

INTERNET ACCESS AS A HUMAN RIGHT

Monday 14th November 2011

Please prepare for a short discussion of this topic with the rest of the class by reading and talking about the material provided in small groups.

You have been given the following articles to read in your group:

1. 'U.N. Report Declares Internet Access a Human Right', Wired, June 2011, <http://www.wired.com/threatlevel/2011/06/internet-a-human-right/>
2. 'Internet access is a fundamental right' BBC News, March 2010, <http://news.bbc.co.uk/1/hi/8548190.stm>
3. 'Internet: A fundamental human right?', Media Law and Freedom of expression Blog, July 2011, <http://ibamedialaw.wordpress.com/2011/07/07/internet-a-fundamental-human-right/>
4. 'Internet access is a fundamental human right, rules French court', Fox News, June 2009, <http://www.foxnews.com/story/0,2933,525993,00.html>.
5. Ofcom details "three strikes" scheme for illegal downloads for 2013, Boxado News, October 2011, http://www.boxado.com/754_ofcom-dates-%E2%80%9Cthree-strikes%E2%80%9D-web-policy-for-2013/.

Some questions you may like to consider:

- Should Internet access be a basic human right?
- How does it compare to other rights like access to water etc?
- How does the three strikes rule interplay with the right to access?

1. U.N. Report Declares Internet Access a Human Right

The United Nations counts internet access as a basic human right in a report that bears implications both to on-going events in the Arab Spring and to the Obama administration's war on whistleblowers. Acting as special rapporteur, a human rights watchdog role appointed by the UN Secretary General, Frank La Rue takes a hard line on the importance of the internet as "an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress." Presented to the General Assembly on Friday, La Rue's report comes as the capstone of a year's worth of meetings held between La Rue and local human rights organizations around the world, from Cairo to Bangkok. The report's introduction points to the impact of online collaboration in the Arab Spring and says that "facilitating access to the Internet for all individuals, with as little restriction to online content as possible, should be a priority for all States."

The UN report overwhelmingly supports the internet as a communication platform, a boon to all democratic societies, but it also warns how the internet's unique architecture threatens power brokers in those societies:

The vast potential and benefits of the Internet are rooted in its unique characteristics, such as its speed, worldwide reach and relative anonymity. At the same time, these distinctive features of the Internet that enable individuals to disseminate information in "real time" and to mobilize people has also created fear amongst Governments and the powerful. This has led to increased restrictions on the Internet through the use of increasingly sophisticated technologies to block content, monitor and identify activists and critics, criminalization of legitimate expression, and adoption of restrictive legislation to justify such measures.

La Rue's mention of reach and anonymity celebrates Twitter and Facebook role in Egypt as much as it validates WikiLeaks in the United States. The Electronic Freedom Foundation says that the UN's support for anonymous expression and the protection it affords should inform how governments regulate security and surveillance. Forms of online surveillance--be it Facebook's privacy policy or the United States government's expanding treason law to document leaks--"often [take] place for political, rather than security reasons in an arbitrary and covert manner," La Rue argues. In short, broad surveillance powers or the erosion of privacy online endanger anonymity's ability to protect dissenters and journalists alike when they speak out.

Stacked against the administration's assault on whistleblowers, La Rue's warnings are condemning:

The Special Rapporteur remains concerned that legitimate online expression is being criminalized in contravention of States' international human rights obligations, whether it is through the application of existing criminal laws to online expression, or through the creation of new laws specifically designed to criminalize expression on the Internet. Such laws are often justified as being necessary to protect individuals' reputation, national security or to

counter terrorism. However, in practice, they are frequently used to censor content that the Government and other powerful entities do not like or agree with.

La Rue acknowledges the logistical barriers that some nations face when it comes to delivering internet service. Without the proper infrastructure, some nations simply can't engage the internet as the "revolutionary" and "interactive medium" it's proven itself to be. However, all nations should make plans to offer universal access and also maintain policy that won't limit access for political purposes. In doing so, La Rue calls on governments to decriminalize defamation, do away with real-name registration systems--including the parameters in Facebook's terms and conditions that allows governments to collect users' names and passwords--and restrict rights only in the face of an imminent threat.

The United Nations' strong position on anonymity online reads like a hat tip to WikiLeaks and its campaign for transparency, but it also sounds scolding towards governments like the United States' that have waged wars against transparency. Likening the Obama administration's increasing number of convictions using old treason laws against information leakers is censorship in no uncertain terms, the UN seems to say. And the government's bad track record of protecting this type of free expression is ideologically just as bad as shutting the internet down altogether.

2. Internet access is 'a fundamental right'

Almost four in five people around the world believe that access to the internet is a fundamental right, a poll for the BBC World Service suggests.

The survey - of more than 27,000 adults across 26 countries - found strong support for net access on both sides of the digital divide.

Countries such as Finland and Estonia have already ruled that access is a human right for their citizens.

International bodies such as the UN are also pushing for universal net access.

