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Is access to the Internet a human right?

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Introduction

According to the International Telecommunication Union (ITU), 34.5 percent of the approximate seven billion people on earth now use the Internet, compared to 17.5 percent in 2006.¹ The fact that the proportion of global Internet users has nearly doubled in half a decade strongly reflects the ever-increasing prevalence within people's daily lives of online services: from interpersonal e-mail communication to Voice over IP services like Skype; from blogs to social media channels like Facebook and Twitter; from commercial web services to online business negotiations and transactions. The Internet seems to abound with possibilities for human enterprise and communication, existing as a space where doctors can check up on their patients at the same time that students participate in e-seminars and governments interact with citizens. The versatile use of the Internet—becoming increasingly widespread—has thus offered opportunities in many areas for individual and collective advancement through facilitating creative expression, economic development and education.

Yet while the Internet indeed offers opportunities unimaginable only decades ago, we should also note its limits. In particular, whereas the Internet has brought rapid changes to some societies, other societies remain largely unaffected or are only slowly experiencing the Internet's formidable reach. Furthermore, as the Internet continues to evolve, so does the way in which individuals interact with the medium. In particular, as Internet use has broadened geographically and socially in recent years, the deepening impact it has on people's lives has not necessarily corresponded with individuals' ability to decisively influence the nature of their relationship with the online world. A range of actors apart from individual Internet users—technology developers, policymakers, businesses, etc.—shape this interaction.

The relationship of individuals with the Internet has long raised human rights concerns, including those related to privacy, the protection of children and countering hate speech. Within the past decade, this discussion around rights and the Internet has seen a notable evolution: whereas one could say that much of the earlier debate focused on the threats posed by the Internet, there is now increasing attention on threats to the Internet and related human rights. For example, the right to freedom of expression now occupies a growing space within this debate. Moreover, discussions about intellectual property right legislation—consider the contentious 2011-2012 debate about the SOPA and PIPA bills in the United States—demonstrate how public policies concerning technology are now often framed within the discourse of human rights. While this discourse is familiar to many, this paper attempts to explore some of the questions it leaves unanswered. Namely, how do human rights issues concretely play out on the Internet? What rights are involved, and what issues are at stake?

It is not within the scope of this paper to undertake a comprehensive review of all Internet-related human rights issues. Instead, this paper looks at one emerging issues within the debate: the possible existence of a right to access the Internet. While it has been touched on before by other authors, this article adds to the discussion by mapping out the elements at play with this issue, offering insight into underreported dimensions and further analyzing their significance. Given that the Internet inhabits such a prominent place in billions of people's lives—and that policymakers often have the ability to make crucial decisions affecting who can and cannot access the Internet—this issue is paramount. Some states have already paved the way by declaring a right to Internet access within their territories.

¹ "One third of the world's population is online," in: *The World in 2011 ICT Facts and Figures*. (Geneva: International Telecommunication Union, October 2011). <http://www.itu.int/ITU-D/ict/facts/2011/material/ICTFactsFigures2011.pdf>, 1; and "Key Global Telecom Indicators for the World Telecommunication Service Sector," *Internal Telecommunication Union*, 16 November 2011, http://www.itu.int/ITU-D/ict/statistics/at_glance/KeyTelecom.html.

I. The right to access the Internet

In recent years, numerous elements and events have amplified discussions around a right to access the Internet. First, the expansion of Internet use across the globe, its impact and perceived benefits—economic development among them—have given rise to the idea that having Internet access is generally positive for people. Considering the marked lack of Internet connectivity in developing countries, a right to access has been argued as a means for economic, social and cultural development. For example, among other objectives outlined in the outcome documents of the 2003 and 2005 multilateral World Summit on the Information Society (WSIS), we find “the importance of removing barriers to bridging the digital divide, particularly those that hinder the full achievement of the economic, social and cultural development of countries and the welfare of their people.”²

