



**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Introduction

KARIBU Welcome to the 2012 Kenya IGF.

Page | 1

The **FORUM REPORT** includes proceedings of the forum under the following sections:

- 1. Forum Executive Summary**
- 2. Forum Speakers Presentations**
- 3. Forum Programme**
- 4. Forum Pre-Event Online Discussions Report (On The Internet)**
- 5. Forum Digital; Pictorial, Video/Audio**

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Comments and feedback

May be addressed to The Coordinator: Grace Githaiga

Coordination

The 2012 Kenya IGF would like to thank all the partners, contributors and participants for their contribution and support towards the success of the 2012 Kenya IGF. God bless you all!

Conveners Support: Grace Bomu, Barrack Otieno

Forum Proceedings/Report: Wangari Kabiru -ISOC KE, Elizabeth Magu -ISOC KE





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Notable Speakers and Guests

The Forum discussions were enhanced through the kind contribution of among others;

Page | 2

Dr. Bitange Ndemo (PS, Ministry of Communication and Information), **Mr. Michael Katundu** (& Mr. Francis Wangusi, Ag. Director General), **Mr. Jaco du Toit** (UNESCO Communications and Information Adviser for Eastern Africa and the Indian Ocean Islands), **Mrs. Alice Koech** (Director, African Telecommunications Union), **Mr. Michuki Mwangi** (ISOC), **Ms. Sandra Musoga** (Article 19), **Ms. Stephanie Muchai** (Article 19), **Ms. Esther Wanjau** (E-government), **Jane Ngima** (Network for Non Formal Educational Institutions (N-NFEI)), **Ms. Alice Munyua** (Vice Chair, ICANN Governmental Advisory Committee), **Mr. Churchill Otieno** (Managing Editor, Digital and Convergence, Nation Newspapers)

Moderators

The Forum appreciates the moderators for the day who were:

Ms. Grace Githaiga, Ms. Grace Bomu, Mr. John Walubengo, Mr. Ali Hussein, Mr. Barrack Otieno

Live Streaming Local Support: Paul Musee (KENIC) and Paul Muchene (iHub).





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Opening Session

Welcome

All participants were invited to join in the proceedings of the 2012 Kenya IGF which is also a build up to the 5th EA IGF and Consultations on ITRs to be held in Nairobi (Tuesday 17 - Wednesday 18 July 2012).

Background Information

The IGF (Internet Governance Forum) is a UN meeting that is held every year. It started in 2006. This meeting is a policy dialogue on matters of internet governance. The internet and technology has for a long time been ahead of the law. There is a need for all the different sectors to come together to discuss and have policy dialogue on these issues. We are pleased to inform you that several sectors have been represented today.

This year the IGF will be held in Azerbaijan in November 2012.

The Kenya IGF is a meeting to discuss the issues that are important to Kenya as a country so as to then be able to feed them into the (main) IGF. Leading to the IGF, the East Africa IGF will be hosted in Kenya in July 2012.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
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Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Session Topic: ITRs Introduction

Mrs. Alice Koech - African Telecommunications Union

ATU (African Telecommunications Union)

Africa as a region required to start looking at issues from the ground level (local needs) before going upwards (global scene).

The main challenge as the Africa support unit is that Africa is normally lagging behind in terms of preparing for global resources.

It is high time that we (Africa) stand up as a continent to lobby for issues and get what belongs to Africa.

ITRs

The session covered what ITRs are and what Africa has done so far.

If the African countries put their issues as Africa and not independent countries, Africa will have a stronger voice to ensure that Africa's issues are heard and addressed.

Key Questions:

- What is the course of Africa on these issues and not as independent countries
- We need to include the voice of the civil society, the Government and the Private sector in the membership of ATU so that we can forge ahead as a common front.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
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Time: 08.00am - 06.30pm**

- Were there any discussions within the African context related to the recent remarks on internet as a human right or internet as a right especially in terms of the role the internet can play in the development context
- Who are the stakeholders who have been discussing Africa's position on ITRs and have all voices been involved in these discussions
- Kenya has one vote at the ITU Plenipotentiary Conference. Who represents us
- What are the proposals presented on behalf of Africa during the Treaty so that we may know if our issues have been covered
- If the member states at the WICT conference in December pass these issues, what will the impact be

Page | 5

In Kenya unlike in other countries, the government has in place a process of engaging stakeholders as a community where this is controlled by the government.

These discussions are engaging people at the global level and Africa needs to make sure differentiation between local issues and global issues.

Session Topic: ITRs Introduction

Michuki Mwangi

Internet Society

Introduction To The Internet Society

A non-profit organization based in Washington. DC with headquarters in Geneva. The organizations interest is the Internet.

"...we have an interest of ensuring that the internet continues to evolve in an open and inclusive way which means nobody is left out. Our vision is "the internet is for everyone". With this vision we try to go out around the world to support and ensure that the principles to which the Internet was built on continue to be supported and maintained".





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
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Time: 08.00am - 06.30pm**

ISOC is an ITU member and will be joining the ATU membership as well.

ITRs

Prepared under the Public Policy Department, ISOC

One of the things happening this year is that the discussions around the internet has caught a lot of attention and that attention has brought in the governments which for many years were silent.

The ITR Treaty was signed in 1998. At that time there was nothing in regards to the internet but there was telecommunication. Telecommunication involved the use of operators for international calls, trunk calling and use of area codes to name a few.

Telecommunications today has a very different meaning mainly because the Internet has disrupted the way Telecommunications operates. By disrupting the model of telecommunications, then there has been an interest especially by governments, to try and bring on the Internet into the International Telecommunications Regulations.

Concerns: One of the areas we have concerns about is that the ITR Treaty is going to affect the operations of the Internet, the architecture of the Internet, the content, the security and business practices in respect to the Internet.

It is a crossroad.

“The effort to radically reverse the long-standing international consensus to keep governments from regulating core functions of the Internet ecosystem has been gaining momentum. The reach, scope and seriousness of these efforts are nothing short of massive.”
Robert McDowell - FCC Commissioner, 2011.

