind closed doors.

So as long as the Governments keep demanding access to the personal data and refrain from legislating any protections it is easier to keep the system flowing and it is a powerful feedback loop. The Government effort justifies the business model. And the current situation where the interests of two powerful actors align states and multi-national corporations affect is very dangerous for fundamental rights and individual rights and democracy. And what I want to now connect perhaps with decisions on right to be forgotten and how they could be understood in this kind of context is that regulatory intervention is very difficult and unlikely and judiciary, especially the EU court of justice I would say it is trying to push back against this regime because political actors do not see it this way or as I just described perhaps their interest do align with such models. And I would say that recent validation of data retention directive or Scram's decision or Google and Spain's decision shows that judiciary is finally adopting a different approach which is in stark contrast with the lack of leadership shown by political actors and states.

And we can discuss all of this with fellow panelists and the audience. I would like to say in this context without going in to small legal details I would just like to say that Google and Spain decision, for example, the right to be forgotten decision could be understood in this context as a pushback against the continuous expansion of limitless monetization without trying to -- without taking any responsibility or trying to avoid most of it. So where yes, I would say the court of justice tried to impose this responsibility because that's the Google profiting of this data, it turned out to be very paradoxical consequences of this decision. It gave Google the right of the de facto watchdog of rights. And I leave my contribution here and I would like to discuss this with fellow colleagues and the audience later on. Thank you very much.

(Applause.)

>> WINSTON ROBERTS: Okay. Can I have the next powerpoint by Yasuyo Inoue? Thank you very much, Monika. At this point would it be useful I think -- I wonder to note any questions that you might want to discuss later? Because that's -- those are two very complex presentations of very fast evolving legal situations and debates and listen to them, all sorts of questions may have occurred to you that you might not remember later. So if anyone has any questions now that we should note down for discussion at the end, could you tell us? Yes.

>> Okay. One thing to add about private -- making companies using the data, something is just very convenient. Sometimes people do know how data is being used. Sometimes it is more complicated than that. Sometimes it is easy to give. That's my opinion. Thanks.

>> WINSTON ROBERTS: Maybe you can answer that quickly.

>> MONIKA ZALNIERIUTE: I don't think it was a question. It was a very good remark. And indeed one of the points that I wanted to make implicitly was the convenience of the model for the Government. It is difficult to demand any change and even if the change is proposed by the judiciary I would say the fate of the invalidated data retention or the Google Spain is very uncertain if anything is going to change because the convenience is a very high factor I think.

>> WINSTON ROBERTS: Thank you. Any other quick comments and questions? I saw one other hand up before. No? Okay. In that case can we move on to the third presentation by Yasuyo Inoue? And Yasuyo, could you -- could you introduce yourself briefly and then discuss the issues?

>> YASUYO INOUE: My name is Yasuyo Inoue. I'm from Japan. I am a professor from University. Is there any librarians? No librarians. We select books, materials, informations, collect the books, provide books, describe or preserve books. Why? Because we have to provide the sort -- the people's memory to our great, great grandsons and daughters.

That's the history. We are making history. So like now I'm a member of the IFLA, the International Federation of Library Association and institutions, that kind of international organisation. All over the world librarians got together. Among that IFLA, the Committee on freedom to access to information and freedom of expression. So we librarians also think about that freedom of access to information and freedom of expressions. Because libraries or librarians we have a mission. As I said we have to provide informations to the public. And the -- we have to do free access to information, freedom of expression and preserve the adequate or everyone wanted to have enough reading environment.

So why? Because people want to know but as the case mentioned it is very risky borderline because people wanted to know everything. But we have to think about what is most important things. So we make the statement on libraries and architectural freedom. So we just don't do -- follow what policymakers said. So we want to follow our mission, what librarians should do. And also we have the statement on the right to be forgotten because as I said we preserve not all but we preserve books, materials, informations to next generation, to next next generations for. So that historical records, sometimes someone don't want to be read by the others. But someone wanted to read or get information, especially historians need such kind of record. But the -- we have to. It is very difficult. We have to divide what is a private person's privacy and public person's

information.

