

PERSPECTIVES ON INTERNET FREEDOM FREE EXPRESSION NOW AND IN THE FUTURE

PCSS Internet Freedom Session

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1. What is Internet Freedom?

UN General Assembly:

“The human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and relevant international human rights, treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.”

“The same rights that people have OFFLINE must also be protected ONLINE.”

- Freedom of expression and association
- Right to access information
- Right to privacy
- Right to Internet access

2. Freedom of Expression Online

UN Human Rights Committee:

“Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They constitute the foundation stone for every free and democratic society.”

- States have a duty to promote and protect the free exercise of the freedom of opinion and expression. States should refrain from imposing restrictions on:
 - discussions on government policies and political debate;
 - reporting on human rights, government activities and corruption;
 - engaging in election campaigns, peaceful demonstrations or political activities; and
 - expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups

2.1. Core International Standards

Art.19 of the Universal Declaration of Human Rights

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

2.1. Core International Standards

Art.19 of the ICCPR (International Covenant on Civil and Political Rights)

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right 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.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided 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.

2.1. Core International Standards

Art.19 of the ICCPR (International Covenant on Civil and Political Rights)

- States may restrict the right to freedom of expression under very limited circumstances. According to Article 19 (3), any restriction must be:
 - provided by law;
 - undertaken for the respect of the rights or reputations of others; the protection of national security or of public order, or of public health or morals; and
 - necessary and proportionate to achieve a legitimate objective
- National security and counter-terrorism measures must comply with the conditions.
- Criminal defamation and blasphemy laws are unlawful restrictions.
- “fake news”, hate speech, extremist contents?

2.2. Internet Censorship

What is Internet censorship?

- The control or restriction of what can be accessed, published, or viewed on the Internet enacted by regulators, or on their own initiative. Often called content restriction or moderation.
 - Self-censorship: Individuals and organizations may engage in self-censorship for moral, religious, or business reasons, to conform to societal norms, due to intimidation, or out of fear of legal or other consequences.
- Reasons for Internet censorship vary from copyrights, defamation, obscenity, child pornography, and hate speech.
- Techniques: technical blocking, filtering, take-down order, search result removals, etc.

2.2. Internet Censorship

Recent Challenges

- Restrictions on online expression are on the rise
 - States are introducing a range of measures to both directly censor online expression and to increase pressure on companies to restrict content on their platforms.
- Commercial rules on content moderation are too vague
 - Company policies on hate speech, extremist contents and other complex areas of expression remain vague and inconsistently enforced.

2.2. Internet Censorship

A Human Rights Approach

- Under international human rights standards, states are obliged to ensure that restrictions on online expression are lawful, necessary and proportionate.
- International human rights standards also gives companies the tools to develop policies and processes that respect democratic norms and counter unlawful demands from States.
 - e.g. The Guiding Principles on Business and Human Rights

2.3. Intermediary Liability

What is Intermediary?

- “any entity that enables the communication of information from one party to another”
 - ISPs, search engines, social media, e-commerce platforms, etc.
- Most online expression today takes place over communications networks on platforms owned by private companies that are internet intermediaries.

2.3. Intermediary Liability

What is Intermediary Liability?

- “The legal liability of Internet intermediaries for content contributed by, or activities carried out by, third parties”
- Governments around the world increasingly press intermediaries to block their users’ undesirable online content. One form of pressure is to make intermediaries legally responsible for their users’ contents.
- This is a form of censorship-by-proxy, and thereby imperil both freedom of expression and innovation.

MANILA PRINCIPLES

ON INTERMEDIARY LIABILITY



1 Intermediaries should be shielded from liability for third-party content



2 Content must not be required to be restricted without an order by a judicial authority



3 Requests for restrictions of content must be clear, be unambiguous, and follow due process



4 Laws and content restriction orders and practices must comply with the tests of necessity and proportionality



5 Laws and content restriction policies and practices must respect due process



6 Transparency and accountability must be built into laws and content restriction policies and practices



2.4. Emerging Issues

Disinformation (“fake news”)

- Restriction on disinformation should comply with the international human rights standards.
 - International standards on “false information” is well established.
 - “public interest” or “social disturbance” are too vague objectives, incompatible with international standards.
- States’ obligation:
 - should not make, sponsor, encourage or further disseminate statements which they know or reasonably should know to be false.
 - have a positive obligation to promote a free, independent and diverse communications environment, including media diversity.
- What about Russia?

2.4. Emerging Issues

Hate Speech & Extremist Contents

- No universally accepted definition of “hate speech”
- Art.20 (2) of ICCPR states, “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”
- Three key elements:
 - 1) only advocacy of hatred is covered;
 - 2) hatred must amount to advocacy which constitutes incitement, rather than incitement alone; and
 - 3) such incitement must lead to one of the listed results, namely discrimination, hostility or violence.

3. Right to Anonymity

UN Special Rapporteur on Freedom of Expression:

“Encryption and anonymity, today’s leading vehicles for online security, provide individuals with a means to protect their privacy, empowering them to browse, read, develop and share opinions and information without interference and enabling journalists, civil society organizations, members of ethnic or religious groups, those persecuted because of their sexual orientation or gender identity, activists, scholars, artists and others to exercise the rights to freedom of opinion and expression.”

3. Right to Anonymity

UN Special Rapporteur on Freedom of Expression:

“States should not restrict encryption and anonymity, which facilitate and often enable the rights to freedom of opinion and expression. Blanket prohibitions fail to be necessary and proportionate. States should avoid all measures that weaken the security that individuals may enjoy online, such as backdoors, weak encryption standards and key escrows. In addition, States should refrain from making the identification of users a condition for access to digital communications and online services and requiring SIM card registration for mobile users.”

3.1. Internet Real-name System

South Korea

- The first country to introduce the real-name system
 - In 2004, for online news media during the election period
 - In 2007, for all gov't websites and large private websites
- Real-name system for private websites abolished by the Constitutional Court in 2012.

China

- China introduced real-name system for microblogging sites such as Weibo in 2011.
- The Cyber Security Law came into force on June 1, 2017.

3.2. SIM Card Registration System

- South Korea introduced mobile phone real-name system, commonly called “SIM card registration system” in 2014.
- SIM card registration might occur through using an official ID, passport, or proof of address; in some countries, biometrics are also collected.
- Mandatory SIM card registration eradicates the potential for anonymity of communications, enables location-tracking, and simplifies communications surveillance and interception.
- The common justification is crime prevention, but the system proven ineffective in curbing crimes and instead fueled crime such as identity theft, and created black markets.

4. Access to the Internet

Internet Shutdowns

- Can be defined as an “intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information.”
 - include blocks of social media platforms
- Usually perpetrated by states, in response to governance challenges ranging from elections and public protests to cheating on school exams.
- Internet shutdowns violate human rights, put people in danger, and harm the economy.

THANK YOU!

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