The access debate has also been spurred by intellectual property rights legislation, which, in a few countries, has been pitted against users’ Internet access. The HADOPI law in France, for example, punishes repeat copyright infringers by disconnecting their Internet service.³ Furthermore, international trade treaties that have been discussed in recent years, including the Anti-Counterfeiting Trade Agreement (ACTA) and the Trans-Pacific Strategic Economic Partnership Agreement (TPP), have at times included provisions calling for similar measures.⁴ This has stirred the question of when, if ever, the penalty of disconnecting individuals from the Internet can be justified. A third stimulus for this debate has been the imposition of state power on general Internet connectivity. In January 2011, the Egyptian government intentionally induced a blackout of Internet service as political unrest swept the country, at the same time that a bill in the U.S. Senate proposed building a ‘kill switch’ to the Internet.⁵ As a consequence, many asked whether a firmly entrenched right to access was needed to prevent and render illegal such actions.

a. Dimensions of a right to access

While understanding these diverse motives for demanding a right to access is crucial to fully grasping the socio-historical significance of such a right, it is equally important that we understand the various nuanced ways in which such a right can be interpreted. Even though such a right may appear a straightforward claim, thoughtful analysis is required to understand the different aspects it encompasses. Here, I outline four of the most important dimensions that merit consideration when talking about a right to access.

The first dimension involves seeing a right to Internet access as a right that cannot be denied: where Internet service exists, governments cannot prevent individuals from acquiring the service, nor can they deprive individuals of their Internet connection. The former element includes protection against arbitrary exclusion from attaining Internet access, as well as forms of political repression—for example, Internet usage is widely discouraged in Eritrea and North Korea—while the latter part relates to both the ‘kill switch’ measure and the imposition of far-reaching penalties for the purpose of copyright enforcement.⁶

² “Tunis Commitment,” *International Telecommunication Union*, 18 November 2005, <http://www.itu.int/wsis/docs2/tunis/off/7.html>. See also the Geneva Principles: “Declaration of Principles. Building the Information Society: a global challenge in the new Millennium,” *International Telecommunication Union*, 12 December 2003, <http://www.itu.int/wsis/docs/geneva/official/dop.html>.

³ Simon Columbus, “France to disconnect first Internet users under three strikes regime,” *OpenNet Initiative*, 27 July 2011, <http://opennet.net/blog/2011/07/france-disconnect-first-internet-users-under-three-strikes-regime>.

⁴ Paul Meller, “Leaked ACTA Draft Treaty Reveals Plans for Net Clampdown,” *PCWorld*, 19 February 2010, http://www.pcworld.com/article/189812/leaked_acta_draft_treaty_reveals_plans_for_net_clampdown.html; “Trans-Pacific Partnership - Intellectual Property Rights Chapter - Draft,” *Knowledge Ecology International*, 10 February 2011, Art. 16.3b.VI <http://keionline.org/sites/default/files/tpp-10feb2011-us-text-ipr-chapter.pdf>.

⁵ James Glanz and John Markoff, “Egypt Leaders Found ‘Off’ Switch for Internet,” *New York Times*, 15 February 2011; “Reaching for the kill switch,” *The Economist*, 10 February 2011.

⁶ “Countries under surveillance: Eritrea,” *Reporters Without Borders*, <http://en.rsf.org/surveillance-eritrea,39762.html>;

The second dimension entails viewing a right to access as an entitlement; one that indicates every person should have the ability to access the Internet. Clearly, the realization of such a right would require a massive global effort involving widespread public policies aimed at enabling every individual to attain Internet access. Furthermore, if the right to access the Internet were explicitly established by treaty as a human right, the first dimension described above—the inability of states to deny the right—would necessarily encompass the second. Under international law, states are not only bound to respecting and protecting, but also to fulfilling human rights, a process that requires that states “take positive action to facilitate the enjoyment of basic human rights.”⁷

The third dimension of a right to Internet access builds on the notion that such a right may extend beyond mere connectivity. Internet access, after all, seems deeply skewed if it is limited to a compartmentalized network consisting only of websites from a user’s home country.⁸ Such access also appears slanted if specific services, such as video sharing or VOIP, are excluded, as is reflected in the debate around net neutrality.⁹ As such, a right to access requires discussions on whether Internet filtering is a permissible approach to enforcing legitimate limitations to the right to online freedom of expression, however ‘legitimate’ is defined. A right to access may therefore also include provisions outlining content that can be accessed.