As Monika mentioned that policymakers are very happy to hide what they are doing behind their closed doors. But that is what people wanted to know actually. So we have to think about that maybe private persons wanted to do the RTBF mentioning. But policymakers do they have the right to do so or not? I think in society the people have the right to know. So librarians or libraries to support people's right to know.

And also we have the statement on privacy in the library environment. It is not only RTBF but also sometimes the authorities. Maybe with political power come over to the library to ask who is reading this kind of book, something like that. In Japan we have the very bad memory during World War II. Some special police came over to public library and checked who wanted these kind of books and after that they arrested these people. So that's very bad memory. So not only we Japanese ones but I think all over the world protect the privacy. Who is reading what kind of books. So that is very important privacy information. And also as I said that historical memory if we preserve the historical record, but not like just kind of scandals information, but also historians wanted to know the information when do research. So we protect that kind of accessible historians accessible activities. But most important thing that we say that the statement -- oops. Statement on right to be forgotten we found as Monika said that the Google and Spanish people's, the person in Spain Google are older, to not to be searched but the original record at the newspaper article database they are not derated. So librarians try to do our own technique. If they really wanted to know that policymakers information, we try to find for you something like that. So the IFLA try to ask librarians all over the world try to help the people who really wanted to get information to make the society or community transparent. So try to help those people. Not like support the peeping Toms or something like that. That's the meaning of the statement.

But most important thing that it is very risky right now who decide why, how, who controls the information. In my country in Japan there are more than 600 claims using that RTBF reason, only three. The court, local court ordered not to be searched this information. But there is no activities to make role, I don't know the next year, but right now the court tried to judge whether that is a public one or private one and so-and-so. The other countries sometimes everything should be down, something like that. So that is very risky situation. So at the time of the RTBF discussion we think about it who decide, why, how, that is most important discussion point. That's all. Thank you.

(Applause.)

>> WINSTON ROBERTS: Thank you, Yasuyo. Can you give the -- give me the second slide on my presentation now? The second page. Okay.

That's fine. Before I talk about that, that's just really a shopping list of issues which I thought might be useful at this point. I would like to make some comments to support what Yasuyo has said, speaking for the -- speaking for the library and information sector. Because we are not talking here about the sort of libraries where you take your kids on Saturday afternoon for someone to read them stories. We are not talking about libraries and schools providing educational resources, although those are very important as well. We are talking about state run or high level academic research institutions which have a function to support policy making for information strategies in countries. And Yasuyo is a teacher of information science and she knows that, too. I work in the national library of New Zealand. I am here wearing an NGO hat and I am a public servant in New Zealand. And our national policy has an active mandate which describes obligations which include collecting and protecting original documents and making the content of those documents available to the citizens of the country but in particular we have to keep those documents in perpetuity. That's quite a long time.

If we are going to keep these documents in perpetuity in practice for centuries, then we have to preserve the originals, but we also have to preserve them in a -- in conditions whereby the content can be made available to the citizens and the descendants and the descendants of the citizens of the country. These are our legal obligation. We digitize information in our collections as much as possible. And digitization as you know means that you can retrieve information much faster. You can drill down much further. You can go back further in time. Pull out information which you could never have done before in the analog environment. So you can, in fact, find information from the past quickly. Whereas, in fact, in the old days the practical obstacles to do that would have been just too great. That they would have been a deterrent to doing that information.

One specific example is we have digitized all national newspapers from the 19th Century. We have digitized all newspapers in both our official languages, English and Malawi through the 19th Century up to the first three decades of the 20th century until copyright stopped us from going any further. Now this database of digitized newspapers called Papers Past is a resource for historians which has brought us great praise from the community, search on key words but actually drilling down in to the actual words searching on words, places over the past 150 years.

Now this has a great advantage, for example, the Malawi people of New Zealand, the Indigenous People wanted the Government to compensate them for land that was confiscated in the 19th Century and they made a case for doing this because they could find in our digitized newspapers from the middle of the 19th Century actual court records and descriptions and news items of Malawis, of Indigenous People whose land was confiscated by white settlers and they were

documented and put in newspapers. And they could search on these records and pull out the information and take it to the Government and say this is evidence of compensation and they won their cases. Now that is something that was never foreseen in the original law that we are operating, that we according to which we operate.

