

UNESCO's Comprehensive Study on Internet Related Issues

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- 1. What can be done to reinforce the right to seek and receive information in the online environment?**
- 2. What mechanisms can develop policies and common standards for open-licensed educational resources and scientific repositories, and for the long-term preservation of digital heritage?**
- 3. How can greater progress be made as regards inclusive strategies for women and girls as well as marginalized and disabled people?**
- 4. How can accessibility be facilitated through increases in locally produced and relevant content in different languages?**
- 5. What can be done to institutionalize Media and Information Literacy (MIL) effectively in national educational systems?**
- 6. What are the current and emerging challenges relevant to freedom of expression online?**

Central to the discussions surrounding freedom of expression online is the yet to be solved problem of content regulation. The prevalence of the different approaches to content regulation, such as state regulation, regulation through intermediaries and end-user content regulation, differs from country to country. While France, Germany, Australia and the EU amongst others show a preference for content regulation through legislation, others rely primarily on self- or co-regulation. (Wright & Breindl, 2013, p. 7) These differences can, at least partly, be explained by

varying local interpretations of freedom of expression and their respective manifestations in national law. (Mueller, 2010, p. 186) The degree to which freedom of expression is balanced against other principles and thus the degree to which freedom of expression can be legally restricted in order to protect those other principles varies among countries. (Wright & Breindl, 2013, p. 4)

The question of appropriate forms of content regulation is still debated and concerns are being voiced regarding each approach. Opponents of regulation on a national level fear an undermining of national sovereignty:

“[...] the combination of a global Internet with resurgent national sovereignty runs the risk of allowing objections from one jurisdiction to restrict or intimidate communicators residing in places where that government has no legitimate authority.” (Mueller, 2010, p. 186)

Others see a potential threat to freedom of expression in the increasing trend of indirect regulation through intermediaries. Hawtin states that when governments introduce laws, which require intermediary service providers to monitor content created by their users, this “effectively stifles innovation among service providers and reduces the range of platforms that people can use to express themselves and associate online”. (Hawtin, 2011, p. 53)

Still others express concerns regarding self-regulation. Wright & Breindl (2013), for instance, argue that “self-regulatory mechanisms [...] largely evade public oversight and are thus questionable from a viewpoint of democratic principles” (p. 2) whereas state regulation would mean an “opportunity for citizens to debate and question aspects of filtering, in terms of democratic principles such as freedom of expression and the rule of law, and in terms of its effectiveness.” (p.7)

One crucial aspect are the rules that apply to user-generated content. In the absence of globally shared regulatory norms, private authority has become a dominant source for how user-generated content is governed on the Internet. Social media platforms, such as Facebook, Twitter, YouTube and Tumblr, showcase the relevance of private ordering in this domain. Whereas a vast body of existing literature in this discipline focuses on media content regulation within a nationally defined regulatory system, the field lacks systematic analysis of the emergence of non-statutory forms of content governance on the Internet. Moreover, it has barely addressed governance in the context of user-generated content.

In studies it has become evident that aside from applicable domestic laws, corporate rules enforced on popular social media platforms heavily shape the conditions for exercising private speech on these platforms. However, companies’ self-regulatory approaches, such as the use of algorithms, automated enforcement, or transparency practices, remain opaque. In this sense, I see a specific demand for a more granular understanding of how companies set policies and eventually govern content generated by billions of users around the globe.

In conclusion, not only is there an ongoing struggle between proponents of freedom of expression online and those who seek to restrict it for monetary gains or power. Advocates of

freedom of expression online are also divided by disagreement over which regulation approach is best suited to ensure freedom of expression.

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Hawtin, D. (2011). Internet charters and principles: Trends and insights. Global Information Society Watch 2011: Internet Rights and Democratisation - Focus on freedom of expression and association online, pp. 51-54

Mueller, M. L. (2010). Networks and states: The global politics of Internet governance. Mit Press.

Wright, J. & Breindl, Y. (2013). Internet filtering trends in liberal democracies: French and German regulatory debates. Internet Policy Review, 2(2). DOI: 10.14763/2013.2.122

7. How can legislation in a diverse range of fields which impacts on the Internet respect freedom of expression in line with international standards?