The fourth dimension relates to the way in which people connect to the Internet. Honing in on *how* this connection occurs raises issues ranging from privacy and affordability to private access, medium of access, and information literacy. For example, a right to access the Internet might be perceived as less meaningful if individuals find their online activities monitored, while the question of affordability—calling attention to the socio-economic dimension of the right to access—largely determines people’s ability to connect to the Internet in the first place. Furthermore, whether individuals can access the Internet through a mobile device or in the privacy of their home, as opposed to having to utilize a public Internet service (in a library, for example), largely shapes how a right to access is enjoyed. Finally, the extent to which individuals are equipped to engage and find information online—whether their capabilities extend beyond checking e-mail, for example—also impacts the meaningfulness of a right to access.

Recognizing the various dimensions of a right to access is crucial: in addition to avoiding any single, monolithic definition of the right, it facilitates our analysis of whether such a right can be said to exist. The next section aims precisely to address this question.

b. Does a right to access exist?

In this section I will assess the arguments for and against recognizing a right to Internet access, by examining different sources that point in the direction of such a right existing. Before considering this ‘evidence,’ it is important to understand when a human right can be said to exist in legal terms. According to the UN Human Rights Committee, human rights are “the legal expression of the essential rights that every person is entitled to as a human being.”¹⁰ They are generally established “in the forms of treaties, customary international law,

⁷ “Internet enemies: North Korea,” *Reporters Without Borders*, <http://en.rsf.org/internet-enemie-north-korea,39755.html>.

⁸ “International Human Rights Law,” *United Nations Office of the High Commissioner for Human Rights*, <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>.

⁹ “Belarus: Browsing Foreign Websites a Misdemeanor,” *Library of Congress*, 30 December 2011, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402929_text.

⁹ “The concept of ‘net neutrality’ holds that companies providing Internet service should treat all sources of data equally.” From: “Net Neutrality,” *New York Times*, 22 December 2010,

http://topics.nytimes.com/topics/reference/timestopics/subjects/n/net_neutrality/index.html.

¹⁰ “General Comment No. 24. Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant (CCPR/C/21/Rev.1/Add.6),” *UN Human Rights Committee*, 4 November 1994,

general principles and other sources of international law” and include both rights and obligations.¹¹ Human rights may therefore vary in source, form and enforceability. Although not exclusively, the core of the human rights framework is expressed in three key documents: the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR, also 1966).¹² Human rights treaties can also aim to address more specific rights violations, as evidenced by the Convention against Torture (and Other Cruel, Inhuman or Degrading Treatment or Punishment) and the Convention on the Rights of the Child (CRC).¹³

Direct legal recognition of the right and state action

The clearest way of establishing a human right is through an international treaty. At the moment, there is no treaty that specifies the existence of a right to Internet access. At the same time, human rights are dynamic: what was not part of the UDHR in 1948 or treaties concluded in the decades thereafter may very well become an established human right in a changed world, particularly where the Internet has obtained such dominance and significance for people’s everyday lives. It is therefore useful to consider domestic laws and state actions in assessing whether emerging norms, local or international, can be said to recognize a right to access.

A number of states have legislated this right. Estonia, Finland and Spain have included the Internet as part of universal service provisions, with the latter two countries even affirming a right to broadband (high-speed) access. In addition, the French and Costa Rican constitutional courts declared in 2009 and 2010, respectively, that there is indeed a right to access the Internet.¹⁴ While universal acceptance of the right still appears a distant prospect, these domestic trends suggest that in at least several national contexts, states have regarded the Internet to be of such importance that they have mandated that their entire populations be able to access it.

