



Wilton Park



Conference report

Freedom of expression online: identifying and addressing challenges and developing a shared vision and a working partnership

Wednesday 13 – Friday 15 February 2013 | WP1216



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Executive Summary

- The internet presents new social and economic opportunities, but also new challenges for thinking about the protection and promotion of freedom of expression. Stakeholders are faced with a complex space that lacks conceptual clarity and cuts across policy areas, including security, freedom of expression, development, privacy, and intellectual property. Galvanizing the internet’s potential for innovation and economic development, while fostering norms based on tolerance and respect, requires cooperation between various stakeholders, including different sectors of the government, industry, civil society and the technical community.
- Addressing conceptual issues such as what the ‘internet we want’ looks like, how it should be governed and what a digital agenda for development would involve, goes hand in hand with efforts to educate and build stakeholder capacity, as well as practical issues of developing greater policy coherence. In the upcoming period, there will be a number of opportunities for cooperation between stakeholders across different sectors and geographic regions to find common ground on a number of these issues, focus on what is feasible, and develop practical actions around these goals. A place for meaningful multi-stakeholder engagement is still needed, along with clarity about where decisions should be made. Integrating human rights, particularly freedom of expression, into the internet will require action on multiple fronts, including better education of users for example, on tolerance; transparency including company practices on take-downs; capturing of best practice for regulation of the internet and increased regional dialogue on how to promote and protect human rights. Integrating different areas of internet policy and practice in a coherent manner is a key challenge – engineers, users, human rights experts, government security experts all need to be involved.

Freedom of expression online – challenges and opportunities

Need for conceptual clarity

1. There is currently a lack of conceptual clarity about how to achieve an Internet that protects human rights whilst addressing security and other concerns and takes account of the technical implications. The respective role of each stakeholder in upholding this entity is also unclear and there is a lack of joined up thinking amongst these constituencies which include business, government, civil society, and engineers.
2. There are concerns regarding the risk of a fractured internet emerging, developed in an environment where fear of repercussions or lack of forethought may impact on users’ rights and where innovation is stifled.

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“..Internet access needs to be universal and affordable...”

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Internet governance

3. There is dissatisfaction with the current model of internet governance among some stakeholders and a sense that there is a lack of effective mechanisms and an adequate forum to deal with public policy issues related to the internet. These issues are growing in importance in the approach to the review of World Summit on the Information Society (WSIS) in 2015. Failure to address them could risk a fragmentation of the debate as countries pursue their own interests in different forums, which would impact on the possibility of achieving an internet that protects human rights. The fundamental problem is that of decision-making – which of the multitude of forums are important? Where should people look to engage where their efforts would make a difference? Is there a need for a new decision-making body in the field of internet governance and what risks would that run?
4. There is also a problem of policy coherence (domestically and internationally) – as governments lack consistency in their approach to internet policies. There is an absence of an agreed international position on what constitutes multi-stakeholder decision-making, as well as a lack of agreement on the appropriate role for non-governmental actors. The Internet Governance Forum (IGF) has not resolved the issue. However, the recent World Conference on International Telecommunications (WCIT) was a wake-up call that quick action is needed to identify forums to address internet issues. Issues that have not been politicised before are becoming increasingly so and there is confusion about what kind of international discourse is to be expected.
5. The debate on governance is complicated by disputes about the role of non-governmental actors and multi-stakeholder decision-making and whether this contradicts democratic principles. The politicisation of the discourse in the run up to and during WCIT – if not addressed – could lead to countries deciding to go their own way and the economic, social and political benefits of a unified internet would be lost. There is a particular challenge to broaden current discussions in order to ensure Global South engagement, the involvement of the technical community, adequate and balanced civil society representation and the appropriate representation from all sectors of industry.

The digital divide and the need for a digital development agenda

6. At the moment, internet policy discussions are dominated by those who already have access to the internet, and policy forums need to find ways of including the interests of those 5 billion people who don't yet have access. Internet access needs to be universal and affordable, otherwise existing inequalities might increase the risk of marginalisation if people are left behind. There is an opportunity now to shape a comprehensive digital development agenda.
7. There are a number of technical, regulatory and commercial implications that go hand in hand with digital inclusion: providing access requires the right kind of regulation, the appropriate incentives for investment, capacity building – not just technical and commercial, but also in terms of education on human rights-compatible use and processes– and, finally, the need to find the appropriate forum in which these issues can be discussed.
8. Past efforts should be taken into account – there have been several years of development work focused on the use of ICTs for development and it is important to learn lessons from that experience. This highlights the need for some conceptual work about what a digital development agenda would mean. It also highlights the need for better research and evidence of impact of digital technologies and internet in economic and social development.