We have also seen sentiments which either support why the ITRs are being revised, and why it is important to revise the ITRs and also, various governments have come out and said why it is important for them. There is also input coming from the operators, that is you and I.
What is the impact this review is going to have on us?





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
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Time: 08.00am - 06.30pm**

“If the implementation of the ITRs means I pay more for the Internet, I don’t want them. If it means the prices go down, for me, that is the bottom line as an end user”. Page | 7

Eric Schmidt, Chairman of Google says “...be very very careful about moves which seem logical, but have the effect of balkanizing the Internet”. Google is a big organization on the Internet, and they are concerned about the ITRs.

Drivers of ITRs and the Discussions around the ITRs.

1. Economic

Traditional telecom has an inherent telecommunications regulatory agreement treaty that goes back to 1998 which meant that interconnections were defined around costs. When the internet came, 99% of all interconnections were done through peering arrangements which involve a *handshake*.

The internet has disrupted the telecoms as we know it but at the end of it all, there is revenue being lost because of this model.

Today when I want to send an SMS I don’t use the traditional SMS. It is too costly. I use *Whatsup*. **Who is going to cover for this lost revenue?**

Some countries have realized that they’ve lost a lot of revenue and want to use these ITRs as a platform to recover the lost revenue.

2. Political

There are political interests.

Some governments have lost control of their power because of the Internet eg. Arab Spring is mostly associated with the Internet. When the internet was shut down in Egypt, there was huge outcry from everywhere.





**2012 Kenya Internet Governance Forum (IGF)
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Therefore from a political standpoint, could there be hidden supports for these types of actions?

3. Technical

There is the new issue about IP addresses which have come in IPv6.

Should we continue with the previous model of allocating these resources or should we take on a new model?

The ITU has come up and proposed that they would be interested in IPv6 address (proper) management as well.

Standards: There are different organizations that do standards development, ITU being one of them. There is an interest to make sure that a lot of these standards are done within one central location.

- ITU-R - Radio
- ITU-T - Telecommunications (Standardization)
- ITU-D - Development

To participate in the study groups, where the discussions on the various policies take place, one requires to be an ITU member. To be a member, you have to join the ITU as a member state.

There are also slots for vendors. As you go up the ladder, the inclusion of non-member states and individual organizations goes reducing and by the time you get to the ITU council, it is very much a member state affair. That means, every country has one vote. So, at the ITU Council, and the ITU plenary boards, Kenya has one vote.

Who has the mandate to go and vote for us (Kenya)?





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

The WICT which is a meeting that will review/revise the ITRs will be held in Dubai later on this year.

Page | 9

What issues they are going to be addressing?

1. Are the ITRs still relevant today
2. What are the obligations to the member states
3. What impact does it have on interconnection
4. Should we be adopting the ITU recommendations
5. Should these ITRs provide provisions for the new issues? What are the new issues
6. What is the role of ITU moving forward? Does it enforce? Is it mandatory for every state to abide by its recommendations

Overview of areas being reviewed:

1. **Transit Rate;** what do we pay for transit providers. This is being revised so that it is equitable. The 1988 treaty does not include internet but only include telecommunications. (Transit rate is the cost of traffic going out and coming back). Do we want to go this way?
2. **Termination Rate;** who pays for termination rate? How will spam be handled?
3. **Hubbing and Hubs;** There is interest to introduce tariffs for this process. It imposes that there should be a fee for termination of agreements on interconnection. This happens in the voice world but how will this affect the internet world.
4. **Calling Party Identification;** there are alternative calling methods by by-passing the expensive and traditional ITR treaty setups so that it is cheaper to call. The impact is that international calling becomes cheaper.

The impact of treaty interpretation has a big impact on the scope of the ITRs.
Should ITU standards be mandatory?





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Page | 10

One of the areas being discussed is the quality of service. The review states that Member states shall ensure that administration, operating agencies cooperate in the establishment, operation among other areas of the Internet network to provide satisfactory quality of service. **How do we enforce end to end quality if you have no control over the network beyond the next stream? What does this mean for me as the end user if my operating agency has to ensure quality of service?**

Routing regulations: Does my email traffic have to go through Europe and does it have to come back the same way? If I (user/provider) have to state how my traffic leaves my network and come back in, then the internet will be very expensive. The choice of costs can be affected because somebody is dictating how it moves in and out. If this is enforced then what happens to the choice?

Does net neutrality work in favour of us?

The sending party network pays. **Who is the sending party network? If we have to pay, what happens to us as end users?**

Things that are missing inclusion include: competition, regulatory independence, network innovation, liberalization, transparency among other key issues.

The main focus is on billing.

Essentially the most important thing is that we (Kenya) as the stakeholders need to get involved in the process.

Kenyans should be proud there is a forum which to say what they think should be in the ITR, and what should not be there.

Many other African countries, they don't have a process where their government can go and engage the stakeholders to get a view which is of benefit to the stakeholders as a whole. When we see Kenya's proposal at the ITU, we will know that we participated in the process because of this forum which is why we (Kenyans) should be proud.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Questions & Comments

QC: If member states in the WICT conference decide to pass many of the recommendations, what will be the impact? I have been reading that the UN is trying to take over the role of ICANN and maybe the IANA functions. Supposing the member states decide they want more active ITU participation in the running of ITU in the IANA function, which is currently under iCANN, how will this happen? Will they grab the functions or will they come up with competing DNS?

AR: At this point in time, this is highly unlikely and if it does happen, this may involve a whole new process.

QC: On your comment in regards to hubbing and transit rates, what are we ultimately saying? Are we saying that my “yahoo” email access will cost me?

AR: When it comes to the Internet, there are existing business models in which networks interconnect which are far different from the ones that are used in voice communications. The internet uses peering which allows one to connect to their network because you bring traffic. If the ITU introduces tariffs along the path, our cost of accessing the internet is likely to go up.