Another thing is -- another thing I should say speaking for the other side of the street from where I work, that is the national archives, the mandate of our national archives is to keep all records of Government and they also are required by Government now to digitize all their records. So that researchers can pull out information from state records, not only people's publications, private publications, manuscripts and things like that, but you can now pull out from digitized state archives, things which were never expected to be revealed. So what I am trying to say none of this stuff can be forgotten because our law tells us we must make it available. So we are in conflict with ourselves. Now just -- just to say that this is -- these are some of the questions which we thought it would be useful to name check. Access to information has been mentioned in this conference already. It was, in fact, the third action line of the World Summit on the information society's principles in the Geneva declaration. That was a statement on the value of access to information for education and science and culture. And the -- since the World Summit ended in 2005 the post World Summit process has led us through to the Sustainable Development Goals now. We went right passed them because they could not really be fully achieved. And the international community decided to table those to accept what has been achieved and pack the rest and move forward to Sustainable Development Goals for 2030.

And goal No. 4 brings back, emphasizes again the importance of support for education and skills. It emphasizes the need for equitable access to information and skills and education for and particularly for girls and women. Because the -- the emphasis in the Sustainable Development Goals is on equalizing access, overcoming digital divides and literacy, greater literacy and greater numeracy will help people achieve better employment, give them better life chances.

And looking at the third bullet point, sustainable development requires equal access to economic resources, of course. Access to information and access to economic resources often come from interacting with this information and physical spaces. It is not only the Internet at home in your lounge, it is also going to a state-funded, community-funded, local-funded institution such as a school or a library where people can -- people who don't actually have affordable access to the Internet or the equipment, where they can actually find the physical facilities to do their -- to do their work and their learning.

And okay. I'll stop there. The next person who needs to talk

with us is Jamael.

>> JAMAEL JACOB: Could I get the presentation? Okay. Good afternoon again. My name is Jamael Jacob and I represent the Foundation for Media Alternatives, working towards the promotion of communication rights which translates to Internet rights these days. I see my name is still written as -- this is -- anyway, I'm here to talk about the right to anonymity. This particular right has been a constant issue or topic these days in many Forums or fora such as this one. Particularly I suppose because of the heightened premium we give today to the Human Rights to privacy. And then my agenda and that of my two other colleagues is to give you or to present a micro causism or a chunk of this larger ongoing debate regarding the -- regarding right to anonymity. Highlighting in particular its significance in our respective context or jurisdictions which is the Philippines in my case.

Now as the first speaker I suppose the burden falls upon me to somewhat give a very brief introduction as to what this particular right is all about. So right and anonymity. Earlier it was a somewhat abbreviated definition which was given. It pertains to privacy over or regarding one's identity. In some other materials or references the right to anonymity it has been referred to right of an individual to communicate anonymously which means with no names or through the use of pseudo names or assumed names. So that's the right to anonymity.

What has been the debate essentially regarding this particular topic has swirled or has revolved around its significance, vis-a-vi the tradeoffs we as individuals or us as various societies coming from different backgrounds encounter when we deal with this particular right on the one hand or on the one hand the right to anonymity has been forwarded as necessary or vital component in upholding or promoting other equally fundamental Human Rights. For many people with anonymity it fosters expression on their part without fear of reprisal as written there. It enables whistleblowers and allows people to talk about many sensitive issues that they would otherwise be uncomfortable discussing with other people.

And as regards privacy many of us essentially want to try to create -- still create this distance no matter how artificial that may be between our online identities and then offline identities. And the reason behind this could also belong to a range of possible personal reasons, be they political to avoid political exhibit, contribution and thefts. So essentially who benefits from right to anonymity. Many people or classes of people, whistleblowers, Human Rights workers, marginalized groups, victims of domestic violence as well as the organizations who support these people or group of people.