In addition, other adopted legislation also points to a growing perception of Internet access as carrying increasing public importance. Notably, Chile, the United States and the Netherlands have adopted, or are in the process of adopting, legislation guaranteeing a form of neutrality of the Internet.¹⁵ This desired neutrality aligns with the original design of the Internet as a technology where network carriers transport data packets ‘blindly’ from one computer to the other, without discrimination. Such legislation aimed at rendering the Internet neutral seeks to combat a fragmented Internet, where network providers discriminate between services and can, for example, require payment from individuals wishing to access different parts of the web. The significance of governments imposing ‘net neutrality’ lies in its suggestion that many states no longer regard the Internet to be a private undertaking as such, but one that requires a top-down, imposed definition

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/69c55b086f72957ec12563ed004ecf7a?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/69c55b086f72957ec12563ed004ecf7a?Opendocument).

¹¹ “What are human rights,” *United Nations Office of the High Commissioner for Human Rights*, <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

¹² Of these three, the Universal Declaration of Human Rights is considered to be ‘soft law’ given its non-binding nature.

¹³ For a list of international human rights instruments, see “International Law,” *United Nations Office of the High Commissioner for Human Rights*, <http://www2.ohchr.org/english/law>.

¹⁴ Stephanie Borg Psaila, “Right to access the Internet: the countries and the laws that proclaim it,” *Diplo*, 2 May 2011, <http://igbook.diplomacy.edu/2011/05/right-to-access-the-internet>.

¹⁵ “Gobierno promulga ley de internet y neutralidad de red,” *Subsecretaría de Telecomunicaciones | Ministerio de Transportes y Telecomunicaciones - Gobierno de Chile*, 26 August 2010, http://www.subtel.gob.cl/prontus_subtel/site/artic/20100826/pags/20100826145847.html; Peter Voskamp, “GOP Attempt to Overturn FCC’s Net Neutrality Rules Fails in Senate,” *Reuters – the Wrap*, 10 November 2011, <http://www.reuters.com/article/2011/11/10/idUS211494328220111110>; “Netneutraliteit,” *Rijksoverheid*, <http://www.rijksoverheid.nl/onderwerpen/telecomwet-en-regelgeving/netneutraliteit>; “Implementatie van herziene telecommunicatierichtlijnen,” *Eerste Kamer der Staten-Generaal*, 17 January 2012, http://www.eerstekamer.nl/wetsvoorstel/32549_implementatie_van_herziene.

of what the Internet should constitute. This neutrality legislation might go hand-in-hand with mandating a right to access: if the Internet is perceived to carry such importance that governments can legislate a right to access it, the idea that governments also desire a voice in shaping the principles which define that same Internet does not seem particularly far-fetched. Conversely, if governments attach great importance to the Internet's neutrality, then it may also seem logical that they should attribute equal importance to people's ability to access it.

Not all legislation and state action, however, point in the direction of accepting a right to access. As mentioned, some states have adopted laws stipulating Internet account disconnection as a legitimate copyright enforcement measure, and more states may follow after the domestic implementation of trade agreements like the Trans-Pacific Partnership. Both the possibility of an international treaty prescribing Internet disconnection as an acceptable measure—as well as domestic laws that build on such a principle—seemingly *counter* an emerging right to access. These paradoxical trends have at times existed side-by-side: in France, for example, in its decision to affirm a right to Internet access, the country's Constitutional Court did not prohibit disconnecting individuals from the Internet; rather, it merely required that a court (rather than an administrative organ) approve of such measures prior to their being carried out.¹⁶

Relation to other rights

The absence of an explicit right to access in human rights treaties does not negate the possibility of it being harnessed as part of other rights. Here, I aim to explore this relationship between the alleged right to access and other widely accepted rights. As the Centre for Law and Democracy claims, access to the Internet can be seen as “central to the protection of other rights.” For example, in the same way that the right to education (ICESCR, art. 13-14), and the right to be elected (ICCPR art. 25) increasingly depend on Internet access, the right to access the Internet may well be protected through these other rights.¹⁷