QC: I represent an NGO for women right and on the review of the ITU, there is child protection but there is no women’s protection. Why hasn’t this been drafted?

AR: For there to be a proposal at the ITR, the member states need to submit a proposal. If they don’t, then it remains as it is. Women rights representative can draft a proposal and then have it go through all the channels and get support from other countries for it to be passed. We also have to be careful to ensure that this (and others) is a global issue and not a local issue.

For the full presentation, kindly refer to: Kenya IGF - ATU Presentation1 (2012 July 06) .pdf





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Session Topic: Ideas on International Perspective

**Jaco du Toit, Adviser for Communication and Information - Multisectoral Regional Office
Nairobi**

UNESCO

The UNESCO View

UNESCO acknowledges the potential of the Internet for fostering sustainable human development and building more democratic societies, and also enhancing the free flow of information and ideas throughout the world.

UNESCO has consistently stressed that the mechanisms of Internet governance should be based on the principles of openness, privacy and diversity, encompassing universal access, interoperability and freedom of expression.

It should also respect cultural and linguistic diversity, which were echoed as well in the “Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace”.

UNESCO participated actively together with other UN Agencies and stakeholders in the World Summit on the Information Society (WSIS) that was organized in 2003 and 2005, propagating for the construction of knowledge societies.

Recognizing the Internet as a core element of building such a knowledge base Information Society, it was acknowledged that the governance mechanism of the Internet should ensure “an equitable distribution of resources, facilitate access for all and ensure stable and secure





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

functioning of the Internet, taking account multilingualism”. To that end, WSIS applied the principle of multistakeholder participation, which means that the development of the Internet governance mechanism should be done by the involvement of all stakeholders, in their respective roles, considering the self-organizing nature of the Internet.

Page | 13

Key remarks on two of the topics that fall within the mandate of UNESCO:

1. Technology and Violence against Women
2. Open Data/E-government.

Technology and Violence Against Women

Did you know that there is a difference in access to ICT by men and women especially where they depend on public access?

For example:

- a) Women tend to listen to the radio less than men in spite of similar education and income or due to differences in mobility and access to income;
- b) Rural women are more likely to be deprived of access to any ICTs than rural men. Many of the barriers for women to use ICTs relate to cultural norms and practices that are difficult to legislate and policies. Programmes should incentivize the education of girls.

Internet technology should be harnessed to promote social cohesion through the prevention of violence against women. The picture that emerges from most analyses of new information and communication content is of masculinist rhetoric, and a set of representations which are frequently sexualized and often sexist.

More disturbing is the use of the Internet as a tool in the prostitution and trafficking of women. There are numerous organizations working on the issues of women’s trafficking and have done much to raise concern over the use of the Internet for trafficking women and children, and the explosion of pornography on the Internet.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Above all else, women should be informed, made aware and included in the discussions and debates taking place around these trends, and consulted in the development of any policies and practices that are advocated by state agencies and other bodies. Page | 14

UNESCO is already carrying out a number of research and awareness-raising projects to combat trafficking in women and children in the Asia-Pacific region, and has been collaborating with the Open Society Institute in the creation of the “Stop Trafficking” network in Central and Eastern Europe, as well as in Central Asia.

The media has an important role to play in order to sensitize the public about the issue and UNESCO recommends that the issue is specifically addressed in journalism education curriculum.

E-government

The Internet is a major opportunity to improve free flow of information and ideas throughout the world.

Internet governance mechanisms should be based on the principle of “openness”, encompassing interoperability, freedom of expression in Knowledge Societies.

The need for e-government finds its genesis into broader factors pertaining to ‘good governance’.

Governance primarily refers to the manner in which power is exercised by governments in managing a country’s social and economic resources. Good governance involves a multifaceted approach and application of ICT is one of the important enabler of good governance.

Using ICT along with other reforms, Governments today are able to deliver a wide range of services - from ration cards, motor licenses and land records to health, education and





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
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Time: 08.00am - 06.30pm**

municipal services - in a manner that is timely, efficient, economical, equitable, transparent and corruption-free.

The successful examples of e-governance include the Bhoomi Project in Karnataka state of India , Bahiya Project in Brazil have shown that optimum utilization of ICT has enough potential to attain the above and hasten the pace of development.

Page | 15

E-governance coupled with necessary political support as well requisite process reforms, can go a long way in facilitating good governance.

UNESCO developed an e-government toolkit that aims to demystify concepts behind e-government and strengthen the understanding of all those involved in planning and execution of E-government projects.

The toolkit offers an action framework involving all the stakeholders in developing nations including parliamentarians, government executives, institutions as well as nongovernmental organizations to guide them through various phases in their e-government initiatives.

The toolkit is available to Member States and UNESCO will be more than happy to share this with Member States that are interested in applying it.

For the full presentation, kindly refer to: Kenya IGF - UNESCO Remarks (2012 July 06) .pdf

Guest Speaker Address

Dr. Bitange Ndemo, Permanent Secretary

Ministry of Information & Communication

We are going through a digital revolution.

Countries that will understand the digital revolution and take advantage of it, will become a digitalized economy (from the industrial economy).





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
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Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Key questions for Kenya:

1. How can we make sure Kenya is part of this digitalized economy
2. How do we use technologies to change our lives

Page | 16

In Kenya, IT is trying to impact practically every sector.

The Ideal Situation:

1. Everyone must have internet access and we must use this internet to change the lives of every human being across the continent.
2. Access to internet is a problem that needs to be addressed at this level and also at levels where we have control.

Questions & Comments

1. What control measures if any, have been put in place for the youth
2. On sharing of information, how to ensure that information is not used to influence others negatively such as hate speeches etc





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Topic: Data Protection and Freedom of Information

Page | 17

Introduction

Kenya has a new constitution “Katiba” which states that people are supposed to get freedom to access information about themselves.

With the internet and the opportunities it presents for access to information, **what effect does that provision have** and what is it going to mean for us?

