

THE INTERNET ACCESS AS A FUNDAMENTAL RIGHT

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Abstract

Since its creation, the Internet has been an important platform of information and communication, growing and becoming, in the same time, an indispensably part of our lives. The World Wide Web could not stay apart of many problems the society tries to cope with, such as the protection of fundamental rights. New context of technoglobalization and techno-capitalism means that there are new situations in which fundamental rights have to be defined, limited, ensured, and protected.

In the very last years, there was started an international controversial debate on the issue of the Internet access as a fundamental right. It should not be conceived as a new and independent right, but rather as part of the freedom of expression. Key elements of the right to Internet access includes access to online media, equitable access to the means of online communication, the right to freely access online information, the right to be free of undue restrictions on content and privacy rights. However, even if we are in the era of promoting the Internet access as a fundamental right, there are many countries around the World which are not willing to recognize, respect and implement such a right, or they have no necessary infrastructure and financial resources to implement it.

Keywords: Internet access, fundamental rights, freedom of expression, online access, World Wide Web, Internet censorship, ISPs.

Nowadays, the Internet access is considered as a fundamental right in European countries like Estonia, France, Finland, Greece, Spain and it cannot be even touched in African countries such as Somalia, Eritrea or Libya.

In the last decade, the United Nations has proposed that Internet access should be a human right. The World Summit on Information Society created a Human Rights Caucus in 2002, which called on governments to list all the internationally recognized fundamental rights, and in 2003 was adopted the civil society declaration which called for *Shaping Information Societies for Human Needs*ⁱ, promoting the idea that nations come together to “*build a people-centered, inclusive and development-oriented Information-Society, where everyone can create, access, utilize, and share information and knowledge*”ⁱⁱ.

On 5th of November 2009, Viviane Readingⁱⁱⁱ said:

“I would like to underline ... the recognition of the right to Internet access. The new rules recognize explicitly that Internet access is a fundamental right such as the freedom of expression and the freedom to access information. The rules therefore provide that any

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measures taken regarding access to, or use of, services and applications must respect the fundamental rights and freedoms of natural persons, including the right to privacy, freedom of expression and access to information and education, as well as due process”.

As the European Commissioner for Justice said, the right to Internet access is a fundamental human right, part of the freedom of expression which is a cornerstone of democratic rights and freedoms, recognized in all of the main international and regional human rights treaties. In the U.N. General Assembly’s very first session in 1946, before any human rights declaration or treaties had been adopted, there was the Resolution 59(I) stating “*freedom of information is a fundamental human rights and ... the touchstone of all the freedoms to which United Nations is consecrated*”. It was universally declared to be a right of the highest importance in the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10th of December, 1948.

„Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers^{iv}”.

This regulation has also been enshrined in the International Covenant on Civil and Political Rights and in all three legislations of the regional systems of human rights protection – in Africa, Europe and America.

The right to freedom of expression, as guaranteed under the international law, including the right to seek, to receive and to impart information and ideas, is broad in its scope. In terms of imparting information and ideas, it includes the right to express oneself verbally, or by writing, by electronic means or through any other means of communication, and, in the same time, the right to express controversial opinions in public. Freedom of expression is not, however, limited to the right to express oneself. It also includes the right to seek and to receive information from others, including the right to obtain and read newspapers, to access digital broadcasting, to surf the Internet, and, of course, to participate in discussions in public and private as a “listener”.

The new technologies - such as the Internet, the satellite and the digital broad casting – offer unprecedented opportunities to promote freedom of expression. Therefore, the right to Internet access becomes an indispensable fundamental right needed for the implementation of the freedom of expression, being important not only for individual dignity, but also for the promotion of the democracy itself.

