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The right to Internet access

Report[1]
Committee on Culture, Science, Education and Media
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Summary

The Internet has revolutionised how people interact, allowing individual citizens to speak out freely in ways that were impossible before the advent of the web. It has also opened up whole new possibilities for people to access educational material, take part in cultural life and organise themselves into groups.

In other words, according to the Committee on Culture, Science, Education and Media, the Internet has made it much easier for people to access basic rights – freedom of expression, freedom of association and assembly – and other civil rights. For this reason, internet access for all – with a minimum standard of service – should be a public goal.

The committee believes that the Internet should be available to all – regardless of age, place of residence or income. Governments should recognise this as a right, both in law and in practice, and lay down universal service requirements that service providers must comply with, drawing on United Nations and European Union standards. Web access should be affordable and secure, subject only to legitimate restrictions laid down by law, and data traffic should be treated without discrimination on a basis of strict "net neutrality".

The Council of Europe should work with the commercial providers, governments, the European Union and the United Nations to ensure that universal Internet access throughout Europe becomes a reality.

1. Reference to committee: Doc. 12985, Reference 3892 of 1 October 2012.

Contents **Page**

A. Draft resolution 3
B. Explanatory memorandum by Ms Pelkonen, rapporteur 5
1. Introduction 5
2. The relevance of Internet access for individuals and society 5
2.1. Growing importance of Internet 5
2.2. Acknowledging Internet access as a right 7
3. Technical aspects of Internet access 9
3.1. Infrastructure 9
3.2. Software 10
4. Legal norms applicable to Internet access and use 10
4.1. United Nations 10
4.2. Council of Europe 11
4.3. Contextuality of relevant human rights in relation to Internet access 12
4.4. Rights of Internet users 13
4.5. Standardisation 13
4.6. Governance of Internet domain names 14
4.7. Broader obligations for the State 14
4.8. Governance of Internet and multi-stakeholder model 15
5. Prominent cases 15
6. Conclusion 17

A. Draft resolution[2]

1. The Parliamentary Assembly recalls that the right to freedom of expression is both a fundamental right in itself and an essential enabler of other fundamental human rights, including the right to education, the right to take part in cultural life and the rights to freedom of association and assembly.

2. The Internet has revolutionised the way people interact and exercise their freedom of expression and information as well as related fundamental rights. Internet access hence facilitates the realisation of cultural, civil and political rights. Therefore, the Assembly emphasises the importance of access to the Internet in a democratic society in accordance with Article 10 of the European Convention on Human Rights (ETS No. 5).

3. Recalling Committee of Ministers Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet, as well as international universal service obligations established by the International Telecommunications Union of the United Nations and the Universal Services Directive of the European Union (Directive 2002/22/EC), the Assembly stresses the need for universal service requirements regarding the Internet throughout Europe and beyond.

4. In view of the important role which the Internet plays for individuals, groups and States in a modern society, the Assembly believes that the Internet should be available to all regardless of age, place of residence or income, and that stronger efforts are necessary at local, regional, national and European levels in order to ensure Internet access for all.

5. Public authorities have a duty to ensure the effective enjoyment of the right to freedom of expression online. The Assembly therefore recommends that the Council of Europe member States ensure the right to Internet access on the basis of the following principles:

5.1. everyone shall have the right to Internet access as an essential requirement for exercising rights under the European Convention on Human Rights;

5.2. the right to Internet access includes the right to access, receive and impart information and ideas through the Internet without interference by public authority, regardless of frontiers and subject only to the limitations laid down in Article 10 of the European Convention on Human Rights;

5.3. as Internet access is also essential for the exercise of other human rights, such as the right to freedom of assembly and the right to private and family life, member States should recognise the fundamental right to Internet access in law and in practice;

5.4. Internet access and service providers must comply with universal service requirements regarding the Internet, which have been established for instance by the United Nations and the European Union;

5.5. the availability of a minimum quality of Internet services for all is the joint responsibility of member States and Internet access and service providers; particular emphasis should be placed on the affordability, interoperability and integrity of Internet services, taking account of the latest technological developments;

5.6. there should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin or destination of the content, service or application, thus ensuring net neutrality;

5.7. national law and practice should recognise individual Internet access, and any restrictions to this right should be provided by law, pursue a legitimate aim and be necessary in a democratic society;

5.8. Internet access through public access points should be promoted, in particular by educational and cultural institutions;

5.9. member States should increase their action for ensuring Internet access for people with special needs and disadvantaged Internet users;

5.10. member States should promote technological research into improving Internet access as well as open access to relevant software and services;

5.11. member States should oblige public authorities to provide open access to their information and services also through the Internet; multilingual Internet access should, as far as possible, be a public objective.

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2. Draft resolution adopted unanimously by the committee on 28 January 2014.

6. The Assembly calls on the United Nations and the European Union to co-operate more closely with the Council of Europe in defining universally and implementing at European level the right to Internet access and related standards.

7. The Assembly invites commercial stakeholders of the Internet to co-operate with governments and parliaments in their efforts to implement the above principles and realise universal access to the Internet. The European Internet Service Providers Association is invited to develop quality benchmarks in this regard.

8. The Assembly asks the Secretary General of the Council of Europe to develop targeted programmes to support member States in national legislative initiatives aimed at guaranteeing universal access to the Internet throughout Europe.

B. Explanatory memorandum by Ms Pelkonen, rapporteur

1. Introduction

1. Having tabled a motion on the right to Internet access (Doc. 12985), I was appointed rapporteur on this subject by the Committee on Culture, Science, Education and Media of the Parliamentary Assembly on 2 October 2012. On 30 November 2012, the Assembly's Bureau mandated me also to take into account the motion for the promotion of media content on the Internet (Doc. 13014).

2. In close co-operation with me, Ms Riikka Koulu from the University of Helsinki prepared a substantial background report for the Committee on Culture, Science, Education and Media (document AS/Cult (2012) 08) and presented it to the committee in Paris on 11 March 2013. This report serves as the substantial part of this explanatory memorandum.

3. I am particularly grateful to Ms Koulu, as well as to Professor Wolfgang Schulz from the Hans Bredow Institute in Hamburg and Mr Abel Caine, Programme specialist from the Communication and Information Sector at UNESCO, all of whom participated in an exchange of views with the committee on that occasion.

4. Speaking on behalf of the Finnish delegation to the Council of Europe's Conference of Ministers responsible for media and information society in Belgrade on 7 November 2013, I reported on this work and had an exchange of views with other participants in the ministerial session I on "Access to the Internet and fundamental rights".