Adherence to existing human rights principles

9. There is a need for a better understanding of how human rights apply to the internet and how to better implement accepted human rights principles. The report to the UN

Human Rights Council (UNHRC) 2011 and subsequent resolution in 2012 sets a good benchmark, but some governments do not respect the ruling of the UNHRC.

“This interactive, rapidly shifting medium requires new norms of behaviour...”

10. In addition, there is a need to build understanding of the complex nature of human rights online and their technical, commercial and political dimension. Technically, human rights principles can, to a certain extent, be designed into the architecture. There is value in working with engineers to establish basic human rights principles online that are capable of being represented in product or service design. This is tied to the need for discussion about those principles with the technical community and of integration of a human rights training element in relevant engineering training.
11. There is also the need to engage in a dialogue with industry about human rights principles. The work of John Ruggie on business and human rights is a useful starting point and there are numerous guidance notes and industry recommendations on applying these standards (although there is an array of approaches which might benefit from simplicity and codification). Some companies are faced with questions on whether their own services have come to constitute a human right and therefore need protection. This raises a further question: should something that is seen as a human right be run by the public sector rather than a private company? Another question is how investors can be motivated to invest into tech start-ups that respect human rights.
12. Regional bodies and regional dialogues could provide a useful way of rolling out normative standards.

“It is difficult to separate the internet from broader political and development issues such as literacy or an understanding of what is acceptable speech.”

New norms of behaviour

13. There has been a growth of incivility and even hatred online, with the attendant difficulties of policing different national and cultural concepts of acceptable behaviour. While international law specifies agreed restrictions on free speech (implemented through national law) there is still international incoherence, as the spectrum of what is acceptable is wide in some areas (eg. the application of religious speech) and very narrow in others (such as terrorism or child pornography).
14. The internet is a different kind of medium where what has previously been private conversation becomes a published document on a medium like Twitter. This interactive, rapidly shifting medium requires new norms of behaviour (education goes hand in hand with freedom) and a need for tolerance-building globally. In looking at current standards of speech, acceptable restrictions vary across the globe depending upon the issue. In relation to child pornography there is a global consensus, but with religious speech the range of restrictions may be broad. If it is accepted that there will necessarily be regional variations in how issues are dealt with, this in turn raises the problem of how to maintain some universal parameters so that restrictions do not go too far.
15. While human rights advocates argue that human rights online are the same as offline, others disagree and point out that social media changed the nature of private/public space in a way that triggers a rethink of the application of traditional law to the online realm. One option is to avoid hard law in this area, given its fluid nature, and develop guidelines or norms that help prosecutors decide whether they have discretion to prosecute or not. This raises issues about whether laws, guidelines or norms are appropriate. However, while the application of normative or discretionary guidelines may work in countries such as the UK there are concerns that they might not work in some jurisdictions.
16. It is difficult to separate the internet from broader political and development issues such as literacy or an understanding of what is acceptable speech. It is also important not to be naïve about the internet. Its strengths include self-realisation and the promotion of rights of minorities, but in other areas the role of internet is more ambiguous, for example, negative effects on professional journalism.

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Actors – new roles and challenges

Governments

“Governments should explore new ways of engaging citizens and involving users in discussions about internet governance.”

17. Because the internet changes rapidly and government policy processes do not, it is difficult for governments to be flexible and responsive. State dominated bodies, whether multi-lateral or bi-lateral may aspire to control things and it is challenging to find a forum for state negotiations that also involves other stakeholders. Any mechanism or forum put in place needs to have legitimacy in the eyes of governments in order to be effective. At the same time, if governments dominate debate on how the internet is governed there is a danger of over politicisation and the difficulty that the internet gets caught up in wider geo-politics. Multi-stakeholder working can improve people’s understanding of the issues and this, in turn, can lead to better decision-making. However, government decision-makers may not be accustomed to civil society participation except in a limited fashion. Governments should explore new ways of engaging citizens and involving users in discussions about internet governance.