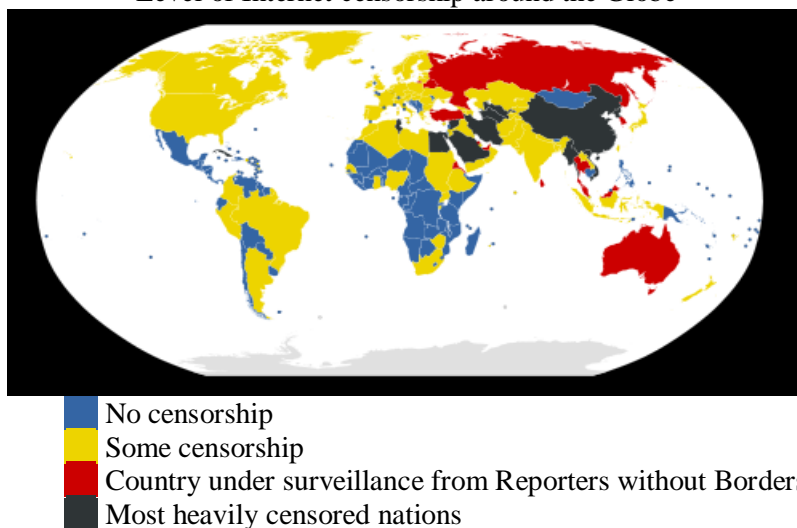
Usually, all the fundamental rights are recognized by international community and they are binding on the states. In this regard, the right to freedom of expression, and in the same times the right to Internet access, must be respected, protected, and fulfilled by the national governments. In this regard, there are corresponding obligations falling upon states and private actors. The national governments must not only respect people’s rights to freedom of expression and to Internet access, but they must also protect and fulfill them.

The states’ obligation to respect: The national governments’ action to limit the spread of harmful or illegal content through the Internet should be carefully designed to ensure that

any measures taken are under the state's obligation to respect the right to freedom of expression, complying with no registration for users or for internet service providers (ISPs), no licensing of modems or centrally-imposed filtering. The national authorities' actions should be a balance between respecting the freedom of expression and ensuring protection from abuses. Any regulation of the Internet must be strongly based on freedom of expression as a human right, and may be restricted only under very narrow circumstances. In particular, there should be no extreme level of Internet censorship, such as it is practiced by many nations.

On the 12th of March 2010, Reporters without Borders published a list of 12 countries as „*enemies of the Internet*“. The organization classifies a country as an enemy of the internet because they „*mark themselves out not just for their capacity to censor news and information online, but also for their almost systematic repression of the Internet users*“. These regimes are: Burma^v, Iran^{vi}, North Korea^{vii}, Cuba, China^{viii}, Egypt, Syria^{ix}, Saudi Arabia, Tunisia, Turkmenistan, Uzbekistan and Vietnam. They often censor political content and may retaliate against citizens who violate the censorship with imprisonment or other sanctions^x.

Level of Internet censorship around the Globe



The states obligation to protect and fulfill: The international law recognized an obligation on states to take positive measures to ensure respect for the right to freedom of expression. Interpretation by courts and other authoritative bodies has started to elaborate on the nature of this freedom and, collectively, the interpretation broadly encompasses the fundamental right to Internet access.

In some countries, the access to the Internet is already explicitly recognized as a fundamental right of their citizens. In 2000 the Estonian Parliament passed a law declaring the Internet access a fundamental human right. Even more, in Finland broadband Internet access is a civil right starting with 1 July 2010.

In June 2009, the French Constitutional Court ruled that “the Internet access is a fundamental right that cannot be taken away by anything other than a court of law and only when the guilt has been established”. The court’s decision was related to the interpretation of the national legislation against Internet pirates exchanging copyright protected music, video and movies. Under the French legislation, the pirates would be informed at least three times by email warnings before the Internet access would be canceled. During the controversy over the French law, the European Parliament voted that whatever the scope of an individual’s right to use the Internet may be, this right should be restricted through governmental actions that are not disproportionate and that involve a decision of an independent and impartial judge which find the citizen guilty. The right to use the Internet is, in essence, the right to due process of law before the ability of the state to remove or restrict such a right. When imminent threats occur, it may be possible to be justified a lesser set of due process procedures prior to termination of the Internet access rights. Otherwise, any rule or procedure implemented by a European country to deny the individual access to the Internet will be controversial and the subject of considerable scrutiny on the constitutional or other legal grounds^{xi}.