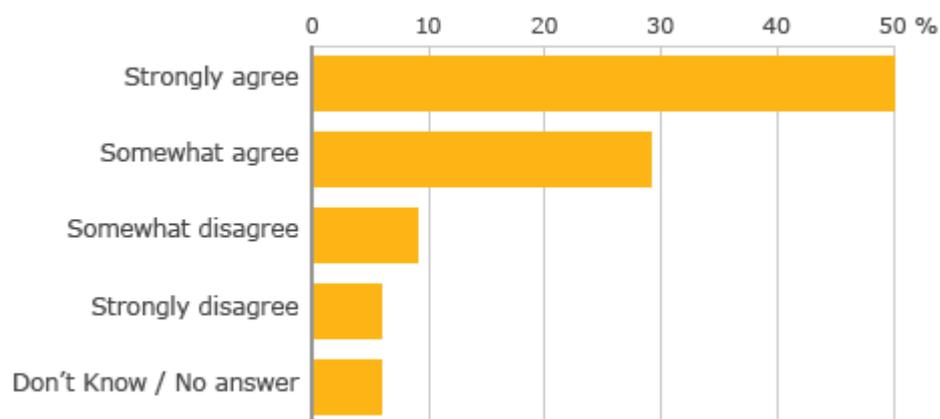
"The right to communicate cannot be ignored," Dr Hamadoun Toure, secretary-general of the International Telecommunication Union (ITU), told BBC News.

"The internet is the most powerful potential source of enlightenment ever created."

He said that governments must "regard the internet as basic infrastructure - just like roads, waste and water".

"We have entered the knowledge society and everyone must have access to participate."

Should the internet be a fundamental right?



Source: GlobeScan/average of 26 countries, 2010

The survey, conducted by GlobeScan for the BBC, also revealed divisions on the question of government oversight of some aspects of the net.

Web users questioned in South Korea and Nigeria felt strongly that governments should never be involved in regulation of the internet.

However, a majority of those in China and the many European countries disagreed.

In the UK, for example, 55% believed that there was a case for some government regulation of the internet.

Rural retreat

The finding comes as the UK government tries to push through its controversial Digital Economy Bill.

As well as promising to deliver universal broadband in the UK by 2012, the bill could also see a so-called "three strikes rule" become law.

This rule would give regulators new powers to disconnect or slow down the net connections of persistent illegal file-sharers. Other countries, such as France, are also considering similar laws.

Recently, the EU adopted an internet freedom provision, stating that any measures taken by member states that may affect citizen's access to or use of the internet "must respect the fundamental rights and freedoms of citizens".

In particular, it states that EU citizens are entitled to a "fair and impartial procedure" before any measures can be taken to limit their net access.

The EU is also committed to providing universal access to broadband.

However, like many areas around the world the region is grappling with how to deliver high-speed net access to rural areas where the market is reluctant to go.

Analysts say that is a problem many countries will increasingly have to deal with as citizens demand access to the net.

The BBC survey found that 87% of internet users felt internet access should be the "fundamental right of all people".

More than 70% of non-users felt that they should have access to the net.

Overall, almost 79% of those questioned said they either strongly agreed or somewhat agreed with the description of the internet as a fundamental right - whether they currently had access or not.

Free speech

Countries such as Mexico, Brazil and Turkey most strongly support the idea of net access as a right, the survey found.

More than 90% of those surveyed in Turkey, for example, stated that internet access is a fundamental right - more than those in any other European Country.

South Korea - the most wired country on Earth - had the greatest majority of people (96%) who believed that net access was a

fundamental right. Nearly all of the country's citizens already enjoy high-speed net access.

The survey also revealed that the internet is rapidly becoming a vital part of many people's lives in a diverse range of nations.

In Japan, Mexico and Russia around three-quarters of respondents said they could not cope without it.

Most of those questioned also said that they believed the web had a positive impact, with nearly four in five saying it had brought them greater freedom.

However, many web users also expressed concerns. The dangers of fraud, the ease of access to violent and explicit content and worries over privacy were the most concerning aspects for those questioned.

A majority of users in Japan, South Korea and Germany felt that they could not express their opinions safely online, although in Nigeria, India and Ghana there was much more confidence about speaking out.

3. Internet: A Fundamental Human Right?

The internet shutdown in Egypt in January 2011 sparked a lively debate on whether access to the internet is a fundamental human right or not? This discussion has re-emerged with the recent release of the report by Frank LaRue, the UN Special Rapporteur on the promotion and protection of the right to freedom of speech and expression. The report identifies the internet as the key means by which individuals exercise their right to freedom of expression. The report concludes that the same framework that safeguards the right to freedom of expression must govern the right to internet access.

While welcomed by many, the characterization of internet access as a fundamental right has not been unanimously embraced.

For the many activists relying on the internet in their fight for freedom and democracy the question of whether the internet should be a protected right, the answer would no doubt be a resounding yes. The international outrage following the Egyptian internet blackout would indicate that this position is widely held. Indeed, according to a 2010 BBC poll, four out of five adults, across 26 countries, regard internet access as a fundamental right.

The counter argument questions whether internet access may be a misplaced priority when staggering numbers of people do not have access to life's most basic necessities – food, water, housing, healthcare. Access to the internet, as the argument goes, is out of place on that list.

