

## International Mechanisms for Promoting Freedom of Expression

### JOINT DECLARATION ON FREEDOM OF EXPRESSION AND THE INTERNET

**The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,**

*Having discussed these issues together with the assistance of ARTICLE 19, Global Campaign for Free Expression and the Centre for Law and Democracy;*

*Recalling and reaffirming* our Joint Declarations of 26 November 1999, 30 November 2000, 20 November 2001, 10 December 2002, 18 December 2003, 6 December 2004, 21 December 2005, 19 December 2006, 12 December 2007, 10 December 2008, 15 May 2009 and 3 February 2010;

*Emphasising*, once again, the fundamental importance of freedom of expression – including the principles of independence and diversity – both in its own right and as an essential tool for the defence of all other rights, as a core element of democracy and for advancing development goals;

*Stressing* the transformative nature of the Internet in terms of giving voice to billions of people around the world, of significantly enhancing their ability to access information and of enhancing pluralism and reporting;

*Cognisant* of the power of the Internet to promote the realisation of other rights and public participation, as well as to facilitate access to goods and services;

*Welcoming* the dramatic growth in access to the Internet in almost all countries and regions of the world, while noting that billions still lack access or have second class forms of access;

*Noting* that some governments have taken action or put in place measures with the specific intention of unduly restricting freedom of expression on the Internet, contrary to international law;

*Recognising* that the exercise of freedom of expression may be subject to limited restrictions which are prescribed by law and are necessary, for example for the prevention of crime and the protection of the fundamental rights of others, including children, but stressing that any such restrictions must be balanced and comply with international law on the right to freedom of expression;

*Concerned* that, even when done in good faith, many of the efforts by governments to respond to the need noted above fail to take into account the special characteristics of the Internet, with the result that they unduly restrict freedom of expression;

*Noting* the mechanisms of the multi-stakeholder approach of the UN Internet Governance Forum;

*Aware of* the vast range of actors who act as intermediaries for the Internet – providing services such as access and interconnection to the Internet, transmission, processing and routing of Internet traffic, hosting and providing access to material posted by others, searching, referencing or finding materials on the Internet, enabling financial transactions and facilitating social networking – and of attempts by some States to deputise responsibility for harmful or illegal content to these actors;

*Adopt*, on 1 June 2011, the following Declaration on Freedom of Expression and the Internet:

## 1. General Principles

- a. Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognised under international law (the ‘three-part’ test).
- b. When assessing the proportionality of a restriction on freedom of expression on the Internet, the impact of that restriction on the ability of the Internet to deliver positive freedom of expression outcomes must be weighed against its benefits in terms of protecting other interests.
- c. Approaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it.
- d. Greater attention should be given to developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content, while recognising that no special content restrictions should be established for material disseminated over the Internet.
- e. Self-regulation can be an effective tool in redressing harmful speech, and should be promoted.
- f. Awareness raising and educational efforts to promote the ability of everyone to engage in autonomous, self-driven and responsible use of the Internet should be fostered (‘Internet literacy’).

## 2. Intermediary Liability

- a. No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so (‘mere conduit principle’).
- b. Consideration should be given to insulating fully other intermediaries, including those mentioned in the preamble, from liability for content generated by others under the same conditions as in paragraph 2(a). At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression (which is the case with many of the ‘notice and takedown’ rules currently being applied).

## 3. Filtering and Blocking

- a. Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with

international standards, for example where necessary to protect children against sexual abuse.

- b. Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.
- c. Products designed to facilitate end-user filtering should be required to be accompanied by clear information to end-users about how they work and their potential pitfalls in terms of over-inclusive filtering.

#### 4. Criminal and Civil Liability

- a. Jurisdiction in legal cases relating to Internet content should be restricted to States to which those cases have a real and substantial connection, normally because the author is established there, the content is uploaded there and/or the content is specifically directed at that State. Private parties should only be able to bring a case in a given jurisdiction where they can establish that they have suffered substantial harm in that jurisdiction (rule against 'libel tourism').
- b. Standards of liability, including defences in civil cases, should take into account the overall public interest in protecting both the expression and the forum in which it is made (i.e. the need to preserve the 'public square' aspect of the Internet).
- c. For content that was uploaded in substantially the same form and at the same place, limitation periods for bringing legal cases should start to run from the first time the content was uploaded and only one action for damages should be allowed to be brought in respect of that content, where appropriate by allowing for damages suffered in all jurisdictions to be recovered at one time (the 'single publication' rule).

#### 5. Network Neutrality

- a. There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.
- b. Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders.

#### 6. Access to the Internet

- a. Giving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.
- b. Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.

- c. Denying individuals the right to access the Internet as a punishment is an extreme measure, which could be justified only where less restrictive measures are not available and where ordered by a court, taking into account the impact of this measure on the enjoyment of human rights.
- d. Other measures which limit access to the Internet, such as imposing registration or other requirements on service providers, are not legitimate unless they conform to the test for restrictions on freedom of expression under international law.
- e. States are under a positive obligation to facilitate universal access to the Internet. At a minimum, States should:
  - i. Put in place regulatory mechanisms – which could include pricing regimes, universal service requirements and licensing agreements – that foster greater access to the Internet, including for the poor and in ‘last mile’ rural areas.
  - ii. Provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points.
  - iii. Promote adequate awareness about both how to use the Internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations.
  - iv. Put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.
- f. To implement the above, States should adopt detailed multi-year action plans for increasing access to the Internet which include clear and specific targets, as well as standards of transparency, public reporting and monitoring systems.

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