8. Is there a need for specific protections for freedom of expression for the Internet?

There seems to be a general consensus amongst actors that there is no need for specific protections for freedom of expression for the internet - or more precisely, that there should be no such need, as the internet is not a distinct space apart from our society. Thus the distinction between an “offline” and an “online” world becomes arbitrary. This sentiment is also reflected by the resolution on Internet and Human Rights by the UN Human Rights Council (2014), which stresses that “the same rights that people have offline must also be protected online, in particular freedom of expression”. (p. 2)

However, recent developments in national law in many countries across the world suggest otherwise. Governments seek to enact new laws or additional legal provisions, which are explicitly dedicated to regulate speech on the internet. The Freedom on the Net 2013 Report published by Freedom House (2013) gives warning of intensified censorship online in recent years:

“Since launching ‘Freedom on the Net’ in 2009, Freedom House has observed a proliferation of such legislative activity. The trend accelerated over the past year, and since May 2012 alone, 24 countries have passed new laws or implemented new regulations that could restrict free speech online, violate users’ privacy, or punish individuals who post certain types of content.” (p. 9)

This development is by no means limited to authoritarian states as liberal democracies are increasingly considering and even implementing content regulation in the form of filtering techniques. (Wright & Breindl, 2013)

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Freedom House (2013). Freedom on the Net 2013. Washington, DC: Freedom House. Retrieved November 14, 2014 from <http://www.freedomhouse.org/report/freedom-net/freedom-net-2013>

United Nations. Human Rights Council. The Promotion, Protection and Enjoyment of Human Rights on the Internet : Draft Resolution. A/HRC/26/L.24 (19 June 2014). Available from <http://undocs.org/A/HRC/26/L.24>

Wright, J. & Breindl, Y. (2013). Internet filtering trends in liberal democracies: French and German regulatory debates. *Internet Policy Review*, 2(2). DOI: 10.14763/2013.2.122

What are the optimum systems for independent self-regulation by journalistic actors and intermediaries in cyberspace?

As pointed out by Wright & Breindl (2013) “self-regulatory mechanisms, which exist in most liberal countries [...] largely evade public oversight and are thus questionable from a viewpoint of democratic principles.” (p. 2) The authors acknowledge that self-regulatory mechanisms have often shown to be more practical and effective means of content regulation than state regulation. However, so the argument goes, they lack in terms of including various stakeholders in the policy making process and in giving the public an opportunity to contest such mechanisms through open debate. The self-regulatory mechanisms in use usually do not provide the transparency needed to ensure their accordance with democratic principles. (Wright & Breindl, 2013)

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- 9. To what extent do laws protect digitally interfaced journalism and journalistic sources?**

- 10. What are the optimum ways to deal with online hate speech? How can Media and Information Literacy empower users to understand and exercise freedom of expression on the Internet?**

- 11. What are the optimum systems for independent self-regulation by journalistic actors and intermediaries in cyberspace?**

- 12. What principles should ensure respect for the right to privacy?**

- 13. What is the relationship between privacy, anonymity and encryption?**
- 14. What is the importance of transparency around limitations of privacy?**
- 15. What kinds of arrangements can help to safeguard the exercise of privacy in relation to other rights?**
- 16. How can openness and transparency of data be reconciled with privacy?**
- 17. What may be the impact of issues relating to big data on respect for privacy?**
- 18. How can security of personal data be enhanced?**
- 19. How can Media and Information Literacy be developed to assist individuals to protect their privacy?**
- 20. How can ethical principles based on international human rights advance accessibility, openness, and multi-stakeholder participation on the Internet?**
- 21. What conceptual frameworks or processes of inquiry could serve to analyse, assess, and thereby inform the choices that confront stakeholders in the new social uses and applications of information and knowledge?**
- 22. How does ethical consideration relate to gender dimensions of the Internet?**
- 23. How can ethics, - i.e. the simultaneous affirmation of human rights, peace, equity, and justice - inform law and regulation about the Internet?**
- 24. What international, regional and national frameworks, normative guidelines and accountability mechanisms exist of relevance to one or more fields of the study?**

25. How do cross-jurisdictional issues operate with regard to freedom of expression and privacy?

26. What are the intersections between the fields of study: for example, between access and freedom of expression; ethics and privacy; privacy and freedom of expression; and between all four elements?

The two fields of access to information & knowledge and freedom of expression appear to be inextricably linked. Instead of looking at both fields separately, the right for access to information can be seen as an integral aspect of freedom of expression.