5. Having put elements for a draft resolution for public consultation on the Facebook website[3] in November 2013, I received little feedback. This may be due to the fact that Facebook is a social platform for more spontaneous discussions. However, it is interesting to note that Mark Zuckerberg, the founder and CEO of Facebook, has launched an initiative for universal access to the Internet.[4] I also sent the draft elements for a resolution to various stakeholders, including the European Internet Service Providers Association (Brussels), the International Chamber of Commerce (Paris), Facebook and ARTICLE 19 (London). I am very grateful for the constructive reply by ARTICLE 19.

2. The relevance of Internet access for individuals and society

2.1. Growing importance of Internet

6. In the 21st century, Internet has become a central part of everyday life for its 2.4 billion users worldwide.[5] Defining Internet comprehensively requires understanding its social significance and possibilities, but as a working technical definition Internet can be described as networks of computers and servers linked together by globally standardised protocols enabling high-level data transfer between the computers.[6] Wide-spread consensus exists that Internet is a unique medium in comparison to other forms of mass media.

7. Internet access has transformed from a communication forum accessible only to a selected few into a mainstream medium for managing banking, health care, work and administrative issues. What these changes specifically entail is difficult to decipher as the transition into information society is still work in progress in many European countries. The level and pace of technological progress varies substantially from country to country. In the forerunner countries, such as Scandinavia, almost all households have Internet access, whereas in other European countries the broadband penetration rate does not extend to the same level. There is a digital divide between different geographic areas and countries. The stage of development affects the ways technology impacts society and Scandinavian countries and other countries of high technology therefore reflect possible future progress in other countries as well.

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3. https://www.facebook.com/accesstointernet.
4. Facebook co-operates with Samsung Electronics, Nokia, Ericsson, MediaTek, Opera Software and Qualcomm to form internet.org, a group whose mission is to bring web access to an additional 4 billion people worldwide, in order to overcome barriers in developing countries to connect to cyberspace.
   See: https://www.facebook.com/isconnectivityahumanright and http://internet.org .
5. Internet World Stats, www.internetworldstats.com/stats.htm.
6. Most commonly, Internet is understood to refer to the World Wide Web, which is one of the most common Internet applications alongside e-mail. For further details, see for example: Dan Jerker B. Svantesson, Private international law and the internet (Kluwer Law International cop. 2007), p. 27 et seq.

8. However, it is evident already at this point that the adoption of information and communication technology (ICT) has permanent and far-reaching consequences on society and that this development cannot be reversed. The historical change brought about by the emergence of new media and computer networks cannot be reduced only to technical terms, as such an approach would disregard the societal changes. Individuals depend increasingly on computer networks such as Internet. Most notably, the role of Internet in everyday life connects with digitisation of data which enables the relay of high volumes of data with no (or very low) costs. This creates the possibility for individuals and other actors to participate in context production at the same time as consumers and providers (user generated content, interactivity).[7] This transformation of mass media also carries vast economic importance.

9. The range of public and private "e-services" (electronic services utilising ICT) is proliferating rapidly and, in some cases, even replacing the existing, traditional services. The transformative power of Internet is based on the low threshold, real time possibility to distribute data from one-to-many regardless of national borders and without central control. Online applications have become intertwined with traditional everyday practices. Such applications include, among others, online banking (managing bank transactions or checking account information online),[8] e-commerce (sale and trade of material or immaterial goods online, consumer protection online),[9] and e-work (remote work where employees work without commuting to the work place with the help of ICT). Of growing importance is also e-health, technology-supported public or private health care, which, in the wide sense, includes patient data management as well as online consultation with health-care personnel, and online applications designed for rehabilitative health care.

10. In addition to this, governmental organisations and public services are increasingly going online. E-government refers to interaction between government officials and citizens or enterprises conducted online.[10] One aspect of e-government is government action to promote e-services such as electronic communication between individuals and courts (e-justice), applying for social and other benefits online, and participation in governance through computer networks. One of the most far-reaching e-government applications is electronic voting piloted in Finland.[11] Another perspective of the relevance of Internet access to democratic society are the new forms of participation in policy making (e-participation). In addition to grass-root level Internet activism of non-governmental organisations (NGOs), also government-encouraged methods of participation are increasingly brought to public attention via the Internet. In Finland, the Ministry of Justice has enabled participation by launching an online service for citizens' initiatives. Through this service, individuals can have their bill or proposal to start a bill drafting process considered by the parliament.[12] Such services and channels of influence can increase civic activity, participation and voice in local decision-making and thus strengthen democratic civic society (e-democracy). However, lack of equality in Internet access can cause exclusion of some groups from this development.

11. As is evident from such examples, Internet has become a crucial commodity not only for facilitating commerce or communication but for using basic public and private services such as banking, health-care or welfare services. In addition to such functions, Internet has already become a method for participation and

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7. For a general overview, see: Martin Lister, *New media: a critical introduction* (Routledge, 2009).
8. Online banking is one of the most common usages of Internet connection. For example, in the European Union countries 38% of individuals have used Internet banking in the last three months for transactions or for account information. See: http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=en&pcode=tin00099 [22.1.2013].
9. According to Eurostat, 34% of individuals in the European Union have made purchases on the Internet in the last three months. See: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_ec_ibuy&lang=en [22.1.2013]. The Eurostat survey demonstrates that corresponding percentage among enterprises is substantively less, only 16%. See: http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do [22.1.2013].
10. According to Eurostat, 41% of individuals in the European Union have had interaction with public officials online during the last 12 months. The study shows that the equivalent percentage in Norway was 78% and in Iceland 84% in 2011. See: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_bdek_ps&lang=en [22.1.2013].
11. The Finnish piloting project was based on technology-enhanced voting in polling stations instead of online voting. However, the Finnish government decided after the piloting project not to develop e-voting in this form further, but to follow international progress and focus on developing Internet voting for the 2016 communal elections instead. For further details, see: Government Communications Unit, Press release 13/2010, "Electronic voting will not be developed further on the current basis", see: http://valtioneuvosto.fi/ajankohtaista/tiedotteet/tiedote/fi.jsp?oid=285753.
12. The online service was launched on 1 December 2012 and is a part of the Action Programme on eServices and eDemocracy (SADe) co-ordinated by Finnish Ministry of Finance. For further information, see: Ministry of Justice's news, 30 November 2012, "Online service for citizens' initiatives is opened on 1 December", www.om.fi/en/Etusivu/Ajankohtaista/Uutiset/1347273533618, and brief description of the online service in English, https://www.kansalaisaloite.fi/fi/tietoa/briefly-in-english.

offers possibilities to increase civic influence in a democratic society. The indispensable role Internet has in modern society is further emphasised as both governments[13] and international actors such as the European Union[14] promote the use of online services.