The session covers presentation on the Data Protection Bill and the Freedom of Information Bill which are currently in progress in Kenya.

It is of interest on the opportunities presented by the two bills and on the opening of the information. Such as to UNESCO, What opportunities do they present in terms of education, science, culture and in other areas.

Article 19

Work to defend freedom of expression and access of information. The name is from the universal declaration of human rights. The organization is based in Nairobi and serves East Africa.

Stephanie Muchai, Article 19

Freedom of Information Bill

Introduction of Freedom of Information:

Freedom of Information refers to “your right to access public information held by the state, public authorities and some private bodies that perform public functions or are publicly funded but not all private bodies”.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Why do we need a Freedom of Information bill if it is already “protected” in the Constitution?

Article 35 of the Constitution says we (citizens) have a Right to access information.

The Constitutional guarantee is there but we require a framework that talks about how this will be done, who has responsibilities, what are the legitimate exemptions to this right, what are the legitimate limitations?

At present, if you try and agitate for this Right, and you get a refusal, then you have to go into court where people are using the wrong kind of refusals that are not a justifiable limitation of your Right.

These are some of the important things that need to be addressed as soon as possible.

How is Internet and Freedom of Information related?

1. Digital information is more accessible and it also decentralizes information from one point to several points.
2. Some information needs to be protected like personal financial information
3. The internet is a platform where everyone is allowed to share information which can be a risk or a threat if it is shut down.

The internet is a medium, a very powerful tool for information and as the Right to freedom of Information talks about the Right to seek or impart or receive ideas, thus it is very relevant to this context.

The medium in itself is very important to this Right thus the need to actively engage with this Bill in the wider stakeholder process and to engage with what’s going on. The Bill affects this sector and also the wider community of Kenyans.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

The UN Human Rights Council (the day before) passed the first landmark resolution that Internet freedoms and access to Internet should be guaranteed and promoted to the same extent and commitment as Human Rights in the physical world. This is now the impetus.

Page | 19

Examples of areas that can be incorporated into this bill to maximize the power of Internet:

1. The requirement for Ministries and Public Authorities to provide data in usable forms. This would make information searchable, identifiable and useful. This doesn't exist in many other Bills.
Make the minimum requirement that the format must be electronic, searchable and identifiable which is a progressive way to do things.
The attention must focus on more than the infrastructure or technology alone as there must be the "information" to move around.
2. Format and visibility are very important when we are thinking about the Internet.

Concerns of the Bill

1. Right to Access of Information
Who should have the right to this information? Should this right be limited to citizens or to everyone? It says the citizens because that is what the Constitution provides but some people are arguing that this is unconstitutional.
2. The commencement of the Bill
It gives the power to a Minister on when the Bill actually commences even though it may already be enacted. This is putting power in the hands of the government. This should be revised and set within a set timeline such as 30 days and not at the discretion of a person.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
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Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

3. Exemptions to the right.

There are legitimate exemptions i.e times when you can be told no, you cannot have this information such as National security concerns, etc .

Page | 20

Generally, the new revised bill covers the exemptions in detail.

However, we think there should be a burden on the public authority, a provision saying they must grant a request for access to that information unless you can demonstrate that there is a substantial harm to a very legitimate interest if you give out this information.

The burden of proof should be on the public authority and not up to the requester.

This gives more accountability and forces the public authority to provide reasons and prevents the public authority from just saying No to information requests.

4. A severance principle.

There might be information that is in bulk which has some information that can be exempted as a national security concern but there are other parts of that information that are not relevant to national security that just happen to be contained in the same bulk information.

We should be able to sever that information and leave out whatever is pertinent to national security.

5. Make provisions for translations of the bill into English or Kiswahili.

Presently, if you request for the information in another language other than English, one is advised that the information would be provided within a reasonable time. The period may mean anything between one month and five years.

A timeframe should be included so that people can be more accountable in order to actualize the rights.

6. Reasonable fee.

A good feature of the Bill is the cost; the lowest cost possible not more than the photocopying cost is advocated for.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
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Time: 08.00am - 06.30pm**

7. Have designated Public information offices.

This is a very important part of freedom of information. If you don't have a designated public information officer, it is very difficult to actualize this right. This would be a person who is trained in freedom of information principles.

At present, the public information officers are communications people and PR people. They would serve the purpose intended.

It is very important that there is a requirement for the designation of public information officers.

At present, the bill says at first instance the CEO is the public information officer. This is not practical considering their busy schedules.

8. Proposing a FOI Data Protection Commission.

As a facilitative Right, the Bill required its stand alone body (Commission).

The main area of concern in this body is the independence of the Commission. The bill states that in order to become a Chairperson or a member of the Commission, there will be a selection panel comprising of six members. Three of the six members of the selection panel are Government ie. Office of the President, Office of the Prime Minister, and a Ministry.

This will mean there will be certain interests in terms of who is picked.

It is recommended that Parliament, with a 2/3s majority should select this panel with the President doing the ceremonial appointment.

9. Put time limits on the appeal procedure.

The Appeal Procedure is good. Put time limits with specific dates so as to have accountability.

10. Burden of proof should be on the public authority and not on the requester.

The public authority needs to explain why they want to limit your right to information.



**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

11. Good measures to promote open government in the bill.
All public authorities have to publish certain information within 12 months of commencement of the bill including the facts used to arrive at certain policies
12. Requirement for public authorities to submit an annual report to the commission.
This is a good provision but there are no penalties if they don't provide the report. This is an area of concern because they can choose not to submit.
13. Protection of whistle blowers.
This is a good thing. If you give people protection against being fired/sacked or other reprisal, then they are more likely to bring information that is in the public interest to know
Thus limiting on violations which in some instances, this is a jurisprudence that is done internationally or regionally in some African countries.
14. Role of government disclosure.
This is captured in the bill and it is a good feature. The government has a duty to proactively disclose information that is of interest to certain.