Article 25 of the ICCPR further declares a right to “have access, on general terms of equality, to public service.” With e-governance commanding a growing role in how governments interact with their citizens, being able to access the Internet has increasingly become part and parcel of active citizenship.¹⁸ Furthermore, being able to access information held by governments online falls under the right to freedom of opinion and expression: in both the Universal Declaration of Human Rights and the ICCPR, the right to freedom of expression is defined not only as the right to impart, but to “seek” and “receive” information.¹⁹ According to the UN Human Rights Committee, the freedoms of opinion and expression are “indispensable conditions for the full development of the person (...) constitut[ing] the foundation stone for every free and democratic society.”²⁰

There is no other right with which the Internet is so intrinsically linked as the right to freedom of expression. Seeking, receiving and sharing information is the core function of the Internet, and through its instant, mass, interpersonal and interactive nature, the Internet offers unique opportunities for fulfilling this right. After all, the Internet increasingly forms the essential medium through which people find information and engage in

¹⁶ “Decision 2009-580 DC, Act furthering the diffusion and protection of creation on the Internet,” (original: Loi favorisant la diffusion et la protection de la création sur internet), *Conseil Constitutionnel*, 10 June 2010. http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/2009_580dc.pdf, § 11-16.

¹⁷ “Commentary on the Charter of Human Rights and Principles for the Internet. Version 2.” *Centre for Law and Democracy*, October 2011, <http://www.law-democracy.org/wp-content/uploads/2011/10/Charter-Commentary.pdf>, 5-7.

¹⁸ France Bélanger and Lemuria Carter, “The Impact Of The Digital Divide On E-Government Use,” *Communications of the ACM* 52 (April 2009), 135-139. Also: Alisdair A. Gillespie, “Restricting access to the internet by sex offenders,” *International Journal of Law and Information Technology* 19 (2011): 167.

¹⁹ “General comment No. 34. Article 19: Freedoms of opinion and expression (CCPR/C/GC/34),” *Human Rights Committee*, 12 September 2011, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C-GC-34.doc>, § 18-19.

²⁰ *Ibid.*, § 2.

both small-scale and mass communication. This key role of the Internet in enabling individuals to fully enjoy their right to freedom of expression—and conversely, the necessity of the right to free expression to exist in order for the Internet to function—has created a strong link between this latter right and the right to access. Moreover, given the recognition that the ability to seek, receive and impart information is critical for realizing other rights—such as the right to vote—the Internet has itself become regarded as a tool for preventing and addressing human rights violations.

Indeed, according to Frank La Rue, the UN Special Rapporteur on the right to freedom of opinion and expression, denying someone’s right to access the Internet has grave consequences for that person’s enjoyment of the right to freedom of expression. In his 2011 annual report, La Rue declared that legislation allowing for cutting off individuals’ Internet connection, even if on the basis of copyright enforcement, was “disproportionate and thus a violation of article 19, paragraph 3, of the International Covenant on Civil and Political Rights.”²¹ Article 19, paragraph 3, outlines under what exceptional circumstances limitations to the right to freedom of expression may be legitimately imposed, those rare circumstances being when restrictions are “by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”²²

As mentioned above in the section highlighting the various dimensions of the right to access, *fulfillment* of the right to freedom of expression—the third ‘task’ following governments’ responsibility to respect and protect this right—includes governments’ promotion of it. This idea links well with La Rue’s emphasis on states having a “positive obligation to promote or to facilitate the enjoyment of the right to freedom of expression and the means necessary to exercise this right, including the Internet.”²³ Thus, the Internet, La Rue claims, “as a medium by which the right to freedom of expression can be exercised,” is only meaningful as such a vehicle insofar as “States assume their commitment to develop effective policies” toward achieving “universal access to the Internet.”²⁴