12. It is noteworthy that Internet as such is neither good nor bad, but instead can be used for contradictory ends. Internet's nature as an interactive medium of communication does not directly mean that Internet should be regarded one-sidedly and merely as an enabler of rights or as a potential venue for violations of rights. Internet has the potential to significantly increase participation and to facilitate freedom of expression. However, at the same time, these rights can be misused online and Internet can be turned into an instrument for censorship, surveillance or cybercrime. In comparison with traditional media, the advantages for civic society and anxieties of misuse can both be seen to be more considerable on the Internet, due to the interactivity. In conclusion, Internet infrastructure *per se* cannot be declared as *pro* or *contra* human rights, but should be seen as a neutral medium which can be used for conflicting purposes.

2.2. Acknowledging Internet access as a right

13. At present, the prevailing opinion is that access to Internet should be recognised as a fundamental right. In the following section, this consensus will be presented in more detail by emphasising national broadband policies, the European Union agenda, national case law and public opinion. The consensus is starting to form through actions and discussions of several governments, international actors such as the United Nations, the European Union, the Organization for Security and Co-operation in Europe (OSCE),[15] the Committee of Ministers of the Council of Europe[16], the International Telecommunications Union (ITU), as well as of Internet stakeholders and private individuals. These actions include recognising the importance of Internet for freedom of expression,[17] promoting the public service value of Internet and adopting broadband policies to this end, and the gradual emergence of case law from the national and international courts.

14. Criticism is nevertheless voiced about regarding Internet access as a human right. One of the most cogent reviews has been presented by Vint Cerf, who is often presented as one of the creators of Internet. Cerf stated in a *New York Times* opinion that "Technology is an enabler of rights, not a right itself". Cerf noted that Internet is an important means to an end, creating new possibilities for people to exercise their human rights. However, according to Cerf, acknowledging access to Internet as a universal service comes close to regarding access as a civic right.[18] As a response to Cerf's opinion, Amnesty International USA has noted that Cerf's view of human rights is particularly narrow and tantamount to contesting physical access to a town square as a human right without understanding that such access is inseparable from the right of association and expression.[19]

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13. In Finland, for example, the use of e-services in relation to government officials and public courts is promoted through legislation. See: Act on Electronic Services and Communication in the Public Sector (13/2003) [Laki sähköisestä asioinnista viranomaistoiminnassa], unofficial English translation available at: http://finlex.fi/en/laki/kaannokset/2003/en20030013.pdf.

14. See, for example, the Digital Agenda for Europe, COM(2010)245: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:PDF.

15. See: Report on Freedom of Expression on the Internet. A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States. Prepared by Professor Yaman Akdeniz: www.osce.org/fom/80723.

16. See for example: Recommendation CM/Rec(2007)16 of the Committee of Ministers to member States on measures to promote the public service value of the Internet: https://wcd.coe.int/ViewDoc.jsp?id=1207291.

17. For a general view, see: Nicola Lucchi, "Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression" (2011) 19 Cardozo J Int'l & Comp L 645. Among others, Lucchi refers to a decision of the French constitutional council concerning the so-called HADOPI 1 Act. In its decision (2009-580), the constitutional council stated that Internet access cannot be recognised as a fundamental right per se but, as Internet access is evaluated in relation to the freedom of communication, it deserves particular protection. The Act, intended for protection of copyright, will be discussed below. Furthermore, Estonia for example has decreed through section 33 of the Public Information Act (State gazette, 2000, 92, 597, passed on 15 November 2000) that "Every person shall be afforded the opportunity to have free access to public information through the Internet in public libraries, pursuant to the procedure provided for in the Public Libraries Act". English translation of the Act: http://legaltext.ee/text/en/X40095K4.htm.

18. See: "Internet Access Is Not a Human Right", *New York Times*, 4 January 2012: www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html?_r=1&ref=opinion.

19. See: "Is Internet Access a Human Right?", 10 January 2012, http://blog.amnestyusa.org/business/is-internet-access-a-human-right/.

15. In any case, these two arguments should be conceptually separated from one another: Internet access as a human right *per se* on the one hand and Internet access as an indispensable enabler of human rights on the other. Although it can be disputed whether Internet is *per se* a human right, it is often recognised that Internet is a crucial tool for exercising human rights. The latter is also the point of origin in the United Nations Special Rapporteur's report discussed below.

16. Because of the central functions and possibilities of Internet, several countries have acknowledged that access to Internet has become a focal tool for exercising freedom of speech and opinion and thus requires protection as a fundamental human right. As of 2011, national policies for promoting broadband access had been adopted in more than 100 countries worldwide.[20] Also, agencies such as the Broadband Commission for Digital Development, joint project of the ITU and the United Nations Educational, Scientific and Cultural Organization (UNESCO), promote broadband policy making.[21]

17. The European Union has recognised access to Internet as a universal service in Universal Service Directive (2002/22/EC) on universal service and user's rights relating to electronic communications networks and services. The directive obliges member States to ensure that requests for connection at a fixed location to the public telephone network are fulfilled. According to Article 4.2, "The connection provided shall be capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that *are sufficient to permit functional Internet access*, taking into account prevailing technologies used by the majority of subscribers and technological feasibility" [emphasis added].

18. The implementation of the directive is subject to judicial review. The European Commission requested the Court of Justice to fine Portugal for failing to designate telecom providers as universal service providers in accordance with the Directive. In its judgment (case C-154/09) of 7 October 2010, the court declared that the Portuguese Republic had failed to fulfil its obligations as it had not transposed the obligations into national law and had failed to ensure their application in practice. On 24 January 2013, the European Commission requested the court to impose further fines on Portugal, which had still not fulfilled all of its obligations.

19. National courts have also started to consider Internet access as a crucial commodity for daily life. The German Federal Court of Justice (Bundesgerichtshof) came to this conclusion in its recent decision (III ZR 98/12) on 24 January 2013, as it granted compensation to a plaintiff who was disconnected from accessing Internet between December 2008 and February 2009 due to the service provider's failure to provide connectivity. The court ruled that access to Internet had already become of central importance for individuals as it: offers access to a wide-range of information globally – replacing traditional media such as television and print media –, and enables communication between users. In addition, the court recognised that Internet is increasingly used for transactions, concluding contracts and fulfilling obligations of public law.[22]

20. The public is also starting to acknowledge access to Internet as a right. As a global survey conducted for the BBC World Service in 2009 and 2010 demonstrates, a vast majority of adults (79%) in the 26 countries participating in the poll stated that access to Internet should be a fundamental right. It is noteworthy that also 71% of non-Internet users considered that they should have the right to access Internet while the corresponding percentage among Internet-users was 87%. For Internet-users, the most valued uses of Internet included finding information (47%), interacting and communicating with other people (32%), and a source of entertainment (12%).[23] As such studies reflect public opinion, the information is also valuable for policy making.