Conclusions

No views and reviews have been obtained from stakeholder, a voice or any expertise from the IGF community in this area.

A brief or statement needs to be prepared from this forum to submit to the Constitutional Committee for consideration before the draft is forwarded to Parliament.

Under our open government partnership plan, the laws are expected to be in place by November 2012.

For a copy of the bill, kindly refer to: Kenya IGF - FOI Bill Copy (2012 July 06) .pdf





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Data Protection Bill

Sandra Musoga, Article 19

Page | 23

Introduction

“..act of parliament to regulate the collection, the processing, storing, use, and disclosure of information relating to individuals”.

Relates to personal information. Can be automated or on manual means or for connected purposes.

Premised in Article 31 of the Constitution ‘... that every person has a right to privacy which includes the right not to have information relating to their family, their private affairs and necessarily biased ...’.

The bill describes a person’s right to control information about you. The intention is to establish rules governing collection and handling of your information.

Personal information in this act is referred to as personal data. The difference between information and data; Personal data is a wider term that covers identification records.

The Bill is divided into 7 parts.

1. Preliminaries. Includes Interpretations and definitions
2. Personal information protection principles. Which principles are observed?
3. Information is adequate, relevant and not excessive to purpose.
4. Needs to be accurate and up to date
5. Needs to be accessible to the subject
6. Is kept secure
7. Is destroyed after its purpose is concluded.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

The Bill also talks about our rights as a data subject, a subject whose information is out there somewhere. You have a right to access that information and to see what information is there about you.

Page | 24

You have a right to know the place of origin of the data about you.

You have the right to know what they are going to use the data for.

You have a right to know all the people who the data will be transmitted to.

They must get your consent to use this information in another institution.

You have a right to rectify incorrect data about yourself.

The Freedom of Information Commission is also mandated to handle the Data Protection Bill.

Observations

1. The data protection right and FOI8 are complementary and designed to go together.
2. Limitations - Scope. Initially only applied to public institutions but amended to cover also private institutions.
3. A recommendation was made that exemptions should be made specifically for information held by media, academic and journalistic activities
4. Criminal information is considered personal data though sometimes it may be in the interest of the public to display some of this information such as child molesters, rapists etc.

Q: To what extent is this information considered private and I (a person) require privacy for this?

It is recommended that criminal information should not be defined as private information.

5. Mandates of the information commission - The Bill is silent on how the commission will handle both the FOI and the Data Protection Bill. How will they be funded? Will these bills be passed together?

Status

This bill is with the CIC.

For a copy of the Bill, kindly refer to: Kenya IGF-Data Protection Bill Copy (2012 July 06) .pdf





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Questions and Comments

QC: What really is the scope of the law considering the internet in regards to giving information to people who are in another country?

Page | 25

At the moment there is not much we can do beyond the boundaries which is why there is a push to legislate. Many countries are becoming very reluctant to give information where there are no data protection laws.

QC: How were the bills drafted since they seem quite shallow? It would have been expected the drafters should have tried to get out to those in the ICT industry before they come up with this first draft.

QC: A lot of government agencies are not using formats that are easily accessible to everyone.

This forum (KIGF) should provide a brief to CIC about the benefits of this requirement to have electronic documents in formats that are easily usable or shareable.

QC: Can we still make recommendations to the Bills?

Both bills go under stakeholder review. There may not be any more actual meetings on the Data Protection Bill. The position on the FOI Bill is not clear. As long as the bills are up on their (CIC) website, one is able to provide comments.

QC: Most of the information we see is from government. We also need to demand information from the private sector as they also have an impact on the public e.g. businesses such as airlines sharing security information to the public.

The Bill makes a provision to access information of private bodies that are either performing a public function or have some sort of public resource. In addition to this, if you can demonstrate that you need the information from a private organization that doesn't necessarily perform a public function, but you require it for the enforcement of a Right, then you can access the information.

QC: In Kenya we are still in the draft phase of the Bills. Is there any harmonization going on between the regional economic communities e.g East African community to harmonize our protection laws because as we are moving towards an integrated region, if we don't harmonize, then that means we will have wasted a lot of time due to integration efforts Presently there are no known efforts to harmonize the laws within the region.





2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm

E-government and Infrastructure issues

Esther Wanjau, e-Government

e-Government

Mandate of e-Government Directorate

- Provide technological advice and policy frameworks for government electronic service delivery,
- Manage the shared security infrastructure, networks, servers and services.
- Facilitate access to e-Government services, including online, e-mail, web services, data warehousing and Government domain name administration,
- Develop and enforce ICT standards to promote interoperability and cost-effective ICT infrastructure and services.
- Manage the implementation of ICT projects
- Monitor and evaluate the implementation and use of ICTs and recommend suitable enhancements;
- Monitor emerging technologies and facilitate activities to ascertain the potential value of these technologies in a government context;
- Design and implement Government of Kenya ICT capacity building initiatives.

What is e-Government?

" the use of information technologies (such as Wide Area Networks, the Internet, and mobile computing) by government agencies that have the ability to transform relations with citizens, businesses, and other arms of government " (World Bank, 2005).

- the delivery of information and services online through the Internet or other digital means (West, 2000)
- the use of ICTs, particularly the Internet, as a tool to achieve better government (OECD, 2003b)





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

- electronic information-based services for citizens (e-administration) with the reinforcement of participatory elements (e-democracy) to achieve the objective of balanced e-government (Bertelsmann Foundation, 2001, p.4)
- a process of reform in the way government works, share information and deliver services to external and internal clients (Bhatnagar, 2002, p.1).