What are the obligations of private actors? States may constitute the primary duty-bearers, but other actors can, at a minimum, contribute to strengthening protection and respect of human rights, including the right to communicate. Hence a number of courts worldwide have begun to address the parameters of corporate liability for human rights violations. The United Nations have launched the Global Compact, a voluntary initiative to promote corporate responsibility and cooperation between companies and the U.N., a principle-based framework for businesses, comprising ten^{xii} principles in the areas of human rights^{xiii}, labor^{xiv}, the environment^{xv} and anti-corruption^{xvi}.

Internet providers should not be empowered to make decisions amounting to censorship, outside any due process, transparency, and legal framework. Currently this practice is unaccountable and leaves no redress for individuals whose sites are taken down. So, international community should address the human rights obligations of internet providers and other industries directly involved in the making of the information society.

For example, Yahoo! Inc. provides Web portals, search engine, online chat and forum, and other services to users worldwide. Human Rights Watch argued that China’s restriction of freedom of expression on Internet and imprisons of those who engage in public expression of views that differ of those of the state are linked with Yahoo! Inc. which assist in furthering such human rights violations^{xvii}. Furthermore, Reporters without Borders suggests that, by voluntarily and publically agreeing to censor Internet content, Yahoo! Inc. is an accomplice in “demolishing the very foundations of the Internet and of democracy”^{xviii}.

Conclusion

In conclusion, I would like to underline the fact that, in practice, the reality shows that it is almost impossible to argue for the western concept of Internet access as a universally recognized fundamental right. It is hard to talk about this new right in areas where other basic rights are not yet implemented, such as the right to have access to drinking water. For example, in Africa where the Internet access is growing, with only Somalia, Eritrea

and Libya remaining apart, the vast majority of the continent's Internet users are in South Africa. Of approximately one million Internet users, on the African continent, 700,000 lived in South Africa. Letting this country out of figures, Africa has had, in the year 2000, about one Internet user for every 5,000 people while the rest of the World average was about one user for every 38 citizens^{xix}.

Unfortunately, the last ten years that passed since the data presented above was recorded have brought some modifications in this regard but the gap between the developed countries and the developing ones is even wider than before.

In September 2010, in Lithuania, at the Internet Governance Forum held in Vilnius, the United Nations under-secretary for Economic and Social Affairs, Mr. Sha Zukang, presented a report with the latest figures regarding the internet access of the African peoples. In the 2000 – 2005 period of time the number of internet users in Africa grew from 1 million to around 16 million and in the 2005-2009 period this trend was kept and the number of "web surfers" grew from 16 million to around 69 million. These numbers alone are showing a great increase in number of internet users but they can be somehow "out of context" if being regarded only by themselves.

In 2005 the United Nations statistics showed a gap of 43 percent in the proportion of people having access to the internet between the developed and the developing countries. The same statistics and metrics published by the organization at the end of 2009 showed that this gap is widening, being calculated at 49 percent. Another parameter that shows the real difference between the internet access available to different people is the percentage of mobile broadband usage (the high speed, always available connections to the internet). The gap percentage between the developed and developing countries in this regard, in 2005, was only 4 percent. The latest official figures of the Internet Governance Forum, published at the end of 2009, showed that the difference has dramatically increased to 37 percent.

All things considered, I can conclude that while the last years have brought a real progress of the developing countries in the matter of internet access, and the wide use of technology from another perspective, they are not able to catch up with the developed countries. It seems that they are now starting to walk this path while the others have already starting to run.

