

The Recipes

Recommendations of the OSCE

Representative on Freedom of the Media

from the 2004 Amsterdam Internet Conference

A. Legislation & Jurisdiction

- The source for all legislation regarding the Internet should be basic constitutional values, such as freedom of expression and its interpretation in jurisprudence. These values form the foundations for tailor-made and non-restrictive regulation where necessary. New legislation should be limited to instances where it is absolutely unavoidable and then only in the least restrictive way in terms of freedom of expression and users' rights.
- The Internet is not in itself a guarantor of freedom of opinion and expression. The Internet is primarily a technology, a network enabling communications. States and new corporate gatekeepers have increasingly developed policies and technologies of control which go beyond the legitimate. Freedom of expression on the Internet must be protected, as elsewhere, by the rule of law rather than relying on self-regulation or codes of conduct. There must be no prior censorship, arbitrary control or unjustified constraints on content, transmission and dissemination of information. Pluralism of sources of information and media must be safeguarded and promoted including diversity among systems for information retrieval.

- Media presence on the Internet includes websites of traditional media outlets, but it also includes websites of individual desktop publishers who convey information or express their views through their own personal websites. Some of these sites enjoy significant readership; others do not. But when we speak of guaranteeing media freedom, it must be clear that we are not only speaking of freedom for traditional media outlets but also the freedom of the average citizen to voice his or her views through his or her own website.
- All Internet content should be subject to the legislation of the country of its origin (“upload rule”). Any legislation which imposes liability on an author or publisher for content wherever it is downloaded is too restrictive for freedom of expression.
- Most Internet legislation is aimed at the World Wide Web (WWW). Awareness should be raised about the negative impact this can have on different Internet-related communication systems such as chat environments, file transfer protocol servers (ftp) or peer-to-peer networks, Usenet discussion groups, audio and video streams (including live sound and image transmissions), and finally the ubiquitous e-mail communications. WWW content represents only a fraction of the whole of the Internet and different levels of privacy for different forms of communications must be observed. A provider must not be held responsible for the mere conduit or hosting of content.
- Search engines embody the core concept of the Internet: global accessibility and connectivity of content. Filtering or limiting their content searches would betray their basic mission which is to deliver comprehensive and reliable results. Automated search engines should not filter, and must not be held responsible for the content of the results they produce.

B. Self-regulation, Co-regulation, State Regulation

Regulation

- Regulation of the Internet should be limited to fields where it is unavoidable. Preferably the Internet should be seen as a space that works best autonomously and without any intervention. If regulation appears unavoidable, it should be applied according to the principle of subsidiarity, meaning that regulation should be as close to the source of trouble as possible – close both in terms of geography and competence. Within regulatory and co-regulatory bodies, transparency, accountability and the right to appeal should be observed to at least the same degree as in classic media.
- Procedures and patterns of behaviour have evolved among users of the Internet. “Netiquette” was the first informal code of conduct that was not developed by lawmakers or industry representatives but users who wanted to utilize the Net for themselves in a civilized way. This logic should be extended and made popular among all Internet users. It should also serve as a blueprint for other forms of regulation.
- When structures or institutions for Internet regulation are being designed they should follow the multi-stakeholder approach of governance that includes “governors” from different segments of society, geographical regions and genders, representatives from governments, NGOs, industry, users and citizens, etc. No sector should be allowed to dominate and the overall strategy should be based on compromise.

Self-regulation

- Defending values of free expression should become a priority of global public policy. The Internet is based on technical designs that are mostly decided upon by hardware and software companies, not bodies of government or governance. The technical architecture of the Web must reflect values like openness, promotion of progress and knowledge, and easy access. It should also strengthen the intellectual commons and protect the public domain. Protecting these features and developing the courage to counteract any trends that could lead to the monopolization of Internet activities must be central tasks of any regulatory action.
- The Internet is not just threatened by certain state activities; it also faces the danger of “privatized governance”. This occurs when a few industrial actors become so powerful that they are able to take over the regulatory process and define the rules. Diversity and pluralism as values do not just refer to the content of the Internet; they are also values of utmost importance in the selection of regulators.
- Industrial “self-regulation” has an ambivalent and tense relationship with freedom of expression. It should be avoided because it tends to be non-transparent and there is also the risk of it being utilized for hidden business purposes. Because self-regulatory institutions are not public bodies, they may be less accountable and there may be less protection of fundamental rights than provided by the rule of law.
- Private bodies must not decide on the legality or illegality of content. This is the duty of courts with transparent mechanisms of appeal and accountability. The right to “put back” content after removal by private bodies should be regarded as a policy issue.

Regulatory Schemes

- Regulatory schemes must be able to command public confidence. There must be a high degree of external consultation and all relevant stakeholders should be involved in the design and operation of schemes. As far as practicable, the operation and control of schemes should be separate from the institutions of the industry.
- Regulatory schemes must be based on clear and intelligible statements of principles and measurable standards – usually in the form of a code – which address real consumer and user concerns. Reasons for interventions must originate from these objectives and intended outcomes should be identified. Schemes must be well publicized, with maximum education and information directed at users and publishers. Schemes must be regularly reviewed and updated in the light of changing circumstances and expectations.