Now as far as legal bases is concerned when we are talking about the right to anonymity and its related concept of encryption in the

U.S. context, for instance, Supreme Court has constantly or consistently acknowledged that the right to anonymity is somewhat enshrined or found in their First Amendment. The list I gave here is in the context of the Philippines. For the first four parts I will refer to sections of our Constitution. The first of which pertains to freedom of speech and freedom of expression. The next one pertains to privacy of communication. The third one also has reference to our state having this responsibility to provide a policy environment where -- which respects freedom of speech. And then for the last two parts just examples of statutes or laws wherein our Government acknowledges their significance or importance of anonymity insofar as pursuing law enforcement objectives by the Government.

So, for example, Ombudsman in going after corrupt Government officials they actually take in to account or accept anonymous complaints as well as our national privacy commission, privacy commission which also entertains or accepts similar complaints.

Now moving towards the Philippines context and why I think this is an emerging challenge or an emerging problem in the Philippines. As of now for those who I guess are following the political development in our country we have a new administration led by a new President who should I say has been quite controversial in the -- in his way to the presidency. TIME Magazine has referred to him as the Trump of the east but the guardian did them better by saying he is actually worse than Donald Trump and he has been able to antagonize a lot of people, institutions including the United Nations, the Pope, Human Rights organizations, women's advocates. And in his recent state of the state address he said that although Human Rights are important people should not actually make use of human rights as an excuse to destroy the Philippines. So that's one curious fact that we have right now in the Philippines. We have the fact that currently we have at least two laws that have a significant impact on the right to anonymity and one is our cybercrime protection which was perhaps I think on record one of the most challenged statutes in Philippine history. I think there were 15 petitions filed with your Supreme Court. Its more controversial provisions are cyber provisions on cyber libel and realtime survey leads. We also have an equally controversial law which is our anti-child pornography act. And one of the more questionable parts of this particular law is that it requires actually ISPs or Telcos to install monitoring software or platforms, supposedly to be able to identify who are actually engaged in or patronizing child pornography. And then as a consequence of the Supreme Court upholding or the provision on cyber libel, there have been a slue of libel cases filed, all sorts of libel cases filed, proceeding or emanating from what we believe are erroneous interpretations in the Supreme Court.

We have professors finding libel cases against fellow professors and journalists finding libel cases against journalists and one

post -- one Instagram user he wanted authorities to identify the -- to be able to identify who that particular Instagram user is in order to file that particular libel case.

And still in relation to our current or new President, during the campaign period his supporters have been one of the more -- have been the more aggressive I suppose types such that any attempt by an individual to express an unfavorable or contrary opinion as regards their candidate was met by very serious and very offensive threats that survive a woman or a girl who is actually bombarded with threats like she should be raped or something to that effect.

And then finally -- well, not yet finally. Second-to-the last slide we have also two pending bills which not surprisingly are being supported by our new President which also potentially will have a large impact on anonymity which is the proposal to have a mandatory SIM card registration which is the trend that's going on all over the world these days. And we have a very sketchy legal regime insofar as our survey landscape is concerned. We have a lot of Government agencies engaged in surveys, for instance, with us, with the public having very little knowledge actually as to where they get their legal authority to do that. So all these things, all these factors put together we believe create this very volatile, very dangerous situation where in the right to anonymity with all its importance and significance for the many people that I just mentioned earlier is actually threatened or already being threatened and will potentially be threatened even more with the passage of these proposals. So I will end there and I hope to entertain or to answer any of your questions later on. Thank you.

(Applause.)

>> WINSTON ROBERTS: Okay. Could you just introduce yourself first?