Page | 27

ICT can bring about changes in the government and also the society. It brings about a new way of life and inculcates new social behaviours. ICT also affects the technical aspects of government processes such as automating the process of storing, accepting, outputting and transmitting information.

e-Services

- *the use of ICT tools such as Internet to transform the internal operation or work process of the government in providing a more efficient, relevant and accessible, cost-effective, consultative and interactive services to the stakeholders; mainly the citizens and businesses.*

Various methods are used to offer e-Services

- Face-to-Face- Citizens walk into a service centre where all government departments are represented to get services
- Web Portal – One stop shop where services are integrated to make it possible for visitors to have a single point of contact
- Interactive Voice Response System (IVRS) – Same as a web portal but one uses their mobile phones to get the same service
- SMS – Users send an SMS to get information e.g exam results, job application status

Examples of where e-Government has worked in Kenya

- Integrated Payroll and Personnel Database (IPPD)
- Online recruitment
- Integrated Financial Management Information System (IFMIS)
- PIN Registration
- Online TAX returns
- Passport and ID application
- P3 and Abstract Forms





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

e-Government Projects

Page | 28

Government Unified Messaging System (GUMS)

- The overall aim of The Government Unified Messaging System (GUMS) is to improve the speed and quality of decisions made by government officers in the course of their official engagements. In particular, the project is intended to:
- Improve efficiency in internal government communication and enhance collaboration among officers through implementation of an *Electronic Messaging and Collaboration System* and a *Unified Communications System*;
- Increase access to information and Communication technologies (ICTs) in both the Central and County offices by providing access devices including *desktop computers, laptops and printers*.

County Connectivity Project (CCP)

- The Directorate of e-Government is carrying out a county connectivity project with the objective to provide last mile connectivity to government offices in all the counties with the first phase being to connect 28 counties via the NOFBI to provide:

1. Voice Connectivity via an IP based PABX (the Siemens HiPATH 4000 Network), IP phone connectivity to 6,000 users in ONE seamless network.
2. Data Connectivity via WiMAX technology with a point-to-point wireless connection from the NOFBI Termination point at the TKL Offices to the Local Government Office (PC or DC's Office) From here a point-to-multipoint connection WiMAX connection is made to all the Government agencies in the area. This provides the flexibility of connecting different and diverse users. The Network is designed to serve a multi-tenant, multi-user and multi-services environment.
3. Video-Conferencing connectivity - the system has the ability to connect 26 concurrent video -conferencing sessions allowing counties to consult in real time in real motion.

NB: *The Constitution of Kenya requires that citizens get services irrespective of their location in Kenya.*





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Government Data Centre (GDC)

- The Directorate of e-Government is in the process of fully operationalizing the Government Data Centre and also developing a Network Operation Centre where all the application from the Ministries and other agencies are expected to reside.
- The Directorate of e-Government is implementing Shared Services where common services will be integrated and managed centrally to improve services, relationship to the citizens, reduce overhead costs and duplications as well as for optimal utilization of the ICT human capital thereby increasing transparency and efficiency across the Government.

Human Capacity Development

- One of the main functions of the Directorate of e-Government is the development of ICT Human Capacity in the Government of Kenya to increase productivity of public servants and to improve the quality of Public Service delivery.

Capacity Building (Bridging the Digital Divide)

Community Learning Information Centres (CLICs)

The objectives of the CLICs are to:

- Expand rural poor communities' access to government services using sustainable and scalable ICT's approaches
- Improve livelihoods and access to development opportunities.
- Reduce the existing digital divide
- Provide technologies that will deliver sustainable and profitable services to the underserved in the community.
- Develop skills the underserved communities need to succeed in modern globalized economies.

Community Learning and Information Centres are centres where citizens can access government information and services at community level. The Directorate of e-Government has empowered these centres by providing infrastructure, computers and connectivity to provide these services. These are very useful in bridging the digital divide. For a copy of the full presentation, kindly refer to: Kenya IGF- Kenya IGF - e-Government (2012 July 06) .pdf





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Topic: Network for Non Formal Educational Institutions

Jane Muriuki,

Network for Non Formal Educational Institutions (N-NFEI)

The organisation is a CSO (non-governmental) with a mission: “promoting access to quality education mainly to children and youth in poor marginalised communities”

Last year the organization established a program whereby they have set up video conferencing as a mode of teaching centres in Korogocho and Kayole Centres targeting youth out of school

Non-formal schools are within the slums whereby one book may be shared by several students or by the teacher only.

The program is suitable for schools without laboratories and improve the quality of learning sciences.

Parents may make use of the portal to support students in revision and tuition.

Children now have a (web)site that has relevant content - educational based

Key challenges:

- Access to digital content .Have mainly sourced for content from Commonwealth of Learning
- Hardware costs tablet - Kshs. 30,000/, computer - from Kshs. 20,000/-





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

- Internet consistency
- Night programs; men not willing to let women attend
- Internet cost is too expensive for the target users. Develop infrastructure that will enable e.g a house girl (employee) to afford
- Electricity power fluctuations and shortage in the areas of operation

Page | 31

How the challenges are overcome:

- Encouraging use of PASHA centres, government centres, Cybercafe
- Undertaking training for empowerment of teachers and students on use of hardware
- Sensitisation of the community that e-learning is as good option of going into class

The Approach

- The program relies on students as teachers and content developers. Support from stakeholders is vital
- Developed the DARASANI portal launch on August 11th 2012 (content of Form 1 uploaded)
- The Organisation plans to set up an educational TV





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

- Hardware access is a major hindrance to provision of access to handicapped/visually impaired learners. e.g Kilimani Primary School from next term is expected to have a boarding section with a capacity for at least 30 students with visual impairments
- Classes from about 10 Schools in Kenya will be made accessible to learners through the virtual network thus ensuring that though all Kenya students though are not able to attend national schools, they may access the teaching

Page | 32

The benefits accrued from set up of the educational portal

- Non-formal schools are within the slums whereby one book may be shared by several students or by the teacher only.
- The program is suitable for schools without laboratories in order to improve the quality of learning sciences.
- Parents may make use of the portal to support students in revision and tuition.
- Children now have a (web)site that has relevant content - educational based

E: nfeischools@yahoo.org W: www.nfeischools.co.ke

For a copy of the full presentation, kindly refer to: Kenya IGF - Network for NFEI (2012 July 06) .pdf