If the internet is viewed merely as one means of sharing and receiving information, and more specifically as a means available to only a fraction of the world's population, its characterization as a fundamental right can be difficult to justify. However, this view may too narrowly define the impact that the internet has in today's world. There is no other medium of communication with the reach, breadth of information, or interactivity of the internet. In more developed countries, where information from a variety of sources is readily available, it is easy to see the internet as a luxury or a convenience. However, to those living in developing countries, particularly ones with repressive regimes, the internet can play a far more fundamental role.

Additionally, the knowledge exchange facilitated by the internet supports a host of other basic rights. Internet technology allows people access to knowledge in all fields and areas of

life that would otherwise be unattainable. A single internet kiosk in a rural town or region can have a dramatic effect on improving agriculture, healthcare, and education. As aptly noted by Mr LaRue, the internet, as an 'enabler' of other human rights, "boosts economic, social, and political development, and contributes to the progress of human kind as a whole." When viewed from this perspective, perhaps the right to internet access is not such a misplaced priority after all. The debate will undoubtedly continue.

4. Internet access is a fundamental human right, rules French court

Access to the internet is a human right, claim France's most senior lawmakers.

The web was 'an essential tool for the liberty of communication and expression', according to the Constitutional Council.

It was ruling on legislation against pirates stealing copyrighted music, video and films from the Net.

Under the rule, pirates would be given three emailed warnings before having their access to the Net cancelled.

But the Council struck down what would have been one of the world's toughest laws against illegal downloading.

It quoted the founding principles of the Republic set down after the French Revolution, stating: 'Under the Declaration of 1789, every man is presumed innocent until proven guilty.'

'The internet is a fundamental human right that cannot be taken away by anything other than a court of law, only when guilt has been established there.'

Although the Constitutional Council agreed that theft of copyright material was a crime, it rendered the law unenforceable by saying that only a court had the authority to switch off a person's web connection.

Laurent Bedoue, head of the French magistrates union, said: 'They approved 90 per cent of the text of the law, but eroded 90 per cent of its spirit.'

'But ruling that every illegal downloading case must go to court, it has wiped the law off the statute books.'

'With an estimated 180,000 cases a year, there is no way each one could be taken to court anyway without the most vast expense.'

'The government should have seen this coming.'

The ruling is a severe blow to President Nicolas Sarkozy and his culture minister Christine Albanel, who lobbied hard to get the legislation passed.

First Lady Carla Bruni, who has recorded three pop albums which can be downloaded from the net, was also said to have been a major backer of the law.

And music and film industries had welcomed the move to halt the theft of copyright entertainment, which they said was costing them millions of pounds a year.

But opponents branded the law 'unfair, unworkable and out-of-date'.

French newspaper Le Monde said the law created an internet Big Brother who would hit innocent people whose web connections were being used by others, such as children, employees or people illegally hooking into their wi-fi.

And while many 'geeks' who download large files could also easily hide their Internet IP address to avoid detection, less knowledgeable people would get caught, the paper said.

Film star Catherine Deneuve also became a major public opponent of the law, saying: 'This law will punish the average amateur user, while the 'nerds' will find ways around it.'

The so-called Loi Hadopi had been rejected the first time it came before MPs in April, and only passed after Sarkozy ordered his party members to vote it through in May.

Culture minister Miss Albanel said she would now attempt to revise the law, which was due to have come into force in the autumn, and have it passed in another form later this month.

She said: 'We will have this law passed, despite the decision of the Constitutional council, and set up courts around the country to enforce it.'

5. Ofcom details "three strikes" scheme for illegal downloads for 2013.

Ofcom is apparently moving ahead to implement the so-called "three strikes" policy, which is supposed to deal with the problem of illegal file sharing in the UK.

The policy is part of the ill-thought out and rushed through Digital Economy Act. The "three strikes and you're out" policy means that those (allegedly) caught sharing copyrighted files over the net will have two warnings, and on the third occasion action will be taken against them.

While this was initially supposed to be disconnection from the Internet, it seems that has changed to offenders' names and details being passed to copyright holders, who will then doubtless be taking legal action.

Of course, there are a myriad of problems with these accusations, such as the person whose connection it is not being responsible for the illegal download in question (it was their son/daughter, someone who had popped round for a cup of tea, or hacked their network and so on).

Ofcom apparently wants to implement this policy by mid-2013, according to a report on TechRadar. It's still finalising the code of action, however, and things could be put back further seeing as the Digital Economy Act is currently under fire in Parliament. A debate regarding the DEA was postponed earlier this month due to Parliament not having the time to cover it (they were probably busier with more important issues, like getting to the Commons bar before tea time).

The Lib Dems are certainly gunning for the Act, however, calling it "backward facing legislation" which supports "obsolete standards and business models that cannot capitalise on the future opportunities that the internet creates".

Indeed. If the music and film industry put half the effort and expense that they've spent lobbying politicians and chasing alleged pirates, and channelled that into constructing new digital schemes of distribution instead, they'd see a great deal more headway made on the front of their profits.

Unfortunately, the noises Ofcom is making seem to indicate this is happening regardless of the controversy in Parliament. Let's hope for some more positive developments soon...