>> NIGHAT DAD: Sure. My name is Nighat Dad. I'm from Pakistan and Digital Rights Foundation. We mostly do digital rights work in Pakistan, Internet freedom, privacy and right to privacy and freedom of expression and do digital security trainings. When it comes to right to anonymity I feel that a country like Pakistan there is not -- it is not being debated yet. We feel that the right to privacy has come in to the limelight when the Government has proposed the cybercrime bill two years ago and there are a number of provisions which actually violates the right to privacy and the right to anonymity. And now the legislation and the Senators feel that before such Draconian legislation there should be a protection mechanism in place. If the people feel their right to privacy is being violated they can get a legal recourse or legal remedy. So the -- very little debate has started around the right to privacy but there is -- a very recent incident happened in Pakistan which actually established that by right to anonymity is very well connected to the security of a person. A woman named Condelle Baloch. Very first social media celebrity in

Pakistan who used social media to share her bold opinion and expression. And I guess she was the first celebrity to actually openly claim her sexuality and bodily rights on social media. She was -- a couple of weeks back she was killed by her brother in the name of honor. And I guess one of the reasons it wasn't just the murder by the brother but also a number of reasons which contributed to her murder was that she was using successfully social media because she was anonymous and no one knew about her real name, about her identity, about her address, anything. But somehow when she -- and when people were taking her as an entertainment and poking fun on her posts and she was an entertainment figure on social media. But when she seriously challenged the stereotypes in Pakistan, the clergy in Pakistan she started getting threats. And that's how people were really interested in sort of identifying her real identity and not only -- not only the Internet users who used to go to her page and poked fun on her but the mainstream media played a real role in revealing her identity not only on the TV channels but on social media. There is a very famous journalist in Pakistan who tweeted her passport on Twitter and then this tweet was retweeted thousands of times.

So I guess it is very -- it is very important that not only on -- in the online spaces but how the other stakeholders or the actors, you know, violate the privacy of the individuals and especially in countries like Pakistan where these rights are not established. Although the constitution, the constitutional Article 14 says something about privacy of homes, but it is -- it isn't interpreted in a very articulated way by the judiciary where it can apply in the online spaces. There is a blurry line between the -- blurry line between the right to anonymity and the security and this debate mostly in countries like Pakistan which is a security state, it mostly overcomes by the notion of national security, and then the civil liberties in the online spaces.

So I am actually interested to hear from other, you know, panelists or the audience how we can strike this balance and how we can also, you know, when the Government comes with the very strong argument of national security in a country where the security is a huge, you know, has taken a huge place, how to -- how to argue that argument by the Government. So yeah, this is from Pakistan.

(Applause.)

>> WINSTON ROBERTS: And now we have Smita.

>> SMITA VANNIYAR: Hello. I'm Smita. I work with an organisation called Point of View in India. We work to remove barriers to free expression. So I will be speaking about the need for right to anonymity and this in particular and I will particularly be placing it with regards to the core community in India focusing on core women. One minute.

Yeah. That one. That one. Oh, yeah. My name is there. Yes. That one.

Yeah. This was a quote from the Special Rapporteur on freedom of expression. Expression and anonymity leading vehicles for online security provide individuals with the means to protect their privacy, to browse, and develop and share information and without interfering and enabling them to exercise their right to freedom and opinion and expression. In countries where there is still very much prevalent discrimination and criminalization of sexual minorities this is very, very important. This was in a study. The cyberspace has given the core women a chance to existing gender and any identity is not static. In India, in the early 1990s there was the first lesbian organisation which was formed. They identified as lesbian explicitly. What they did they advertised in the only core magazine which was available in India at that time and said that any woman who identified as a lesbian or likes other women please write to us here and we will put you in touch with other women in different parts of the country. And a lot of letters came in. Once they identified the identity of a person, they wanted to make sure that it was a woman indeed or identified as a woman. They put them in touch with women across the country. Without knowing each other's identities in anonymity people got in touch with each other and formed a community. The Internet can enable it, but you need to have the right to anonymity to do this. If you are forced to give an e-mail or a phone number that's not going to happen anywhere.