21. Although several stakeholders have agreed that access to Internet is to be considered as a human right, it is still unclear how this access is defined and what it involves. Most statements, *travaux préparatoires* for universal services acts and other recommendations emphasise Internet as an enabler of freedom of expression. This implies that there is an obligation to provide free access to information (access to content)

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20. ITU World Telecommunication Regulatory Database, Broadband Policies Worldwide: Selected Countries, Year: 2011: www.broadbandcommission.org/Documents/NationalBBPolicies_2012.pdf.

21. For an insight into the work of the Broadband Commission, see: The State of Broadband 2012: Achieving Digital Inclusion for All. A Report by the Broadband Commission, September 2012: www.broadbandcommission.org/Documents/bb-annualreport2012.pdf.

22. See Bundesgerichtshof, Mitteilung der Pressestelle No. 14/2013: http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&pm_nummer=0014/13. See also: "Having an Internet connection is crucial to everyday life, German federal court says", 24 January 2013, www.itworld.com/internet/338159/having-internet-connection-crucial-everyday-life-german-federal-court-says.

23. See "Four in Five Regard Internet Access as a Fundamental Right: Global Poll": http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/08_03_10_BBC_internet_poll.pdf.

and communication without censorship, to participation and social activism and to the use of online services and e-commerce. However, many issues have not yet been discussed at all. Depending on the interpretation regarding definition of access, it could also be argued that this right includes the right to host a server or use such access for equivalent purposes.

22. Due to its unique nature, it is widely accepted that access to Internet cannot be directly compared to traditional forms of mass media with an *ex analogia* interpretation. Especially applications such as social media elude comparison. Regardless of this, analogy to traditional media could be useful for some uses of computer networks, for example e-mail. As questions concerning e-mail (such as privacy of correspondence) are notably similar to those already examined in relation to traditional mail, discarding analogy interpretation in its entirety, without case-by-case examination, is not necessary reasonable.

3. Technical aspects of Internet access

3.1. Infrastructure

23. As the pace of technology development is especially rapid, opinions on the right to Internet access rarely take a stand on the technical realisation of this right. Instead, they leave it to be decided by the Internet service provider (ISPs) and national policy makers, according to the available technical possibilities. In brief, Internet access requires a telecommunications network, last-mile telecommunication (the access point at the user's home, infrastructure), and end equipment (computer, hardware) for accessing the network. Software is used to administer the hardware. The infrastructure and last-mile telecommunication can be organised in several ways.

24. It is evident that the available technical options have an impact on legal regulation as well. However, the relationship between technology and regulation is two-way, as standardisation determines the development of technology. The prevailing opinion is that technology neutrality should be adopted as a starting point in future legislation. However, some standpoints have been taken, for example by European Union policy setting and national broadband strategies, all promoting high-speed broadband bandwidth. Such bandwidth can be achieved by several technical alternatives or combination of them, wireless transmitters or wires. For example, in the United Kingdom, broadband strategy has adopted a mix of technologies combining fixed, wireless and satellite connections.[24]

25. At this point of development, access to Internet requires the use of data terminal equipment such as a computer or mobile telephone. Although Internet access is declared a universal service, it does not follow from there that the State should provide such access for free without costs of ISPs or procurement of the end equipment. However, it has to be taken into consideration that the costs of Internet access might in themselves be prohibitive for some individuals, increasing the digital divide in developed countries as well. Consideration should be given to whether the State should take positive action in order to provide access through public WLAN (wireless local area network) connections and public access points through library or other such public services to those individuals and households that cannot afford the costs.

26. In its European Broadband Communication, the European Commission set the objective that by 2020, all Europeans should have access to Internet of above 30 megabits per second (Mbit/s) and 50% or more of European households have subscriptions above 100 Mbit/s. The Commission highlights that optical fibre technology (fibre to the home, FTTH) should be preferred for last-mile telecommunications as it can utilise the existing copper network. Optical fibre has been described as future-proof for the relayed bandwidth is limited mostly by the end equipment. However, the use of mobile technology for the last mile communication is constantly on the rise. The Commission states that also next-generation terrestrial wireless services as well as satellite connection, if further development is undertaken, will be able to reach the target bandwidth. The European Union objective is very ambitious and calls for active member State action. However, the halfway objective adopted as a part of the Finnish Broadband 2015 Strategy, securing the minimum bandwidth of 1 Mbit/s, is sufficient for accessing most Internet services effectively.

27. Funding the development of Internet infrastructure is one of the issues related to the future of Internet. Although the European Union, for example, provides targeted infrastructure funding at European level, investments are made and Internet traffic hubs are run most often by private businesses, ISPs etc. This further highlights the importance of adopting the multi-stakeholder model in governance issues.

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24. See Britain's Superfast Broadband Future, December 2010: http://webarchive.nationalarchives.gov.uk/and www.culture.gov.uk/images/publications/10-1320-britains-superfast-broadband-future.pdf.

28. One example of the importance of infrastructure is the role of Internet Exchange Points (IXPs). They enable Internet traffic from one operator's autonomous network to that of another (direct interconnection) without third-party networks or peering. This makes data transfer cheaper and faster and more fault-tolerant. IXPs are governed by non-profit Internet Exchange Point Associations (IXPA) whose member corporations are national and international ISPs. On an international level, there are four regional IXPAs for Europe, Africa, Asia Pacific and Latin America.

3.2. Software

29. It is evident that effective exercise of access to Internet requires computer literacy in addition to the absence of restrictions on access and denomination of universal service providers (USPs). Lack of adequate computer skills prevents certain groups from taking full advantage of the possibilities of Internet. A "digital divide" exists between different geographic areas (different continents, rural/urban areas) – where the term refers to the missing possibilities of the necessary infrastructure – but also in developed areas where differences between individual skills, economic abilities, physical disabilities or age can translate into *de facto* obstacles for utilising the potential of Internet services.

30. In the development of software, the role of intermediaries (such as Internet businesses) is central as adopted software architecture often directs future user behaviour. For several groups, such as the elderly and immigrants, the learning curve for using Internet services has to be set as low as possible. In Finland, for example, a small eHealth business (Pieni piiri) is offering a collaborative Internet experience as a method of engaging the elderly in interactive Internet services, which, in its turn, gives them the necessary know-how to access other services as well.