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Questions and Comments

QC: There is need to harmonise the information in the private sector with what is out in the public using the County structure in Kenya as wananchi understand this model

QC: The Government requires to put in measures to make the internet affordable (viewed as prohibitive and accessible to enable citizens to make use of the e-government services

QC: The innovations in the use of the internet should take into account the disabled and the educational needs

QC: The Kenya IGF was challenged to look into affordable and useable tablets, computers and smart phones

QC: Government performance contracts now require other Government organs and companies to automate. Previously this was for the central government

QC: A toll free number to access Government services may be the solution in order to reach all Kenyans

QC: There is need for consolidation of the efforts by the government and government agencies

QC: The Kenyan Constitution requires that all citizens should be able to access information wherever they are

QC: Look into other interrelated bills e.g. education bill to ensure it also promotes the use of internet in education





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Topic: What are The Sensitive/Controversial Strings In The New gTLD applications?

Alice Munyua, Vice Chair, ICANN Governmental Advisory Committee

Page | 34

Introduction

The New gTLDs applications have been questioned as many are viewed to be (driven) by brand names

- Diversity is limited in applications : 844-USA, Africa - 17
- The main applicants are Google, Amazon with multiple applications
- Applicants from Africa e.g Multichoice who is trying to protect their name
- Applications eg maasai, Nairobi are not there.

Key Concern for Africa and Kenya In Light:

- Is it money
- Lack (low) awareness
- Or not getting into the digital economy





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

What is required on the current applications:

- Develop a Kenyan position on certain applications e.g dothealth (not made by WHO), dotbank (made by US companies not by The World Bank.)
- Some geographic applications e.g .dotafrica, dotAUCCommission require support from Africa governments

Page | 35

The Business Perspective:

- Africa must engage in the conversation. Tackling this is more than the aspect of fees

Actions Proposed:

- Set up a local team to review the applications and make proposals and determine the applications that are not in line with Kenyan law or not in order
- The early warning process begins in August, thus contribute as a region
- Support for needy applicants by ICANN is available - make use of it
- Advocate that another round of applications is done with regional sensitive communication and resources allocate for adequate sensitisation
- Send the ICANN survey again across the lists for input
- Introduce ICANN as a topic at Kenya IGF and EAGF in future
- Advocate for ICANN to set base in Africa if there is commitment towards the region





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Questions and Comments

Page | 36

QC: Will there be another round; Not defined yet. However there is need to propose as there is limited diversity

QC: Awareness on ICANN; Within the region, ICANN as a multi-stakeholder model would work with active engagement, diversity and competition in the domain name

QC: Prohibited name (s) in Kenya: Names may not be prohibited. The main issue would be the public interest (acceptance)

QC: It is crucial that a multi-stakeholder process is taken to review the applicant names.

QC: Lack of awareness and the view that Kenya is not strongly a digital economy thus the major firms in Kenya may have shunned or not participated by application

QC: Why the ICANN applicant support was not utilized; May be attributed to lack of proper communication

QC: This is a Call for ICANN; Take time with service providers and other businesses in Africa to emphasise the need and benefits





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Topic: Regulations

Grace Githaiga

37

Introduction To Intermediary Liability

- Internet intermediaries can be looked at as go-betweens, they act between two parties on the Internet enabling the transmission and sharing of information. You and I communicate but how is that facilitated?
- They allow communication, and provide knowledge and content of all types, from email to entertainment.

They do not make decisions on what content passes through them. They do not make the decision on what we say.

Examples of intermediaries include: ISPs, data processing and web hosting providers, search engines, participative networking platforms, which include internet publishing and broadcasting platforms that do not themselves create or own the content being published or broadcast.

From an African perspective, it is also important to consider mobile service providers as intermediaries since we all know that mobile telephony continues to set the stage for adoption of Internet access in Africa, even though they are regulated under telecom laws.

The Role of Intermediaries

1. Through their infrastructure and platforms provide access, host, transmit and index content originated by third parties, or provide internet based services to 3rd parties.
2. They facilitate social communication and information exchange.
3. Also protect personal information in the online environment.
4. They provide some “ trust: for us.





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

5. They enable individuality and self expression and therefore offer potential improvements to the quality of societies in terms of fundamental values such as freedom and democracy (OECD, 2010, 8).
6. Internet intermediaries help in the transmission/dissemination process but do not initiate decisions to disseminate the content, products or services that transverse (go through) their networks or servers.

Page | 38

Liability

Intermediary liability arises where governments or private litigants can hold ISPs liable for unlawful or harmful content created by users of those services.

When we communicate some of people disregard issues of copyright, fraud, cyber crime etc.

It might be easier for Governments or private litigants to sue the corporations as opposed to suing the individual because they may have the capacity to settle the charges (fines).





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Intermediary Liability in Kenya

Victor Kapiyo

Page | 39

Intermediaries

- Key drivers in development of the internet
- They host, locate and search for content and facilitate its distribution
- Include - ISPs, Telcos, - Wananchi, Accesskenya, Safaricom, Airtel etc

Issues

- Conflict of Laws- Constitution - supremacy of the people (art 1) and the constitution (art 2); general rules of international law (2 (5)) and ratified treaties and conventions (art 2 (6)) also form part of Kenyan law
- Real world vs Cyber world
- Jurisdiction issues - No borders - Multi-nationals
- Conceptual understanding of issues - definitions
- Anonymity

Constitutional Rights

- Art. 31. Right to Privacy - search and seizure of property, collection or revelation of private information and communications - (Government monitoring of emails); hacking, security, LinkedIn passwords - data protection bill; official secrets act; spam, viruses
- Art. 32. Freedom of conscience, religion, belief and opinion
- Art. 33. Freedom of expression - seek, receive, impart information & ideas; limitations - war propaganda, violence, hate speech etc.
- Art. 34. Freedom of the media - independence of electronic, print & other media; limitations present
- Art. 35. Right of Access to information - held by state; necessary for the protection of a right/fundamental freedom - Freedom of info bill