The Human Rights Committee, the United Nations body offering authoritative interpretations of the ICCPR, takes a similar approach to that of La Rue. In its General Comment No. 34 (2011), related to article 19, the Committee highlights “developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems,” going on to declare that “[s]tates parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.” While the statement does not go as far as saying that states ‘must’ or ‘are obliged to’ facilitate access to new media, it adds force to the claim that governments’ responsibility to provide full enjoyment of the right to freedom of opinion and expression involves ensuring that people can access the Internet.²⁵

Soft law

Finally, the last source which can be argued as providing evidence for a right to Internet access is soft law. Such law includes reports of expert groups, guidelines issued by international organizations, joint communiqués and other ‘quasi-legal’ instruments. Soft law is not explicitly binding and does not carry with it the enforcement power embedded in international human rights treaties. It is nevertheless valuable insofar

²¹ Full disclosure: this author was involved in writing the report. “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (A/HRC/17/27),” *United Nations Office of the High Commissioner for Human Rights*, 16 May 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf, § 49-50, 78-79.

²² “International Covenant on Civil and Political Rights (ICCPR)”, 16 December 1966, art. 19.

²³ “Report of Frank La Rue,” § 66.

²⁴ *Ibid.*, § 60.

²⁵ “General comment No. 34,” § 15. Whether reflecting a political change of times or not, the entire paragraph of which the quotes were part was absent in an earlier draft of General Comment No. 34 (CCPR/C/GC/34/CRP.5), dated 25 November 2010.

as it is more responsive to international developments and offers both perspectives on and insights into changes in international human rights norms, while including views of non-state actors. As such, soft law carries “normative and moral weight,” and merits thoughtful consideration within our discussion about the so-called ‘emerging’ right to access.²⁶

In recent years, a number of organizations have published principles, guidelines, codes and declarations on the role of information and communication technologies in present societies. Among these published items, the theme of universal access to the Internet has featured prominently. In addition to the previously mentioned WSIS outcome documents—which acknowledge the need to bridge the digital divide—UNESCO’s November 2011 *Code of Ethics for the Information Society* states that “[e]very person irrespective of where they live, their gender, education, religion, social status shall be able to benefit from the Internet and use of ICTs,” and that “[e]veryone shall be able to connect, access, choose, produce, communicate, innovate and share information and knowledge on the Internet.”²⁷

In the same vein, the *Communiqué on Principles for Internet Policy-Making* of the OECD, from June 2011, asserts that “more ubiquitous access to and use of broadband Internet networks,” provided that they are “available in a competitive market and at affordable prices,” will serve to cultivate innovation and spur growth of the (Internet) economy. Moreover, the document argues that “[e]nhancing access and participation in the Internet economy through the deployment of high speed broadband Internet networks” can help strengthen those “critical components of a democratic society and cultural diversity.”²⁸

Civil society groups have similarly underlined the same goals in various ‘charter’ documents.²⁹ For example, the Internet Rights and Principles coalition states that “[t]he right to access [...], and make use of, the Internet shall be ensured for all.” In this charter, the right to access includes provisions on quality of service, freedom of choice of system and software use, and on digital inclusion.³⁰

c. Analysis and operationalizing a right to access

To begin to answer the question of whether a right to Internet access can be said to exist, it is useful to briefly review the question alongside the rights’ dimensions established earlier. The first dimension involved the *negative obligation* of states to refrain from denying Internet access to anyone: even though this negative obligation has not been explicitly established with regard to Internet access, international human rights law makes it unequivocally clear that the right to freedom of expression exists “regardless of frontiers, either orally, in writing or in print, in the form of art, or *through any other media* of his choice” (emphasis added).³¹ And while under article 19, paragraph 3, of the ICCPR, limited restrictions can be imposed on this right, the Human Rights Committee nevertheless states that “when a State party imposes restrictions on the exercise

²⁶ Jeffrey L. Dunoff, Steven R. Ratner and David Wippman, *International Law. Norms, Actors, Process. A Problem-Oriented Approach*. 2nd Ed. (New York: Aspen, 2006), 92-97; Dixie Hawtin, “Internet charters and principles: Trends and insights,” *Global Information Society Watch*, 2011, <http://giswatch.org/mapping-democracy/internet-rights/internet-charters-and-principles-trends-and-insights-0>.