31. The future prospects of software development are almost impossible to predict. However, it is evident that the significance of software will increase in the future and data will be increasingly stored on cloud services. Already individual apps have started to gain ground on traditional Internet browsers and the importance of social media is highlighted. As a part of this, use of Internet access will probably become both more tailored and more community-oriented. Due to insufficient data transfer capacity, earlier software applications have been text-based, but as the broadband bandwidth becomes customary, there will be no obstacles to relaying audiovisual information, which will affect future software infrastructures.

4. Legal norms applicable to Internet access and use

32. There are several sets of rules that affect the evaluation of Internet access and its use. Most of these norms are founded by binding international instruments. However, such instruments have been enacted for very different purposes. It is necessary to differentiate the norms that regulate the human rights perspective of Internet access from the norms regulating the technical aspects: how such access is used, what technical standards are in place for the necessary interoperability and how restrictions on content are imposed. The technical solutions nevertheless affect the recognition and interpretation of the human rights perspective as they substantially affect the way Internet is developed and used. In addition to international regulation of human rights and technical standards, there are also the national legislations which might impose specific technical requirements or rights for citizens. All in all, the legal norms applicable to Internet are diverse and fragmented between different fields.

4.1. United Nations

33. As stated above, the freedom of opinion and expression is one of the central human rights connected with the use of the Internet. Freedom of expression is protected under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) adopted by the United Nations General Assembly on 16 December 1966. The treaty has 74 signatories and 167 Parties and its implementation is monitored by Human Rights Committee through a reporting procedure, the examination of individual complaints and the publication of general comments on the interpretation of the ICCPR. Article 19 of the ICCPR decrees freedom of opinion and expression to include first, the right to hold opinions, and second, the right to seek, receive and impart information and ideas of all kinds through any media. According to Article 19, this freedom carries with it special duties and responsibilities and therefore it may be subjected to a restriction regulated by law and necessary for the respect of rights or reputations of others or for the protection of national security, public order (ordre public) or public health or morals.

34. In 2011, the Human Rights Committee has addressed new media in its General Comment No. 34, stating that:

> *"States parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto."*[25]

35. An important step towards recognising access to Internet was taken when the United Nations Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, Frank La Rue, submitted his report to the Human Rights Council on 16 May 2011. In his report, the Special Rapporteur concluded that access to Internet was a key means of exercising freedom of opinion and expression. He states that:

> *"The right to freedom of expression is as much a fundamental right on its own accord as it is an 'enabler' of other rights, including economic, social and cultural rights, such as the right to education and the right to take part in cultural right and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly. Thus, by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights."*

36. Most of the observations and recommendations presented by the Special Rapporteur are pertinent in the European context as well. Especially important points of the United Nations report are: first, the critical attitude adopted towards all restrictions on content; second, its demands for applying cumulative criteria to all restrictions; and third, the insistence on transparency. The Special Rapporteur demands that restrictions on Internet content are evaluated by an independent body using the three-part, cumulative restriction criteria regulated in Article 19.3 of the ICCPR (regulated by law, for specific purposes, necessary). Sufficient legal remedies should be made available. He calls for more transparency in situations where a State uses blocking or filtering mechanisms and points out that legitimate online expression is in practice criminalised by applying laws on defamation, national security and terrorism which, in fact, aim to censor content. The Special Rapporteur calls for State action to ensure access to Internet at all times and considers disconnection of users from Internet as interference with constitutional rights, regardless of the ground for such action. This includes suspension based on copyright infringements, which suspensions he regards as disproportionate and, as such, a violation of freedom of expression. This is a remarkably strong statement, which I will discuss below.

4.2. Council of Europe

37. Freedom of expression is provided for in Article 10 of the European Convention on Human Rights, drafted by the Council of Europe and opened for signature on 4 November 1950. In total, 47 countries have ratified the treaty. The Convention defines freedom of expression in a similar manner as the ICCPR. According to Article 10 of the Convention, freedom of expression includes: i) freedom to hold opinions; and ii) freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers. Freedom of expression may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

38. The European Court of Human Rights ("the Court") has not yet directly evaluated access to Internet from a human rights perspective and, therefore, exact rules for interpretation cannot be found in the Court's case law. However, pending cases concern refusal of prison authorities to give a convicted prisoner access to Internet (alleged violation of Article 10, *Jankovskis v. Lithuania*, Application No. 21575/08) and a news portal's liability for defamatory comments posted on it (alleged violation of Article 10, *Delfi As v. Estonia*, Application No. 64569/09). Tangential cases have also already been evaluated by the Court.

39. In the *Editorial Board of Pravoye Delo and Shtekel v. Ukraine* case, the Court unanimously ruled that there had been a violation of Article 10 of the Convention, as the Ukrainian law did not provide safeguards for journalists publishing materials obtained from the Internet, although immunity from civil liability was granted to

25. The Human Rights Committee, General Comment No. 34, section 15: http://www2.ohchr.org/english/bodies/hrc/comments.htm.

journalists using verbatim citations published in the press. The applicants, the editorial board and editor-in-chief of a newspaper, had published an anonymous letter downloaded from a website. Although the newspaper had provided the reference to the Internet source and a disclaimer stating that the information was not necessarily correct, the national court found the applicants liable on the basis of defamation. The European Court of Human Rights declared that such liability for reproduction of Internet material violated the journalists' freedom of expression.

40. In *K.U. v. Finland*, the Court declared that there had been a violation of Article 8 (the right to respect for private and family life), as the Finnish legislature did not provide a framework for reconciling the confidentiality of Internet services and the protection of others. The Court pointed out that, although it is understandable that regulation in information society falls behind due to the pace of technology development, the Finnish legislator should have been able to provide for the necessary safeguards in 1999 when the initial incident had taken place. Although such protection was subsequently created, the national legislation had failed to provide sufficient protection for the applicant, whose right to privacy had been violated.

41. In *Ahmed Yildirim v. Turkey*, the Court ruled that there had been a violation of freedom of expression as a national court had ordered the blocking of access to Google Sites, which hosted a website whose owner had been accused of defamation of Atatürk. Based on the court decision, access to all other sites hosted by Google Sites was blocked as well.

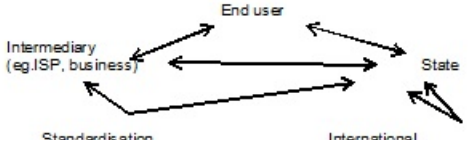
42. In *Ashby Donald and Others v. France*, the Court ruled that there had been a violation of the freedom of expression as the national court had convicted three fashion photographers for copyright infringement. The national court had found that there had been an infringement as two of the defendants published on their website photos taken at fashion shows by the third defendant without the consent of the fashion shows concerned.