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

- Art. 27. Freedom from discrimination - e.g. employment, offering services
- Other social, economic, cultural and political rights
- Art. 40. Right to property - of any description - includes IP; property in the cloud
- Art. 42. Right to a clean and healthy environment - global warming
- Art. 46. Consumer rights - quality goods and services; information; protection of health, safety and economic interests; compensation for defective goods and services; fair, honest and decent advertising - consumer protection bill
- Art. 47. Right to fair, expeditious, efficient, lawful administrative action; Art.48. Access to justice; Art. 50. Fair hearing

Page | 40

Criminal

- Sexual offences act - s.12 - promotion of sexual offences through distribution, supply or display of content; s.14. - promotion of child sex tourism; s.16 - distribution of child pornography; effect of social media & web 2.0 - unwanted postings; KCA s. 84. Publication or transmission of obscene information
- Hate speech - Penal code - s.77
- Typical crimes of Fraud, theft, extortion, forgery
- Obstruction of legal processes - s.117 penal code
- Threats to national security - al shabaab on twitter
- Information communications act - s31 - interception, disclosure of messages; disclosure of contents of statements or accounts - vis a vis - police investigations

Civil

- Common law and statute
- Unauthorised access to info and disclosure - vicarious liability
- Defamation - libel and slander- publication or communication to 3rd party; commercial reputation - defamation act; baobab case
- Negligence - assuming duties - knowledge of act; duty of care, breach of duty
- Contract - law of contract act - enforceable agreements; terms of service; exclusion clauses - breach of contract





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

- Sale of goods act - superior knowledge; breach of conditions or warranties; s.15 - correspond to description; 16-fitness for purpose;
- Deceptive trade practices, unfair competition, false advertisement - consumer protection bill; competition act
- Tort - Interference with business relations - ethics
- Tort - Emotional distress - pain and suffering; privacy

Page | 41

IPR

- Copyright - using/sharing what you don't own/w/o perm - web 2.0 (user generated content), streaming, hosting
- Copyright act 2001- s.35 (1) - doing any act controlled by © without licence of owner, import for private use, - paris and berne conventions - fair use
- S. 35(3)(d) Copyright and related rights shall be infringed by a person...who distributes, imports, broadcasts or makes available to the public, protected works, records or copies from which electronic rights management information has been removed or has been altered without the authority of the right holder;
- Database protection - copyright and patent - google Kenya vs mocality; opendata
- Trademark - Trademark act, Madrid agreement and protocol - confusion about a brand - suck domain names - safaricon website, dalyfiggis, applesucks, ihatetoyotta - typo-squatting - cybersquatting - iphone5.com; name squatting on social media e.g. twitter (@alfredmutua); WIPO dispute resolution mechanisms & registrars
- Industrial property act - WTO-TRIPS Agreement - trade/business secrets

Trends

- Trends - Blocking of websites - Egypt, UK, India case-ashok kumar; wiki leaks; domain name seizure - megaupload; US-sopa-acta; eradication of pointers - google/piratebay; follow the money - visa, paypal-mpesa, pesapal,zap etc
- US - Digital millennium copyright act - protects service providers from liability for copyright infringement -safe harbour provision - Viacom v youtube
- EU Electronic commerce directive: mere conduits; caching; hosting - limits on liability
- UK cookie law - privacy





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

- Net Neutrality - filtering, censorship etc - abuse? Conflict of interest; proportionality of action - india case - blocking piratebay; Authority of the judiciary (administration of justice) - art 169; 23 (bill of rights)
- Social media - arab spring, arrest of uk protesters, kenya case
- Self-regulation - safcom; Co-regulation; Legislation
- Implementation - due process (Notice and take down procedures; Timeframes; role of intermediary; efficacy of procedures) ; will require partnerships; business models
- New approach to IPR regime - brought by internet P2P, sharing online - RT
- Consumer education
- Law is still behind - needs to catch up;
- Ignorance of the law is no defence

Way forward

- Self-regulation - by Companies; Co-regulation; Legislation
- Implementation - due process (Notice and take down procedures; Timeframes; role of intermediary; efficacy of procedures) ; will require partnerships; business models
- New approach to IPR regime - brought by internet P2P, sharing online - RT
- Consumer education
- Law is still behind - needs to catch up;
- Ignorance of the law is no defence

For a copy of the full presentation, kindly refer to: Kenya IGF - Intermediary Liability in Kenya (2012 July 06).pdf

Churchill Otieno, Managing Editor, Digital and Convergence, Nation Newspapers.

What is the role of media in regards to Intermediary Liability?

Any user content that comes into our (Nation Media Group) internet space may be moderated through either pre-publishing moderation or after-publishing. Nation newspaper takes the latter option and has 6 major rules on blogging: Taste, law, hate, language, relevance, moderation





**2012 Kenya Internet Governance Forum (IGF)
FORUM REPORT | Executive Summary
Venue: Nairobi Jacaranda Hotel
Date: Friday, July 6, 2012
Time: 08.00am - 06.30pm**

Closure

- Future of the Kenya IGF - Grace Bomu**
- Contribution to the EAIGF - Barrack Otieno**
- Wrap up/ Way Forward - Grace Githaiga**

The participants acknowledged the team led by Alice Munyua for guiding the Kenya IGF for the last 5years.

ISOC Kenya Chapter (ISOC KE) officially took on the mantle for future Kenya IGF and representation.

The Chair of ISOC KE (Barrack Otieno) would represent the discussions from the Kenya IGF at the EAIGF from Tuesday 17- Wednesday 18 July 2012.

Appreciation To Partners & Participants

The conveners wish to thank each of the partners and participants.

Your support has made the 5th Kenya IGF a success and a valuable contribution to Kenya, East Africa, Africa and the World.

We look forward to see you at the 6th Kenya IGF in 2013.

-----//ends

