Report on Recent DNT Meetings in DC & Brussels

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Some Disclaimers

• This is one person’s attempt to summarize what I have heard so far
• Goal to accurately represent various perspectives
  – E.g., views of NGOs, industry groups, government agencies
  – Not my personal view when I say “their argument for X is Y”
• Today discuss pieces that (initially) may not seem relevant to your organization’s concerns
  – I’ve been asked to connect DNT with other relevant discussions/debates
  – Quite possibly these issues relevant to how others will see the process and assess what happens here
  – DNT meetings don’t take place in a vacuum, with only the TPWG participants interested in the outcome
Overview

- What happens during the DNT process matters
  - Lots of people watching
  - Lots of interest in the Multi-Stakeholder Process (MSP), for complex issues that are not entirely technical
  - Support from leaders on both sides of the Atlantic to create a good standard
- Success will reinforce a bottom-up, multi-stakeholder approach to other issues
- Failure will embolden those who wish a governmental, top-down regulatory regime (e.g., ITU)
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Frames for DNT Process

1. A technical standard that conveys a user preference and site compliance.
3. A W3C standard, among others.
4. An example of multi-stakeholder process relevant to US & EU privacy debates.
5. An example of multi-stakeholder process relevant to global Internet governance debates.
6. Message: DNT success or not affects multiple debates
Status of EU Data Protection Regulation

- Directive 95/46EC
- Jan. 2012 draft Regulation from Commission
  - Regulation, not Directive
  - Other committee amendments soon
- Role of the Council (member states)
- Role of the EU Data Protection Supervisor
- Goal to finish no later than June 2014, new EU elections

Multi-stakeholder & the EU

- Basic EU approach – need assurances in law for data protection
  - Privacy a “fundamental human right” in EU
  - Even more so after Lisbon Treaty (2007)
  - Longstanding goal of harmonizing rules across the common market
- So, often skeptical of “self-regulation” or “multi-stakeholder”
  - Enough role for citizens & government?
  - Enough to have partial rather than comprehensive protections?
- Potential conflict for global Internet if a standard is not built into EU law
  - Enforcement powers today if have assets or employees in EU
  - Draft Reg applies if you sell to any EU consumers
The EU and DNT:0

• High-level discussion here
  – Berlin in March for Global Considerations Task Force
  – Rigo Wenning and many others involved, and these are my personal observations
• A choice mechanism available to 500 million in EU
  – DNT:0 could be or assist in showing of “consent” under E-Privacy Directive (the “Cookie Directive”)
  – Potential aid in EU-wide standardization
• Keeps the “world” in World Wide Web Consortium
• Mechanism that assists compliance with local law, while providing global technical standard
• If useful in EU, affects overall EU reaction to DNT process

Meetings in Brussels

• Computers, Freedom & Data Protection 2013
  – Many international viewpoints on DNT
• DG-Connect
  – Oversees E-Privacy Directive – Neelie Kroes
  – Previous speeches urging for DNT
  – What if DNT does/does not make progress?
• DG-Justice
  – Proposed draft Reg – Viviane Reding
  – Strong fundamental rights outlook
  – Did detailed briefing on DNT, including DNT:0
Brussels – Albrecht

• Jan Albrecht talk (MEP, Green Party, Libé Committee)
  – Overall package more toward fundamental rights than DG-Justice
  – Amendment 105: allows for use of standards such as DNT
    • Creates incentives to use only pseudonymous data as found in § 15 of German Tele-Media Law
    • A standard “needs to be approved by the Commission”
  – Amendment 131: concerns limits on “profiling”
    • Recognizes DNT as a possible “mechanism to object” to profiling
• Note: Albrecht report an interim product
  – Illustrates attention to DNT in EU, in various settings

EU Data Protection Supervisor

• Role of EUDPS
  – Prestige, experience of the leaders
  – Outlook: fundamental rights, “in law”, also practical experience
• Detailed briefing on DNT:1, DNT:0
  – Thoughtful reception on DNT:0
    • Open to technical tools that enable compliance in harmonized way throughout EU
    • DNT now could become precedent for other technical stds.
  – Discussion of whether users sufficiently understand what they are agreeing to – sufficient “consent”
  – Intersection of DNT and “in law”
Meetings in DC, etc.

- Roughly 50 separate meetings for new chair so far with WG participants
- Week before Brussels:
  - White House
  - Commerce Department
  - State Department
- FTC
  - Commissioner Brill
  - Others
- Address thematically
  - Multi-stakeholder process (MSP)

MSP & US Privacy

- Obama administration has supported a strong role for MSPs for domestic US privacy issues
  - Online privacy bill of rights
  - Current Commerce Dept. MSP efforts
  - Feb. 2012 event at White House featuring DNT
  - FTC support for an effective DNT
- With a good W3C standard, DNT:1 would be a highly visible success for MSPs
- If no consensus on DNT:1, then that would be highly visible as well
MSPs & EU Privacy/DP

• Extensive international discussions about draft EU Reg
  – USG has expressed concerns
  – Recent “non-paper”
• US emphasis on achieving “interoperability”
• DNT could be example for MSPs that would facilitate global interoperability
• If no DNT, & no privacy legislation, then what does US emphasize in terms of current progress toward interoperability?
  – Could increase pressure from EU side to block data flows to US

DNT & US-EU Free Trade Agreement

• Remember Colombia, Korea FTA?
• Big push now to negotiate for US-EU
  – Remove barriers to free trade in services
  – Regulatory interoperability & harmonization a principal theme
• Interest in techniques that can facilitate trade without the need for passing identical laws
  – DNT, MSPs as a promising model
  – Thus, could help broader free trade agreement
DNT & Global Internet Governance

• A prime example of how our specialized DNT work (and W3C generally) fits with broader debates
• Late 2012, WCIT and Dubai
  – Role of International Telecommunications Union (UN) for Internet governance
  – New treaty led by China, Russia, Iraq, etc.
  – US strong, bipartisan objections
  – Over 50 countries, including EU, with US on this
• ITU issue will clearly recur
  – Geneva this May

ITU & Internet Governance

• US position:
  – Internet governance should emphasize bottom-up, multi-stakeholder processes
  – Not top-down, government processes managed by nation states
  – 2012 OECD Guidelines for Internet Governance
  – ICANN, W3C, IETF as examples
• EU position: concur with US at Dubai
• What if visible inability to create a bottom-up answer on DNT?
  – What message for global standards?
  – For patterns of Internet governance?
Conclusions

• Reminding ourselves of the goals of this project
• DNT standard worth doing for its own sake
  – Also, can be a positive example for multiple other parts of Internet governance
• Hope this context will be helpful as we come together in Boston