43. The Council of Europe has also adopted other treaties that are relevant to access to Internet. The Convention on Cybercrime (ETS No. 185) and the Convention on Data Protection (ETS No. 108) are important treaties regulating the use of Internet access and providing for protection of Internet users. The Convention on Cybercrime, which came into force in 2004, is the only international and binding instrument on cybercrime. The Treaty provides States with guidelines for the development of legislation against organised crime such as terrorism, paedophile networks, child pornography and computer frauds.

44. Adopted in 1981, the Convention on Data Protection is the only binding legal instrument concerning privacy and it sets minimum standards for the level of protection and harmonisation. Due to the growing concern about surveillance and profiling on the Internet and other data protection issues, an updated draft of the convention will be examined by an intergovernmental Council of Europe committee in 2014 before being submitted to the Committee of Ministers.

4.3. Contextuality of relevant human rights in relation to Internet access

45. The prevailing opinion is that access to the Internet is particularly central for freedom of expression and should be provided for as a civic and political right. This doctrinal choice has been made in Frank La Rue's report (see paragraph 31) and in several other documents. However, access to Internet and use of political freedoms online should be separated from the question of how this access is guaranteed. The widely adopted practice is that telecom providers are designated as universal service providers and obligated to provide sufficient Internet access. The right to enter into a contract with a telecom provider in order to receive the universal service has to be evaluated separately from State obligations. The following graph clarifies the relationships and obligations between the different parties.



46. Incongruity between traditional media and the Internet renders *ex analogia* useless as an interpretation method. This also affects the question of which human right applies to the Internet. Although freedom of expression is the human right most often connected with access to Internet, other human rights might become relevant depending on the context and interpretative issues. In different contexts, access to Internet could be

evaluated through other rights as well, for example the right to education (e.g. use of licenced educational material) or as a part of fair trial (e.g. in online dispute resolutions or technology-enhanced trials). A growing number of national courts are relying on Internet access in their case management and expect Internet capabilities from the parties and their representatives as well (e.g. Finnish legal aid appliances, lower court fees for e-claims, etc.), raising the questions of due process and equality of arms. The implications of technology implementation in dispute resolution are one of the new legal issues arising from Internet and further research on the matter is therefore necessary.

47. It is noteworthy that the context defines the relevant human rights and this might have implications on the obligations placed to the parties involved, on the contracting States on the one hand and on Internet intermediaries on the other. This is to say that, according to the human rights doctrine, civil and political rights entail obligations going further than economic, social and cultural rights.

4.4. Rights of Internet users

48. The rights of Internet users should be provided for and the same level of legal protection guaranteed online as offline. To this end, the European Union has published the Code of EU Online Rights as a part of the Digital Agenda for Europe. The code includes rights and principles i) applicable to access and use of online services, ii) applicable to the purchase of goods and services online and iii) providing protection in case of conflict.[26]

49. As the United Nations Special Rapporteur states, the responsibility of intermediaries in securing freedom of expression is important and thus, they should "only implement restrictions on these rights [freedom of expression] after judicial intervention; be transparent to the user involved about measures taken, and where applicable to the wider public; provide, if possible, forewarning to users before the implementation of restrictive measures; and minimise the impact of restrictions strictly to the content involved". The prevailing opinion concerning the rights of users is that, in addition to providing the necessary safeguards through regulation, also effective legal remedies must be guaranteed. These effective remedies include appeal procedures provided by the intermediary as well as judicial review.

4.5. Standardisation

50. The regulation of Internet is not only a legal and political issue, but a technical one as well. Securing interoperability also in the future is elemental for the future use of the Internet; this is achieved by continuous standardisation work. The United Nations International Telecommunication Union (ITU) strives for standardisation of ICT infrastructure to overcome technical barriers and to ensure accessibility, seamless global communication and interoperability between operators and technical networks. As of 2011, ITU had already given over 3 000 recommendations, including standardisation of broadband access, fibre optic transport, cabling, PONs (passive optical networks) and fixed-mobile convergence. Further standardisation work by the ITU is crucial for overall network operation.

51. On 14 December 2012, the ITU convened the World Conference on International Telecommunications (WCIT-12) in Dubai, United Arab Emirates. The conference reviewed the International Communication Regulations (ITRs) and a binding treaty for the facilitation of interoperability was approved and presented for signature in the final acts of the WCIT. The treaty: i) establishes general principles relating to the provision and operation of international telecoms; ii) aims to facilitate global interconnection and interoperability; iii) promotes harmonious development and efficient operation of technical facilities; and iv) promotes efficiency, usefulness, and availability of international telecommunication services.

52. These technical issues also have important human rights aspects. A key point discussed at WCIT was the future governance of Internet. The participants discussed whether ITU should take a more decisive role in regulating Internet by introducing a regulatory framework for controlling it. Although no such mandate was given to ITU in the final acts, a non-binding resolution was adopted in the appendix. This created controversy as some critics considered that it would enable the ITU to control Internet content later on and thus disturb the free flow of information. Because of this, more than half of ITU member States did not sign the treaty, among them all European Union member States and the United States. On 14 December 2012, the European Commission published a memorandum stating that the European Union member States remained 100% committed to open Internet in the future. According to the Commission, the final acts risked threatening the future of the open Internet and Internet freedoms.[27]

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26. Code of EU Online Rights: https://ec.europa.eu/digital-agenda/en/code-eu-online-rights.

53. However, the ITU has recognised the right to communications as a human right already based on the earlier ITRs.[28] The final acts accepted in Melbourne in 1988 (WATTC-88) have been approved by 190 countries including the European Union member States and the United States. Article 3.4 of the final acts states that "subject to national law, any user, by having access to the international network established by an administration, has the right to send traffic. A satisfactory quality of service should be maintained to the greatest extent practicable, corresponding to relevant CCITT Recommendations".

54. The European Commission has identified lack of interoperability as one of the most significant obstacles to exploiting technology. In the Digital Agenda for Europe, the Commission has listed actions for promoting standard setting in the European Union. These actions include the promotion of standard-setting rules, guidance on standardisation and the adoption of a European Interoperability Strategy and Framework (EIF). The EIF is a collection of recommendations that define how administrations, businesses and citizens communicate with each other regardless of member State borders.

55. The ministerial declarations adopted in Malmö and Granada commit to creating a single digital market in the European Union. To this end, public administrations should promote open standard and interoperability between national and European frameworks and develop more efficient interoperable public services. The European Commission has also harmonised the use of the 3 400-3 800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community (2008/411/EC). It is probable that the importance of European Union standardisation will increase in the future.