²⁷ “Code of ethics for the information society. Proposed by the intergovernmental council of the Information For All Programme (IFAP) (36 C/49),” *UNESCO*, 10 October 2011, <http://unesdoc.unesco.org/images/0021/002126/212696e.pdf>, 1.

²⁸ “Communiqué on Principles for Internet Policy-Making,” *OECD*, 29 June 2011, <http://www.oecd.org/dataoecd/33/12/48387430.pdf>, 2-3.

²⁹ Hawtin, “Internet charters and principles”; Claudia Padovani, Francesca Musiani and Elena Pavan, “Investigating Evolving Discourses On Human Rights in the Digital Age. Emerging Norms and Policy Challenges,” *International Communication Gazette* 72 (2010): 365-370. See also “APC Internet Rights Charter,” *Association for Progressive Communication*, November 2006, <http://www.apc.org/en/node/5677>.

³⁰ “(1) Right to access to the Internet,” *Internet Rights and Principles Coalition*, <http://irpcharter.org/wpcharter/archives/25>.

³¹ “ICCPR,” art. 19.

of freedom of expression, these may not put in jeopardy the right itself.”³² As such, in the same way that individuals’ freedom of expression is widely accepted as embodying the right to take to the streets to protest, to consume information through a television show, and to publish pamphlets, it can be said that having a right to access also falls under this freedom.

The second dimension entailed the *positive obligation* to ensure that everyone can access the Internet. As demonstrated, while there is no explicit ‘right to access the Internet’ established as such in international human rights law, there appears to be an emerging consensus, in multilateral fora and elsewhere, that Internet access should be universal. There is, however, no agreement on whether states have an obligation to facilitate that. Even though the objective has received wide recognition, it is not consistently referred to as a positive obligation that states must adhere to, or to as a right that “could not be secured without the State taking some positive action to uphold them.”³³ As part of the obligation to fulfill the right to freedom of opinion and expression, states are required to take measures to facilitate the ability of individuals to enjoy this right; and as we have seen, the Internet may certainly be part of that. It is not unequivocally clear, however, that this involves Internet access being attainable by all individuals. Such uncertainty lies at the heart of the debate on the right to access.

Dimensions three and four related to the questions of *what* and *how*: what content is accessible online and how do individuals connect to the Internet. While clear provisions on a right to Internet access are absent, the general human rights framework must still apply in this context. This means, for instance, that online content can only be restricted in accordance to what is established in ICCPR article 19.3, and even then, only if these restrictions meet the three-part test of being a) inscribed in law; b) recognized as a legitimate restriction under article 19.3; and c) recognized as both necessary and proportionate to achieve the declared aim.³⁴ Also, article 18 of the ICCPR ensures individuals’ privacy while accessing the Internet, meaning that blanket monitoring of individuals’ Internet connection should never be allowed.

Operationalizing a right to access

Even with the increase of Internet usage worldwide, 65.5 percent of the world’s population is still not online.³⁵ This article, rather than answering the normative question of whether there *should* be a right to Internet access, seeks to explore what that right could look like assuming it were to become explicitly established: what obligations could it come with, and how could it become operationalized? Given this paper’s limitations, in this section I aim to underline a few policies that will necessarily come into play when seeking to realize such a right.

Establishment in law: The right could be established through international human rights law by an agreement between states. To ensure effectiveness and enforceability, establishment of a right to Internet access should then also be prescribed in national laws, such as by including Internet access in universal access provisions.

Market regulation: Governments may wish to regulate the market economy in a way that encourages investment in network infrastructure, such as by easing market entry and managing risks. Investments in infrastructure usually take a long time to earn back, and governments could thus facilitate conditions that

³² “General comment 34,” § 21.