Creating an online profile it is putting your real self as an act of defiance. Now this includes creating profiles on dating apps or joining Facebook groups or tweeting what you want to really see. On -- so according to research which I actually done for my thesis, a lot of core people have multiple profiles on Facebook. This is not just -- this is not restricted to just those who identify as trans but also who identify as gay or lesbian or bisexual. Their public profile exists which they are friends with parents or immediate acquaintances and they have a private profile where they add people from the core community as friends. It was okay until a few years ago. A few years ago when the real policy came up strongly a bunch of profiles were shut down. Facebook would ask them which profile they would prefer to keep on. And so people would use the same name. And the problem with different names is that if you don't have that name on an I.D. card, on a Government authorized I.D. card that profile will be taken down and these were the lucky ones. The unlucky ones both profiles were deleted often.

The introduction of the real name policies is actually a major problem for the core community. If you have a -- okay, say that you are on Facebook and join a secret group which is for the LGBT community in your city or in your country. The problem with this is once you are in the secret group your identity is still very open. So if you don't want -- if you are very much closeted or you don't want your identity to be known this is a major problem. Anyone can go in to

the closed group or secret group and blackmail you. And this has happened in the past. Recently in -- there were these two women who were together. Their family, friends saw their photo up on one of those core groups and outed them to their parents. They were taken out of college and separately and if the real name policy, if it allowed you to be anonymous, allowed you to be who you want to be online this would not be a problem.

The problem with the real name policy goes further. It can compromise directly on the user's ability to express themselves, especially in countries where Human Rights are being frequently violated or you are strongly censored for what you want to say.

There was a case in India a year or two back when a man was burned alive because he posted a Facebook message against a Minister. If he had an option to do this anonymously this wouldn't have happened.

Next I would like to speak about sexual expression. Anonymity enables women's free sexual expression. Within freedom of expression there is a huge hierarchy. You are allowed to speak up about your need for education and water and food and these will all be supported by the majority of the people. Most activists would say you should be allowed to speak about this but sexual expression does not come under this. If you decide to click new, then share it with your partner and it gets leaked for whatever reason. The questions first -- the questions which will be asked to you first will be why did you click it. Why did you send it out and such. And this is not from just people who are patriarchal and it is also from activists and authorities who are supposed to be liberal. This hierarchy is there. It will strongly enable women's sexual expression. There are a few niche places online which you can -- actually a woman can actually use her sexual agency. If you have anonymity these will be strengthened further.

The EROTICS report, they might have been the first ones to socially network because it -- mainly because of the lack of political space and this is not just the case in India. It was the case in Egypt, in UAE, India and I think it is still growing now. If you do not give the right to be yourself, if you are not allowed the right to be anonymous or the right to be yourself online this will not be possible. The community formed through the Internet is a sense of reality but behind open doors. Also related to right to information. Infringement on this is a major threat to some of the fundamental rights. Thank you.

(Applause.)

>> WINSTON ROBERTS: Thank you, Smita. Thank you very much. Well, everyone, I think you understand now why it is difficult to organise a merged workshop.

(Laughter).

>> WINSTON ROBERTS: Summarizing all of that is impossible. I am not going to try. But what I am going to do is take a few minutes

of the coffee break. We have five minutes left of our session. I am going to let us run on to the coffee break for five or ten minutes and just to give you space to ask questions and ask questions directly of the speakers. And hopefully clarify anything that needs clarifying and maybe get some answers. And then for the rest of it I think maybe you can exchange business cards and URLs and e-mails and if you want to follow up on any of those questions. Because that was a very, very vast array of subjects which -- to which there are no answers or no easy answers.

Okay. Any questions then, please? Sir.

>> Microphone here.

>> Hi. I'm Jessie Singh from ISOC Hong Kong. I am an independent consultant. But I think personally I quite agree with Monika's comment and I think -- I find it -- I find easier Googling kind of opened up more trouble than a solution. Of course, I mean they have reason which I don't completely disagree but I think it is -- I find it one more in a way that these platforms have been given the authority or deciding on behalf of its real users what contents to be dispatched or prioritized. For example, I think the -- I'm not sure how many of you follows the U.S. news closely but about the Dallas shootings, the black man in the car, the video was posted by his fiance or girlfriend on Facebook. And that kind of triggered a series of riots and other instances which some say the reason of the video got spread out so widely and fast was because the priority that Facebook has given to video files instead of text and images. So when a powerful platform like that determines what subcontents to be displayed or can be accessed when searched, you know, this has -- it gives a whole lot of -- a whole different effect to the outcome. And another comment I would like to make to Professor Park's presentation, it was interesting that I like his suggestion about the ownership of the information and coming to that it reminded me of an interesting case which is a widow.