4.6. Governance of Internet domain names

56. Governance and control over Internet domain names is carried out by the private non-profit organisation The Internet Corporation for Assigned Names and Numbers (ICANN) based in the United States. ICANN organises the distribution of unique Internet Protocol (IP) address spaces to the five regional Internet registries[29] which, in their turn, manage allocation and registration for specific geographic regions. ICANN protects the stability and operability of global Internet by co-ordinating the domain name system. In order to resolve domain name conflicts, ICANN has established its own dispute resolution model called the Uniform Dispute Resolution Policy (UDRP) in co-operation with the World Intellectual Property Organisation (WIPO). Because, in the end, ICANN is a private organisation entrusted with responsibilities of public interest, it has been criticised for lack of adequate accountability mechanisms.[30]

4.7. Broader obligations for the State

57. The human rights perspective of Internet access creates obligations for the States that can be carried out in several ways. As the national broadband policies demonstrate, promotion of broadband as a necessary commodity is often depicted as a practical way of implementing the right to Internet access. For example, on 4 December 2008, the Finnish Government launched the "Broadband 2015 project". The objective of the Broadband project is that in 2015, more than 99% of the population are no further than two kilometres from a 100 Mbit/s fibre-optic or cable network. This enables the consumers to obtain Internet connection from telecom operators, at their own expense.[31]

58. All individuals and businesses in Finland are considered to have the right to high-speed Internet access in their place of residence. Amendment of section 60.c of the Communications Market Act (393/2003), which came into force on 1 July 2009, enacts that certain telecom operators have the obligation to provide the public with an appropriate Internet access, regardless of their place of residence, but taking into consideration the connection speed available to the majority, technical realisation and costs. Based on the amendment, the Finnish Communications Regulatory Authority designated 26 telecom operators as universal service providers (USPs) of Internet access. These USPs have the obligation to offer Internet access in their specific

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27. See "No change to telecoms and internet governance – EU Member States amongst dozens not signing proposed new International Telecommunications Regulations (ITR) Treaty, remain 100% committed to open internet": http://europa.eu/rapid/press-release_MEMO-12-991_en.htm.

28. See "WCIT Background Brief 2: Communications as a Human Right": www.itu.int/en/wcit-12/Documents/WCIT-background-brief2.pdf.

29. AfriNIC for Africa, ARIN for North America, the Caribbean and Antartica, APNIC for Asia and Australia, LACNIC for Latin America and RIPE NCC for Europe, the Middle East and Central Asia.

30. See, for example, R.W. Rijgersberg, "The State of Interdependence: Globalization, Internet and Constitutional Governance", Information Technology and Law Series, T.M.C. Asser Press, 69-, 215.

31. Resolution of the Finnish Government on national strategy for improvement of the infrastructure of the information society (732/2009) [Valtioneuvoston päätös kansallisesta toimintasuunnitelmasta tietoyhteiskunnan infrastruktuurin parantamiseksi], 4 December 2008, pp. 1-2.

geographic areas of operation. The decision came into force on 1 July 2010. The Finnish legislator has also decreed the speed requirement for an appropriate access. As the Finnish Communications Regulatory states, technology requirements and level of appropriate technology might vary depending on the development level, which is one of the reasons why the provisional speed requirement of broadband speed (1 Mbit/s) for incoming traffic is regulated by a decree of Ministry of Traffic and Communications.[32] The Finnish broadband model gives other countries valuable information on the practical issues of implementing broadband strategies.

59. Such regulation on USPs creates obligations for Internet stakeholders. In Finland, the governmental resolution on the Broadband Project starts out from technology neutrality and leaves the decisions concerning the technology used to the USPs' discretion.

4.8. Governance of Internet and multi-stakeholder model

60. The governance of Internet involves multiple stakeholders, such as civil society, private sector businesses, governments and NGOs, which *de facto* co-operate in policy-making processes. Especially the role of intermediaries in administering content has evolved significantly and private businesses have responsibility regarding the rights of Internet users. Consequently, all stakeholders should be engaged in future policy-making procedures. The prevailing opinion is that, although the States have the primary obligations to provide a regulatory framework for Internet, other Internet stakeholders also have an important role in future policy-making and governance of Internet.[33] Co-operation and dialogue between different stakeholders enables openness, transparency and accountability of adopted policies and enables the responsibilities and roles of different stakeholders to be taken into account.

61. Companies in the ICT sector are encouraged to partake in multi-stakeholder models such as the Global Network Initiative, an NGO devoted to promoting human rights and privacy and preventing censorship on Internet. This multi-stakeholder initiative was founded in 2008 by the important gatekeeper corporations Google, Microsoft and Yahoo!. The growing importance of the multi-stakeholder model as a governance structure influences future norm-giving and policy-forming.

5. Prominent cases

62. Widely discussed cases related to the right to Internet access concern protection of intellectual property rights on the Internet, boycott of services, filtering by the State, censorship, surveillance and other means of limiting access to Internet or access to certain content.

63. Sufficient protection of intellectual property rights, particularly copyright is central to the further development of Internet. However, the means of providing such protection must not infringe the fundamental rights provided for in the European Convention on Human Rights and other human rights instruments. French law aiming at protection of copyright, namely the HADOPI law has created a lot of controversy. The law, adopted in 2009, is based on a three-strikes-penalty model, where a government agency (HADOPI) invokes the policy in repeated copyright infringement situations at the request of the copyright holder. In the first stage, an e-mail message is sent to the Internet access subscriber (based on the IP address) inviting him or her to install a filter to the connection. If in the following six months the infringement is repeated, HADOPI invokes the second step of the policy and a registered letter is sent to the subscriber. If in the following 12 months, the offence is repeated, the third step is invoked and the Internet service provider is asked to suspend the subscriber's Internet connection for a period of between 2 and 12 months while the subscriber's obligation to pay for it continues. Judicial review before a court is allowed in the third stage.

64. The HADOPI law has provoked a lot of debate and the adopted three strikes policy is often seen as being a penalty in its nature. This is problematic as the policy is invoked by an administrative authority instead of an independent court. Considerable doubt has been expressed as to how due process, separation of powers and presumption of innocence are safeguarded under the HADOPI system.[34] It has also been claimed that the suspension of Internet access by an ISP is a violation of fundamental rights. As stated above,

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32. See: Decree of the Ministry of Transport and Communications on the minimum rate of a functional Internet access as a universal service, unofficial English translation: www.finlex.fi/en/laki/kaannokset/2009/en20090732.pdf.

33. See, for example, Declaration by the Committee of Ministers on Internet governance principles, adopted on 21 September 2011: www.coe.int/t/informationsociety/documents/CM%20Dec%20on%20Internet%20Governance%20Principles_en.pdf.