³³ Gillespie, “Restricting access,” 169. This is contrasted by the joint statement of the representatives to promote freedom of expression of the United Nations, Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS) and African Commission on Human and Peoples’ Rights (ACHPR), who stated: “States are under a positive obligation to facilitate universal access to the Internet.” “Joint declaration on freedom of expression and the Internet,” OSCE, 1 June 2011, <http://www.osce.org/fom/78309>.

³⁴ “General comment 34,” § 22, 34, 35; “Report of Frank La Rue,” § 24.

³⁵ See footnote 1.

promote such investments. Governments can include requirements to facilitate access in all areas—even those remote and unprofitable—for corporations interested in exploiting infrastructure.

Information literacy: In order to benefit from Internet service, people need to both be able to operate Internet devices, such as personal computers or smartphones, and the software on it. Furthermore, they need to understand how the Internet operates, including its potential and (privacy) risks. Governments can facilitate this through education.

Access for all: Apart from general information literacy skills, there are other significant barriers that stand in the way of all individuals being able to access the Internet effectively. Two important impediments are the difficulties faced by people with disabilities when it comes to making full use of the Internet, and the challenges associated with accessing information in people’s non-native languages. The Convention on the Rights of Persons with Disabilities (CRPD) recommends that states “[p]romote access for persons with disabilities to new information and communications technologies and systems, including the Internet.”³⁶ Meanwhile, the recommendations on multilingualism in cyberspace adopted by UNESCO stipulate that private and public actors “take the necessary measures to alleviate language barriers and promote human interaction on the Internet.”³⁷ Finally, it is imperative that access to content in the public domain be enabled for people with disabilities and/or language barriers.

Reachability everywhere: Where Internet access provided through private networks fails to reach all, governments should ensure that community centers with Internet facilities or mobile access points are available such that everyone is still able to access the Internet.

Access content and method: In ensuring Internet access, governments will also need to consider the constitution of the Internet, as well as the ways in which people access it. In any event, Internet access must be provided in a way that is respectful of international human rights standards, in particular with regard to the right to freedom of opinion and expression and the right to privacy.

Conclusion

The above policies reflect some of the principal conditions that may be necessary for operationalizing a right to access for all individuals. The discussion about the existence of such a right flags the great divide in how the Internet is nowadays experienced. Considering that so many people are still unable to reap the Internet’s benefits—while billions of others benefit from it in countless ways and increasingly depend on it—this question is of particular importance.

In order to understand the dimensions involved in a right to access, a holistic approach is needed: one that considers negative and positive obligations, as well as *how* individuals connect to the Internet and *what* content they are able to access. Although well-established human rights, especially the right to freedom of opinion and expression, can be interpreted as affirming or embodying a right to access, it does not automatically follow that states possess a positive human rights obligation to provide for Internet access where it is absent.

Establishing a separate right to Internet access, however, would go a long way in strengthening the belief that people may not be deprived of Internet access, as well as in compelling states to ensure that all their

³⁶ “Convention on the Rights of Persons with Disabilities,” *United Nations Office of the High Commissioner for Human Rights*, <http://www2.ohchr.org/english/law/disabilities-convention.htm>, art. 9g.

³⁷ “Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace,” *UNESCO*, 15 October 2003, http://portal.unesco.org/en/ev.php-URL_ID=17717&URL_DO=DO_TOPIC&URL_SECTION=201.html, art. 1.

citizens have the means to access the Internet. Furthermore, the context of Internet usage in national and international settings also matters. For example, if states were to begin treating the Internet as a public good and started communicating with their citizens exclusively via the Internet, this would certainly amplify the justification for a right to access.

As the Internet continues to develop and change rapidly, so does the interaction between government regulators, corporations, and individuals who use or wish to use the Internet. This article has sought to address the question of whether there is a right to access the Internet. It has done so by exploring and unearthing facets of this issue that warrants further probing and investigation. Having attempted to add to the debate on human rights and the Internet, I hope that others will use my article as a point of departure for posing new questions and for furthering the endeavor to find solutions respectful of human rights.