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HUMAN RIGHTS ON THE INTERNET: LEGAL FRAMES AND TECHNOLOGICAL IMPLICATIONS

Background Paper

A cyberspace philosophy promotes maximum independence of the internet from any government and other forms of interference. It is impossible, however, to preclude any kind of internet governance or regulation thereof. The internet is like a mirror reflecting the real world, where we have moral and legal rules called to provide and ensure freedom of expression and information accessibility rights, protection from abuse of those rights by criminal and other kinds of wrongful behavior.

Similar rules should also exist in the cyberspace. Nowadays, we could in fact reveal the three levels of internet governance, namely: supranational, national and self-regulation. Due to the specificity of the internet, none of these levels could be declared self-sufficient or unique to set up relevant management rules. The main purpose of this paper is to compare these three levels of internet governance and to allocate their roles in this process according to their functional characteristics.

To sum up, we can outline the following positive aspects of internet governance at an international level:

– an open and unrestricted dialogue on internet governance issues, including the freedom of expression and information accessibility rights, independently from national legislation or ideology of certain states

– ‘participatory’ approach, i.e. involvement of many actors in decision-making process, such as governments, international intergovernmental and non-

governmental organizations, scientific and professional community and other representatives of civil society dealing with the issues of internet governance

– an open-minded, more complete and scientifically sound analysis of the issues of internet governance

– an international level more adequately reflects the supranational nature of the internet as a worldwide information network ‘without borders’, which approaches the accepted rules to reality;

– due account of fundamental human rights instruments adopted by the United Nations and regional international organizations.

We can also show some weaknesses of the international level:

– in most cases the decisions of international organizations are of recommendatory nature, which prevents us from hoping that such decisions will be adopted by all jurisdictions at a national level (with the exception of such regulations as international treaties that are properly signed and ratified by member states, like the European Convention on Human Rights (1950), the Budapest Convention on Cybercrime (2001), etc.)

– not all national jurisdictions unequivocally perceive particular international norms and principles of internet governance

– most of the above proposed norms and principles of internet governance have ethical nature, which requires extremely high level of legal and information culture for them to be adopted in a particular country

– many international non-governmental and intergovernmental organizations (Reporters Without Borders, IFLA, etc.) perceive any attempt to regulate the internet as an illegal establishment of censorship on the internet, which means an

automatic denial of freedom of expression and information accessibility rights of internet users.

Consequently, as for the supranational level of internet governance, the following should be stressed here.

- Development and launching of programs and policies aimed to improve internet governance theory, ideology and methodology.
- Arbitration, counseling, intermediary and other methods of dispute settlement between national jurisdictions in the sphere of internet governance.
- Development and promotion of ethical standards of internet governance, which includes the development and improvement of the Codes of Ethics at supranational (global and regional) and national levels.
- Clarifications and training courses aimed to promote internationally approved programs and policies of internet governance.
- Development of obligatory rules stipulated in multinational treaties and conventions designed to protect basic human rights in the sphere of information, such as the freedom of expression/speech and information accessibility rights, with due account of the cyberspace.
- Assistance in the ratification of such treaties and agreements and their implementation in national legislations.
- Monitoring of government abidance by the established rules of internet governance to guarantee the freedom of expression and information accessibility rights.

We can outline the following positive aspects of internet governance at a national level:

– as a rule, there are well-defined members of the regulatory process with a specific legally bound mandate to implement it

– ‘traditional’ and clear (understandable) mechanisms for protecting citizens’ constitutional rights when they are violated (judicial, administrative, etc.)

– references to legislation and international law implemented by the country as a part of national legal system provide greater guarantee of legal protection of freedom of expression and information accessibility rights.

There are, however, certain weaknesses of internet governance at a national level:

– possible abuse of power by national security, law enforcement and state control officials in the process of control or supervision exercised over the activities of internet service providers and the users

– imperfect legislation that lags behind the level of development of internet technologies, including the lack of definitions of sufficient internet-related terms

– users whose freedom of expression or information accessibility rights are violated would not sometimes seek to protect their rights with public authorities because of the fear of corruption or red tape

– insufficient legal culture and legal literacy of many internet users prevents them from efficient defense of their rights by using state mechanisms of legal protection.

The national level of internet governance should be assigned for the compliance of following functions.

- Ratification of international treaties and conventions in the sphere of internet governance and their implementation into national legislation.
- Establishment of favorable legal environment for realization of freedom of expression and information accessibility rights in the internet, including

modernization of national legislations according to the modern development of WEB 2.0 and other cutting-edge technologies of cyberspace, especially the possibility to make user-generated content on websites.

- Protection of constitutional freedom of expression and information accessibility rights in the internet by judicial and administrative bodies in a statutory manner.

- Prevention of the abuse of information rights in the internet by imposing legal restrictions that are based on constitutional provisions for defending constitutional interests, such as health, morality, another person's rights, national defense and security.