34. Nicola Lucchi, "'Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression" (2011) 19 Cardozo J Int'l & Comp L, p. 663.

the United Nations Special Rapporteur always regards such suspension based on IPR protection as a violation of freedom of expression. Likewise, the OSCE report on freedom of expression on the Internet declares that countries should refrain from adopting multiple-strike policies as they are incompatible with the right to information. Revision of the HADOPI law is under way and the provisions on cutting Internet access will be removed.[35] In addition, the European Commission has declared that in 2014 the review of the European Union framework for copyright will be completed and, after this, it will be decided whether legislative reforms are needed.[36]

65. The responsibility of Internet intermediaries is further emphasised in cases of service boycotts. In these cases, private businesses operating central services on the Internet decide to ban certain content from their search results or prevent certain groups from using their services. An example of such a boycott is the contentious conflict between Google News and French newspapers originating from the French print media's demand that the French Government enact a law (Lex Google) obliging the search engine to pay for linking their web pages. Essentially, such demands are based on claims that Google News receives advertisement revenue belonging to the print media and on the allegation of Google's search engine bias as opposed to the corporation's supposed net neutrality policy. In response, Google has threatened to shut out French newspapers from its search results if such a law is enacted.[37] No prevailing legal opinion on search engine bias or the possible copyright infringing nature of news portals has formed as of yet,[38] but it is clear that the enactment of such a law will have an impact on the future of content regulation on the Internet, as will the private settlement between the French newspapers and Google News.[39] On 4 February 2013, the executive chairman, Eric Schmidt, posted on Google's business blog that the French President and Google had reached a private settlement which includes Google creating a € 60 million Digital Publishing Innovation Fund to support transformative digital publishing initiatives for French readers. In addition to this, Google has committed to "help increase their [French publishers] online revenues using [Google's] advertising technology".[40]

66. Another example of service boycotts is provided by PayPal's persona non grata policy, which has received widespread criticism. PayPal is a global corporation providing a service for online money transfers. There has also been controversy as a result of PayPal restricting accounts of individual users without prior notice[41] and shutting down the account of Wikileaks[42] while allegedly allowing racist organisations such as the KKK to keep theirs.

67. Based on the United Nations Special Rapporteur's report and other demands for transparency, it is evident that such boycotts committed by private intermediaries are problematic as users do not have sufficient remedies against erroneous decisions. Some of the services provided by private businesses could be considered to be indispensable to users. However, when creating regulations to increase transparency, also the freedom of action of the intermediaries should be taken into consideration. This is an issue related to the roles of intermediaries, States and end users.

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35. See: *Le Monde*: "Hadopi: la coupure Internet sera supprimée en juin", 20 May 2013, www.lemonde.fr/technologies/article/2013/05/20/hadopi-la-coupure-internet-sera-supprimee-en-juin_3385291_651865.html.
36. See: European Commission press release of 18 December 2012, "Copyright: Commission urges industry to deliver innovative solutions for greater access to online content", http://europa.eu/rapid/press-release_IP-12-1394_en.html.
37. See: "Google threatens French media ban over proposed law", 18 October 2012, BBC News: www.bbc.co.uk/news/technology-19996351.
38. For example, Eric Goldman ("Revisiting Search Engine Bias Contemporary Issues in Cyberlaw" (2011-2012) 38 Wm Mitchell L Rev, pp. 108-109.) has labelled the print media's claims as driven by the economic stakes and demands for neutral discussion on search engine bias. Thomas Walter Haug ("Do News-Compilations on the Internet Like the Google News Infringe Copyright – An International Approach" (2007) 39 B L J 80) analyses Google News from a copyright perspective with an international approach and concludes that news portals are of special importance to Internet users which should be taken into account in court practice in the coming years. On the other hand, Benjamin Edelman ("Bias in Search Results: Diagnosis and Response" (2011) 7 Indian J L & Tech, pp. 31-32) highlights that search engine bias does exist and, due to the dominant market position of Google, this situation offers untenable possibilities for abuse.
39. See for example Monica Horten, "Lex Google: a private law for French Internet?", 6 November 2012, www.iptegrity.com.
40. See: Eric Schmidt, "Google creates €60m Digital Publishing Innovation Fund to support transformative French digital publishing initiatives", 4 February 2013, http://googleblog.blogspot.fi/2013/02/google-creates-60m-digital-publishing.html.
41. Craig Grannell, "PayPal responds to clients' anger", 10 September 2012, www.netmagazine.com/news/paypal-responds-clients-anger-122212.
42. "PayPal joins internet backlash against WikiLeaks", *The Guardian*, 4 December 2010: www.guardian.co.uk/media/2010/dec/04/paypal-internet-backlash-wikileaks?INTCMP=SRCH.

68. As several States attempt to impose regulations on Internet or filter content, the question of censorship arises. For example, the Belarus Government has placed filters to control Internet content through government-owned Beltelecom, which acts as an information gateway. According to the OpenNet Initiative, a collaborative project of three research institutions, government involvement in the media market induces self-censorship for fear of prosecution.[43] For years, the case of Google China has been widely discussed in the press as the search engine giant has fought against the extensive censorship system of China by refusing to adopt self-censorship on the Chinese market and to filter key terms such as "human rights" from its search results. According to the latest news reports, after years of heated debate and partial compliance with the Chinese Internet censorship laws, Google has stopped informing its local users that the search results contain restricted information.[44] Iran, too, has created filters for Google's search engine and e-mail service in order to control its citizens' access to content. However, the Iranian Government plans to impose even more far-reaching censorship by creating a closed domestic intranet for Iran, thus isolating it from the World Wide Web.[45]

6. Conclusion

69. In conclusion, it can be argued that Internet access as such is recognised as a freedom for everyone, which is linked to the universal human rights of freedom of expression and information as well as of freedom of peaceful assembly. Other universal human rights are relevant to determine to what extent Internet access is protected, such as the rights to protection of private life and protection of property. In addition, universal service obligations also qualify Internet access by ensuring universal access, namely access for everyone at a reasonable price and a defined level of technical quality, irrespective of location. The above draft resolution contains the operational conclusions of this report.

43. See OpenNet Initiative, "Country Profile: Belarus", 18 November 2010: http://opennet.net/research/profiles/belarus.
44. See Josh Halliday, "Google's dropped anti-censorship warning marks quiet defeat in China", *The Guardian, 7 January 2013*: www.guardian.co.uk/technology/2013/jan/04/google-defeat-china-censorship-battle.
45. See "Iran to launch giant domestic intranet", *AlJazeera*, 24 September 2012: www.aljazeera.com/news/middleeast/2012/09/201292471215311826.html.