>> WINSTON ROBERTS: Keep it short.

>> Yes, a widow in the U.S. named Dena McClay, made a claim of her husband's suicide notes posted on the Internet based on copyrights based on the IP rights. Because she as the widow she owns all his assets, including the intellectual properties of her husband's and the court of Virginia gives her -- basically put on the order that she has the right to enforce and successfully she was able to remove from -- go in and remove that note circulating on the Internet from many sources which I think it is an interesting case relating to Professor Park's presentation.

>> WINSTON ROBERTS: Thank you. Next question, sir.

>> Thank you. I'm Andrew from Vanuatu from the regulator's office. I wanted to ask a question relating to anonymity. How does it balance with abuse or the privilege of being anonymous? I ask that question because we have an issue back home where we had a large

Facebook group of about 30,000 people in the group. And a lot of -- both were very abusive and they were abusive in to the Government. And the Government is not really happy with it. And I don't know how far away the line and the balance.

>> WINSTON ROBERTS: Could it be a case of freedom of expression and democracy?

>> If democracy is framing somebody how do you address that?

>> WINSTON ROBERTS: Well, I think one of the panelists should answer that first. We have some lawyers on the panel. Would one of you like to answer that from the gentleman?

>> I want to answer that because in our country we filed a constitutional challenge against a real name registration law that required that everyone making a posting on a major Website to register his resident registration number and real name and we got it struck down. The constitutional courts say anonymous speech helps democracy because it allows people to overcome the hierarchy coming from gender, wealth, social status, and talk to one another as equals. So it allows to, quote the court, "It allows people to build the substantive democracy, not just formal democracy but substantive democracy by having equal dialogue." And the court also made a special mention that the Internet is just about the only space this anonymous speech is possible. And to add to that even without real name law, even without SIM card registration, even without these preemptive laws, there can be laws through which the law enforcement can track down individuals abusing anonymity by trolling and other things. The law enforcement can get a warrant from the court, showing those bad postings to the court. And say that -- and prove that there is a very high likelihood of crime being committed and the court will issue a warrant that will authorize unmasking of those individuals.

>> SMITA VANNIYAR: So if you use your right to infringe on someone else's right or to dignified life or even libel then you lose your right. Then you have to face repercussions of that. It is not like right to anonymity exists in a vacuum.

>> WINSTON ROBERTS: Then we have this gentleman here.

>> Hi. This is (inaudible) from Pakistan. My question is quite similar. Anonymity is my right. I agree. What if I commit an online crime? What if I anonymously kidnap, anonymously trap a guy, young guy and kidnap him or her and ask for ransom? And what if I am a terrorist and I am doing online activities and recruitment? My Government can't trace me because I'm anonymous. What do you think? There should be some limits. They should be able to do it. I think.

>> MONIKA ZALNIERIUTE: Let me step in as a camarade to my colleagues but can you kidnap anonymously? This is a strange question because I think most kidnappers try to do it anonymously at least initially or it doesn't -- we don't see how this digital space should be different from others and already was said like there is -- it is not an unlimited right, yeah. So if you commit a crime, you

definitely waive your rights. So it is true. What happens, what was the most interesting aspect of your comment was indeed in the context of terrorism and so on but there is always means to surveil people. The question is how, you know, what are the limits and where should we draw the line. So I'm sure that even if I comment anonymously on some daily newspapers' commentary section I'm not totally anonymous, yeah. So there are ways to find me. Maybe not necessarily for everyone. So perhaps these are the boundaries that we are talking on. My identity shouldn't be open to everyone. And I'm sure had there been a need it would be found. Thank you.

>> SMITA VANNIYAR: And when you say the Government should have the right to surveil, then who watches the Government? Who looks at the limit? The phrase that says who watches the -- who guards the guards and who watches the watchers. It is a stare.