Industry

“The economic model of the internet and growth in user-generated content also raises considerable privacy issues”

18. Companies are of crucial importance. As the engines for the creation and sustainability of internet globally they have an important role in respecting human rights. The role of the internet and its importance to freedom of expression and human rights necessitate open and transparent company practices, even though many parts of industry have limited incentives to be transparent given the risks of reputational damage (by for example issuing transparency reports documenting the nature and volume of requests by government for personal data held by companies). The economic model of the internet and growth in user-generated content also raises considerable privacy issues and there are substantial risks from the growth of “big data” with subjects having little or no control over the use or interpretation of their data. It might be possible to protect privacy by technological design, but this would require the incorporation of human rights and public policy into curricula for engineers. Expanding the use and knowledge of the Brussels principles could also help.

Civil society

“In order to participate in genuine multi-stakeholder working, CSOs need both resources and real transparency and accountability.”

19. Civil society’s role is important in a multi-stakeholder framework, but civil society faces a number of challenges. Given the importance of global voices there is a challenge in creating a genuinely representative “connective” tissue that brings together civil society from across the world to participate in policy discussions on an equal basis. Often, civil society groups rely too much on values-based observations and neglect the need for evidence-based research that is policy-oriented and marries values with genuine needs of national security etc. Civil society organisations (CSOs) face a particular challenge in covering all the relevant forums where internet policy discussions are taking place. In order to participate in genuine multi-stakeholder working, CSOs need both resources and real transparency and accountability.

Looking to the future – potential work-streams

Towards conceptual clarity

20. Moving forward on this point requires a shift away from abstract ideas in order to pin down what is meant by a ‘human rights-upholding internet that is safe and secure’. A potential work-strand would be to develop this framework with a detailed breakdown of its technical, commercial and policy-related implications, and an outline of each stakeholder’s respective role in upholding it. This framework should address issues such as security and cyber-security, which concern states but are often overlooked by the human rights community. Development of this framework will require a multi-stakeholder process with input from governments, industry, the technical community and civil society. Existing efforts in building consensus around normative principles for the internet could be used as a starting point.

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“Addressing legitimate concerns of developing countries should be part of this alliance-building strategy.”

21. The process for developing the conceptual framework could be the model for greater collaboration between ‘securocrats’ and the human rights advocates, as well as greater engagement of the technical community in a discussion about human rights principles.

Internet governance

22. As a starting point, there should be an audit of the current internet governance field that maps existing global governance institutions and ways to engage with them.
23. In improving the existing internet governance model, there is a possibility of establishing an enhanced IGF – an IGF+, that would be taken more seriously by states and which could, for example, have the power to make recommendations or declarations. This could be pursued through civil society efforts, ideally with support from governments who would agree to actively engage with the IGF structures.
24. In the interim, multi-stakeholder practices that are exemplified at the IGF should be worked into other forums, and avenues in which deliberations of different bodies can substantively feed into IGF should be improved. National and regional IGF bodies and conferences could play a greater role in the process. In order to improve the current multi-stakeholder model of governance, there should be sustained support to civil society, particularly from the Global South, to participate in internet governance debates.
25. At the governmental level, progressive governments should proactively engage with like-minded governments and states in the Global South. Addressing legitimate concerns of developing countries should be part of this alliance-building strategy.

Developing a digital development agenda

26. Bridging the digital divide will require a rethink on how to ensure better and more affordable access to the 5 billion people who do not yet have it. Developing a digital development agenda should work towards understanding the human rights dimension to this debate as opposed to the ICT4 Development perspective. A first step would be to identify the reasons why ICT 4D has not yielded greater success and what the new agenda would do that has not been achieved so far. The agenda should be based on hard data and evidence about the role of the internet in development. This would feed into a common understanding by donors, recipients, and non-governmental actors of basic principles that would underpin a human rights-friendly approach to development and how to move it forward. Acknowledging the importance of the commercial sector, the agenda should be specific about the role of companies in building the infrastructure needed to improve access and how to incentivise them to do this.
27. Progressive governments that already have a strong presence in international development could spearhead this initiative, but it would require buy-in from developing countries and a joining-up of governments’ development and human rights policies, as well as support from industry. The digital development agenda could feed into upcoming international conferences like the Seoul cyber conference. It could also feed into the post-2015 Millennium Development Goals.

Strengthening adherence to existing human rights principles

28. The application of human rights principles in different contexts still needs to be worked out. There is an opportunity to move this forward by localising the discussion, particularly in Africa, for example through regional cooperation between countries such as Ghana and Nigeria, and by broadening debate in and with African organisations.

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