This is also reflected in the ICCPR by the UN General Assembly (1966), in which the right to freedom of expression is immediately followed by stating that “[freedom of expression] shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” (p. 178)

Similarly, Jørgensen (2013) points out that “the public is only able to participate if they have information about the activities of the government”. (p. 41) The principle of freedom of information mentioned by Jørgensen refers to a specific type of information (information about the government) but this relation can be applied to any kind of open debate. Access to information can thereby be seen as a prerequisite to freedom of expression and any restrictions to freedom of expression then inevitably impact access to information and knowledge as well.

The same could be said when looking at the relation from the other angle and asking, whether freedom of expression must also be seen as a condition for access to information. If expression in the sense of publicly sharing ideas, information and knowledge extends the very pool of information from which others can draw information in order to then form and voice an informed opinion, freedom of expression must also be seen as a condition for access to information.

In consequence, freedom of expression and access to information appear to be two sides of the same coin. When formulating policies, this two-way relationship must be kept in mind.

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Jørgensen, R. F. (2013). Framing the Net. Edward Elgar Publishing.

UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 25 November 2014]

27. What pertinent information materials exist that cut across or which are relevant to the four fields of the study?

When looking at the debates surrounding the internet and human rights and the policy making of recent years, two divergent trends can be identified.

On the one hand, there is an increased transnational discourse taking place, as indicated by the more and more frequently conducted international academic and policy oriented conferences in recent years. These conferences bring together different kinds of stakeholders in an attempt to formulate unified agendas and to translate them into policies. (Wagner, Gollatz, & Calderaro, 2014)

On the other hand, governments and private parties appear to gain more control over the internet and compartmentalize it or show the desire to do so. This development has been perceived by both scholars and civil society organizations alike. Jørgensen (2013) notes that “what may at first glance look like increased support for internet freedom is thus countered by at least as many examples of increased control of the internet” (p. 4) while Hawtin (2011) sees an “increasing array of attacks on the open nature of the internet from governments (both authoritarian and democratic) who seek to control the environment and from business who seek to monetise it” (p. 51).

Advocates of the enforcement of human rights on the internet must therefore remain cautious and not equate the heightened debates about the internet which increasingly take human rights into account to an overall progress in actual policy.

This holds true when taking a closer look at the numerous conferences addressing human rights on the internet. In a study conducted by Wagner, Gollatz and Calderaro (2014), the researchers found that while the debate over the application of Human Rights to the Internet has become a major focus in foreign policy, the existence of a common narrative remains questionable. The concept of internet freedom, for instance, is described as an “empty vessel, which is filled by the respective organisers in whatever manner they see fit”. (Wagner, Gollatz & Calderaro, 2014, p. 5) A similar observation has been made by Jørgensen (2013), who argues that policy discourses regarding the internet and human rights draw from different, competing metaphors. Each metaphor shapes the respective strategic agenda by highlighting different aspects - However, the actors involved often do not recognize those specific metaphors.

Wagner, Gollatz and Calderaro (2014) also found that very little of the transnational debate about human rights and the internet taking place at such conferences has translated into legally binding policy. The investigated conferences show a tendency to “call for things to be done rather than actually doing things”. (Wagner, Gollatz & Calderaro 2014, p. 9) However, it remains debatable whether actual implementation should be the the goal of public discourse in the form of the conferences investigated. The researchers themselves offer an alternative interpretation by referring to Keane’s (2009) model of “unelected representatives”. Another line of argument questions the adequacy of “hard law” for regulating the Internet altogether:

“The internet is not well suited to traditional forms of governance such as national and international law. Some charters and declarations have emerged as an alternative, providing the basis for self-regulation or co-regulation and helping to guide the actions of different stakeholders in a more flexible, bottom-up manner. In this sense, charters and principles

operate as a form of soft law: standards that are not legally binding but which carry normative and moral weight.” (Hawtin, 2011, p. 51)

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Jorgensen, R. F. (2013). Framing the Net. Edward Elgar Publishing.

Wagner, B., Gollatz, K., & Calderaro, A. (2014). Internet & Human Rights in Foreign Policy: comparing narratives in the US and EU Internet Governance agenda. EUI Working Paper RSCAS; Centre for Media Pluralism and Media Freedom (CMPF), 2014/86.

28. What might be the options for role of UNESCO within the wider UN system in regard to the distinct issues of online Access to information and knowledge, Freedom of Expression, Privacy and Ethical dimensions of the information society?

29. What might be options for the role of UNESCO in relation to stakeholders outside the UN system?

30. For each study field, what specific options might UNESCO Member States consider?