Filtering, Labelling and Blocking

- In a modern democratic and civil society citizens should be allowed to decide for themselves what they want to access on the Internet. The right to disseminate and to receive information is a basic human right. State enforced mechanisms for filtering, labelling or blocking content are not acceptable.
- Unlike in television there is little future in filtering systems based on a rating system. It is highly unlikely that such proposed measures will in the long-term result in a safe Internet environment as the rating and classification of all information on the Internet is not feasible. Even if filtering technology is applied to the WWW, it is not clear what sort of content the regulators intend to rate. In most cases, the targeted

category of Internet content is not illegal and remains well within the limits of legality. At the same time the rating of content is in itself a threat to free expression on the Internet.

- Family-based filtering and blocking software only works well if parents also discuss Internet content and habits with their children and update the filter regularly. If this is not the case, filtering software is not a solution.
- Another downside of relying on such technologies is that these systems are defective and in most cases result in the exclusion of socially useful websites and information. Originally promoted as technological alternatives that would prevent the enactment of national laws regulating Internet speech, filtering and rating systems have been shown to pose their own significant threats to free expression. When closely scrutinized, these systems should be viewed more realistically as fundamental architectural changes that may, in fact, facilitate the suppression of speech far more effectively than national laws alone ever could.
- Rating and filtering systems with blocking capabilities enable preliminary censorship and could allow repressive regimes to block Internet content, or such regimes could make the use of these tools mandatory. Laws or other measures prohibiting speech motivated by racist, xenophobic, anti-Semitic, or other related bias can be enforced in a discriminatory or selective manner or misused as a means of silencing government critics and suppressing political dissent. If the duty of rating were handed to third parties, this would be problematic for freedom of speech. Furthermore, as there are few third-party rating products currently available, the potential for arbitrary censorship increases.

C. Hate Speech on the Internet

- Any definition of hate speech should be narrowly drawn. The differences between different sorts of content (e.g. hate speech and child pornography) should be clarified and differentiated. A precise definition of “hate speech” is a necessary prerequisite for further discussions about this issue on the Internet. At a minimum, it is imperative that speech restrictions, when they must be enacted, be clearly and precisely drawn so that they do not chill lawful speech.
- Words should not be confused with actions. A clear distinction must be maintained between what individuals say and think on the one hand, and what they do on the other. Only then can we have an equitable system of law in which individuals are assumed to be rational legal subjects, who are themselves responsible for their own actions and not some third party.
- Coherent policy cannot be developed on the basis of reacting to individual cases of extreme material. Instead, research and monitoring must form the foundations for any decision-making. Obviously there is distressing material to be found on the Internet. But the fact that something exists online tells you nothing about how widely read or widely accepted it is. There should be an understanding that some hate sites are just too small and insignificant to be prosecuted. They are in fact consigned to oblivion, despite being theoretically accessible to the general audience.
- Since the Internet is a high-tech environment, many battles here can be won through technical means. One good example is adding voluntary disclaimers to search engine results or the establishment of sponsored links to sensible keywords, as was demonstrated in the Paris OSCE *Meeting on the Relationship between Racist, Xenophobic and anti-Semitic Propaganda on the Internet and Hate Crimes* in June 2004.

- A society with confidence in its values and ideals has little to fear from the expression of dissenting views, no matter how repugnant those views may be. Attempts by governments to stifle the exchange of views and the free flow of information in the competition of ideas must be resisted vigorously. Never before has so much information been accessible at the stroke of one's fingertips; never before has it been easier for people around the world to communicate with each other; and never before has it been easier for citizens to participate in public discourse and make their voices heard. Instead of focusing on ways to censor hate speech, we must concentrate on answering such expression with more speech. The battle against intolerance cannot be won through government regulation or mere legislative action. Instead, it is a fight that will be won or lost in the competition of ideas.

D. Education & Developing Internet Literacy

Personal and Parental Responsibility

- Parents and other adults always have a role to play regarding children's access to the Internet. Adults should act responsibly towards children's Internet usage rather than relying on technical solutions that do not fully address problems related to Internet content. Parents and teachers and others who are responsible for children's Internet usage need to be educated in this regard.
- In this borderless media world of VCRs, DVDs, satellite TV, and the Internet, children and young people have increasing access to media products from around the globe. Rating and classification systems, legislation and industry codes and guidelines are no longer enough to protect children. Digital media are forcing a shift in responsibility from statutory regulators toward the individual household. The Internet does

not work on the principles of censorship or control, but rather on principles of responsible decision-making and calculated risk-taking – and those are the kinds of skills the young should develop.