Now, we would like to outline positive aspects of self-regulation of web resources:

– freedom of actions of individuals realizing information rights in the internet and ensuring that such rights are observed

– a possibility of diversification of regulatory policy, depending on the specific resource in the internet

– administration of an internet resource and the community of its users is voluntarily interested in compliance with the user agreement of the web resource

– establishment of a competent community of users of internet resources and their corporate culture with ethical norms, customs and rules of conduct.

Among disadvantages of self-regulation we could see the following:

– user agreements are clearly optional for the users, whereas the rules and sanctions imposed by the administrations can be easily avoided by registering multiple accounts

– the quality of protection of the freedom of speech in the internet depends on the legal and information culture of users, the ways of their interaction with the resource administration

– the possibility of subjective approach to the violation or compliance with the user agreements, depending on the policy of a particular resource

– if an internet resource is registered in a foreign jurisdiction, it can give rise to a conflict of jurisdictions which manifests itself in impracticable application of translated versions of user agreements that are recognized as unofficial ones

– the user agreements stipulate their optional nature for the administration of the resource, or easy ways to amend such agreements unilaterally, without any consulting with the users of the website.

Self-regulation on web resources should be allocated with the following functions.

- Formation and development of social networks on different websites, establishment of user communities and improvement of their information literacy and legal culture.

- Elaboration of rules of conduct formalized in user agreements and the terms of service, their compliance with statutory standards.

- Settlement of disputes arising in a process of realization of the freedom of expression and information accessibility rights on different websites in a statutory order within users network communities, possible arbitration by means of specially appointed conflict commissions, moderators and managers of such web resources.

- Development of standard (community) rules of internet governance on specific websites, which have both ethical and legal nature.

In a big range of legal issues arising in connection with Internet Governance and human rights, on the workshop we should revise the following main issues.

1. The need to streamline regulation. In our point of view, following a three-tier division of Internet governance (supranational, national, and community level) in order to realize freedom of expression and the right to access information, it is necessary to provide necessary conditions for participation of online communities in the governance on separate web resources. For that reason it is required to streamline regulation of the rules of behavior on these resources, and introduce strict system of monitoring.

2. Revaluation of the legal nature of user agreements. It is possible to challenge the civil-law nature of the user agreements. The realization of the freedom of expression and the right to access information on the Internet is undoubted constitutional law value. Civil law cannot settle number of public law by nature of social relations connected with the implementation of human rights and freedoms, if freedom of expression on the Internet could be considered in this context.

3. New understanding of jurisdiction in cyberspace. Cyberspace should be treated as separate jurisdiction with their own rules, which reflect its unique character. Internal rules were designed as horizontal, in which the subjects of law are standing as their creators. Consequently, there is need for a new understanding of the Internet governance and territoriality in cyberspace.

4. Establishment of the web communities. In social networks and other sites hosting user-generated content, user agreements do not contribute to the establishment of competent user communities. In this case, the term ‘competent’ includes such community of users, which user agreements have links to legislation and universally recognized principles and rules of the international law, as well as clear procedures for resolution of disputes by the appointment of responsible persons in an open and democratic manner. in this context it is also required to

increase level of legal and information culture of users and administration of web resources.

5. Revision of the standards of responsibility. Rules on liability in the Internet, which existed in the era of ‘static’ web, should be reconsidered, because of the significance of the user-generated content. Resource owner is often just provides technical conditions for the activities of users. Thus, the responsibility of the owner of the resource is his need to establish rules of the website, to draft such rules for discussion of interested stakeholders, and comply with the conditions for their implementation. These rules shall not conflict with the law and impede the realization of the freedom of expression and the right to access information on the Internet. The administration of the resource is an intermediary between the owner and resource users. Its main task is monitoring of the implementation of user agreements, avoiding abuse of the freedom of expression and the right to access information on the Internet.

From technological point of view we could outline the following issues affecting human rights.

1. Anonymity. The conflict of human rights concerns the issue of anonymity on the Internet. On the one hand the legitimate desire of the person to remain anonymous is understandable, but on the other hand, such freedom should be determined by the principle of non-violation of the rights of others. As on the Internet it is difficult to identify a person as this is due to technological features, there are quite a reasoned opinion on the prohibition of all anonymous to human activity.

2. Harmful Information. The spread of harmful information in the internet environment affects human rights, as each state understands by this category of their information. In this regard, there are situations in which you can avoid liability. In addition, in this area there is a problem of identification of offenders. Interaction of states could resolve such questions.

3. Electronic Courts. It creates a procedure for resolution of the dispute to the court in the application of electronic methods of conflict resolution together with the use of Internet technologies. The development of this technology will allow implementation of human rights on all the levels. related to business and other economic activities. At the same time maximum use of modern information and telecommunication technologies.