ⁱ Civil Society Declaration to the World Summit on the Information Society, adopted on 8th of December 2003 in Geneva.

ⁱⁱ Pramond Nayar, *An Introduction to New Media and Cybercultures*, John Wiley & Sons Publishing, Oxford, 2010, p.168.

ⁱⁱⁱ The vice-president of the European Commission and the EU's Justice Commissioner.

^{iv} Article 19 of the Universal Declaration of Human Rights.

^v The internet is regulated by the Electronic Act which bans the importing and use of a modem without official permission, and the penalty for violating this is a 15 year prison sentence, as it is considered "damaging state security, national unity, culture, the national economy and law and order." The internet speed is deliberately slowed and accessing a range of websites, from politics to sites promoting human rights and democracy in Burma are banned by the Ministry of Post and Telecommunications.

^{vi} Iran Internet censorship is delegated to ISPs who attempt to filter contents critical of the government, pornographic websites, political blogs, and especially recently women's rights websites, weblogs, and online magazines. Bloggers in Iran have been imprisoned for their Internet activities. The Iranian government blocked access to video-upload sites such as YouTube.com, Flickr, Twitter, Facebook and many more websites.

^{vii} Only a few hundred thousand citizens in North Korea, representing about 4% of the total population, have access to the Internet, which is heavily censored by the national government. There is a prime example where mediums of communication are controlled by the government. All websites are under government control, as is all other media in North Korea.

^{viii} Based on the People's Republic of China's Laws and Regulations regarding Internet, the internet censorship is vigorously implemented by provincial branches of state-owned ISPs, business companies, and organizations. China blocks or filters Internet content relating to Tibetan independence, Taiwan independence, police brutality, Tiananmen Square protests of 1989, freedom of speech, some international news sources and propaganda outlets, certain religious movements (such as Falun Gong). Many cyber dissidents are reportedly imprisoned in China for their online postings.

^{ix} Syria has banned websites for political reasons and arrested people accessing them. In addition to filtering a wide range of Web content, the Syrian government monitors Internet use very closely and has detained its citizens "for expressing their opinions or reporting information online."

^x A court in Zimbabwe tried to get jurisdiction over a Guardian reporter for an allegedly defamatory story on the sole ground that the Guardian website can be accessed from there. Andrew Meldrum, a correspondent for London's Guardian newspaper, was arrested on 26 of December 2001 under the President Robert Mugabe's new press-gag law - the Access to Information and Protection of Privacy Act for allegedly abusing journalistic privilege and publishing falsehoods.

^{xi} Robert Gellman, *Civil Liberties and Privacy Implications of Policies to Prevent Cyberattacks*, The National Academies Press, Washington DC, 2010, p. 281.

^{xii} The Global Compact was initially launched with nine Principles. June 24, 2004, during the first Global Compact Leaders' Summit, Kofi Annan announced the addition of a tenth principle against corruption.

^{xiii} Principle 1: Support and respect the protection of internationally proclaimed human rights; and Principle 2: Make sure that they are not complicit in human rights abuses.

^{xiv} Principle 3: the freedom of association and the effective recognition of the right to collective bargaining; Principle 4: the elimination of all forms of forced and labor; Principle 5: the effective abolition of child labor; and Principle 6: the elimination of discrimination in employment and occupation.

^{xv} Principle 7: support a precautionary approach to environmental challenges; Principle 8: undertake initiatives to promote environmental responsibility; and Principle 9: encourage the development and diffusion of environmentally friendly technologies.

^{xvi} Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

^{xvii} Human Rights Watch's *Report on Yahoo! Risks abusing rights in China*, 2002, p. 72.

^{xviii} De Mathias Klang and Andrew Murray, *Human Rights in the Digital Age*, The Glass House Press, London, 2005, p. 116

^{xix} Wayne Sharpe, *Rebel Internet: Human Rights and the New Technology*, MacMillan Press, London, 2000, p. 45 .