>> Yeah. I would also respond to that that the Governments are surveilling people anyway. So it is not just one Government. It is like --

(Applause.)

>> If NSA and GCHQ can surveil people across their borders, then I think we need to have this debate of rights and ask for right to anonymity. And I already said this discussion hasn't been taking place in Pakistan.

>> WINSTON ROBERTS: Maybe the question is respecting all interventions on Human Rights and putting them in to domestic legislation, because many of them are not ratified. If they are ratified they are not translated in to domestic legislation with regulations to specify how they should be implemented.

>> Hi. I am from Pakistan, from an organisation called the Women's Digileak. I am really stuck here. I do want my right to be anonymous and to see what I like responsibly but, of course, I know that on the Internet maybe more so in my part of the world if you are a woman and you are working for women and you are doing something out of the ordinary, which I guess can be a woman working for women would be in Pakistan. But there are a lot of people take -- take advantage, their right to anonymity to troll you and not criminally troll you. One person completely bothering you all the time. A group of people who are on and coming and posting stuff on your Facebook and on your organisation's Facebook page, sending you DMs and messages until it will be seen as a criminal by a law agency where it is really going to hurt you physically, nothing will be done. What about the psychological trauma that it causes you? Someone working in that sphere where I am isolated. What do I do then?

>> SMITA VANNIYAR: I would like to answer this. Anonymity will help you here and the Internet is huge. The point of the Internet is that you can get allies and they don't have to be in Pakistan. If the law enforcement agency is not taking you seriously, reach out to people on Twitter and tell them this is happening to you. If they

have people who control them we can control them back.

>> WINSTON ROBERTS: Thank you. Don't -- I don't suggest two wrongs should ever make a right.

(Laughter)

>> WINSTON ROBERTS: Any other questions, please? Comments? Yes, sir, in the back. Have you got a microphone? Also we have to remember the case of the children, underage children who get trolled on the Internet.

>> I am from Vietnam and I want to have a comment on the topic. That if someone can kill you and they can cover their face and come and kill you, so should we have a law that stops people covering their face when they go out of the house? No, right? So same here. Someone can anonymously come in and Spam on you, you can have a war that stop anyone anonymously comment on the war, that is a technical solution but I -- I want to come back that anonymously is a right. And it only can be stopped and get out that people when they are doing something criminal and harmful to the process. But we should not prevent people to help the rights because of a potential harm and that maybe some of them, just a little of them can use this -- that's -- to do harm for people. Yeah.

>> WINSTON ROBERTS: Okay. Thank you. I think that introduces many other subjects that we don't have time for here and which might lead to a heated debate, especially in countries with extensive migration. Any other quick questions? We have time for one more question before the coffee break. Who wants the last question?

>> I do.

>> WINSTON ROBERTS: Sir.

>> Thanks. I'm Artic from Thailand. Back to the rights to be forgotten and issues on identity, privacy, I don't have an answer or questions but just some comments to share that like, one of the things that I want people to explore is about the temporality, the time as well as Park mentioned about when we are talking relevance, it is also -- in general the context is also about time as well. When we are talking say, for example, things to remember, right, in the case of the Presidential record, the U.S. law, it is like -- it is like by law that you have to record all the things that the President say or whatever. But that also limits the access of those things that got remembered. It is not immediately at that moment. The President should leave the office first before those records can be accessed. I'm not sure it is a right way to frame it or not. Rights to be forgotten, should the time frame also be in consideration as well. Say, for example, when I'm online I'm still alive. Maybe I don't know, like nobody should like get in to my records. But if I am dying today, maybe tomorrow people can access.

>> WINSTON ROBERTS: That's too big of a question to deal with now. Sorry. I think we have to stop now because we will be thrown out. And anyway it is time for your coffee break. But I know it would

be good to continue for another two hours. Thank you very much for your close attention to all these questions and apologies for the confusion at the beginning, but we did our best to put together an impossible squaring of the circle type workshop. So once again thank you for coming.

(Applause.)

(Session concluded at 1542 p.m.)

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