- Librarians and teachers should also have a role to play as far as access to the Internet is provided by public libraries and schools. Any regulatory action intended to protect a certain group of people, such as children, should not take the form of an unconditional and universal prohibition on using the Internet to distribute content that is freely available to adults in other media.
- If “regulation” with an emphasis on self-regulatory or co-regulatory initiatives is addressed, then “self” should mean individuals rather than self-regulation by the Internet industry without the involvement of individuals and Internet users. There should be more emphasis on promoting the Internet as a positive and beneficial medium.

Media Literacy

- Media literacy is a necessary complement to traditional literacy. Young people today need to be able to read, understand and bring critical-thinking skills to information in all forms, including media. Media literacy should involve analysis, evaluation, production of and critical reflection about media products and should stress the positive and creative aspects of media and popular culture.
- Research is critical to understanding how technology is fundamentally transforming young people’s lives. Research involves and requires public Internet policy, government policy-setting and responsive national public education strategies on Internet use. Efforts should be made to increase co-operation between OSCE countries in this field.

- Stakeholders in government and industry should be encouraged to support public awareness initiatives to educate parents and other adults not only about the potential risks of the Internet, but also about the opportunities and resources that are available. This support can cover a wide variety of contributions including radio, television, print and Internet advertising, posters and brochures and online resources for parents.

Journalist Training

- There is still a shortage of academic courses for journalists with a special focus on the role of the Internet in journalism. Journalist training needs to be improved to allow students to acquire more specific knowledge and vocational skills on how to utilize the Internet.
- One of the major issues for local media in the OSCE area is Internet literacy for journalists who speak the language of that region. Journalists who can speak English have a distinct advantage over their colleagues in ICT, whereas journalists with other language backgrounds have limited opportunities to gain vocational training on using the Internet because of the lack of special courses and learning programmes in local languages. There is also a shortage of online information in local languages. Special on/off-line Internet training courses need to be arranged and the learning of foreign languages should be promoted.

E. Access to Networks and to Information

Freedom of Information

- Governments should make more information available online. This would increase transparency and allow every citizen to obtain information from any computer connected to the Internet. Governments and intergovernmental orga-

nizations should support dissemination of official information online. Projects should be realized that foster citizens' freedom to receive and circulate online information about the activities of governments and state bodies.

- Universal access to information and knowledge, especially information in the public domain, is a prerequisite for broader participation in development processes and civil society. Access to quality education for all is a basic right and is essential for building the necessary skills and capacities for development, progress and social peace in all societies. ICTs provide immense opportunities to increase access to education and information.

Access to Networks

- Universal access to communication services and networks is essential for the realization of communication rights but will not be achieved, within the foreseeable future, by household access to the Internet alone. Access for all to the global communications environment requires investment in public access centres and in traditional communication technologies such as community radio and television. Public investment in communications facilities is one approach. Community-based initiatives should be encouraged and supported including legal and/or regulatory reforms where there are legislative or regulatory barriers.
- Participating States in the OSCE should aim to expand the reach of cyberspace by taking action to foster Internet access both in homes and in schools. They should also implement policies which aim to ensure that the Internet is an open and public forum for the airing of all viewpoints. To achieve this goal, it is imperative that government regulation is kept to a minimum, and the fundamental freedoms of speech, expression, and the press are respected.

- Another prerequisite is to significantly improve electric power supplies in countries in the OSCE region where this is required.

F. Future Challenges of the Information Society

- Access to the public sphere is being rapidly democratized. The Internet, for example, has made it much easier for like-minded individuals to meet, join forces, and raise money in support of their political views. The principle of freedom of expression must apply not only to traditional media but also to new media, including the Internet. It is the basic premise of knowledge societies as laid out in Article 19 of the Universal Declaration of Human Rights. It is important to continue to mobilize energies and efforts to promote freedom of expression and its corollary, freedom of the press, as a basic right indispensable to the exercise of democracy. Freedom of expression is a major avenue through which creativity, innovation and criticism can be developed. The nature of knowledge societies should be conceived as plural, variable and open to choice, and freedom of expression is inseparable from this vision.
- The right to privacy faces new challenges and must be protected. Every person must have the right to decide freely whether and in what manner he or she wishes to receive information or to communicate with others, including the right to communicate anonymously. The collection, retention, processing, use and disclosure of personal data, no matter by whom, should remain under the control of the person concerned. Powers of the private sector and of governments to access personal data risk abuse of privacy and must be kept to a legally acceptable minimum and subject to a framework of public accountability. Encryption techniques and research should be supported.

- The Internet provides enormous scope for the sharing and development of the common pool of human knowledge but this potential is increasingly held back by the reinforcement of private information property regimes in the Internet environment. There is a need for a fundamental review of international regulatory instruments governing copyright, patents and trademarks. The aim is to foster the development of global knowledge, and to safeguard the right of access to information and the right to creative reuse and to adaptation of information, which in turn should accelerate the social and economic benefits of freely available information.
- The fight against terrorism must not be used as an excuse to limit the free flow of information on the Internet. Prosecution of “cybercrime” must only target illegal activities as such and must in no way endanger or limit the technical infrastructure of the Internet.