

Background Paper

Workshop Proposal for the Internet Governance Forum 2016

Title: “The right to access the Internet in Latin America”

Tags: #Access #HumanRights #LatinAmerica

Session Organizer: Red en Defensa de los Derechos Digitales (R3D) and Association for Progressive Communications.

Format: Panel

Duration: 90 minutes

Abstract

The notion of access to the Internet as a human right is no longer an academic discussion. Several countries have recognized access to the Internet as a right in their Constitutions or through judicial interpretation. As this trend becomes more widespread, particularly in Latin America, it is necessary to explore and develop the meaning and scope of the obligations that arise from such recognition.

The discussion that is proposed is key for the theme of the IGF 2016, since a human rights framework is essential to achieve inclusiveness and sustainability in the strategies to reach universal connectivity. The outcome of this discussion will be to strengthen a common understanding of the scope of the right to access the Internet so the recognition of this right can be successfully implemented by the States that incorporate it to their legal frameworks and other stakeholders understand their role in the progressive realization of this right.

Statement of Purpose and Relevance to the IGF

For years there has been a discussion on whether access to the Internet should be considered a human right. However, at the same time, access to the Internet has started to be recognized in Constitutions or judicial interpretations around the world even without a clear common understanding of the implications of such recognition.

Therefore, as the notion of access to the Internet as a right becomes more widespread, it is very important to develop a clear understanding of the obligations and roles that government, private sector and civil society play in the progressive realization of this new right.

This is particularly important given the main theme of the IGF 2016 around inclusiveness and sustainability. The human rights framework and logic can be extremely useful to develop and implement better strategies to achieve universal connectivity and to ensure that the Internet remains a free and open space for the exercise of human rights.

Review of the Current Situation

Several countries around the world, such as Greece, Mexico, Costa Rica, Spain, Estonia, France, Finland and others have recognized a right to access the Internet. Also, several international human rights bodies, such as the UN and IACHR special rapporteurs on Freedom of Expression have also recognized access to the Internet as a right.

In the case of Mexico this right was directly included in its Constitution which also recognizes four types of obligations: Respect, Protect, Promote and Guarantee. Under this framework and taking as a model the way that international human rights bodies have developed and explain State obligations with regard to economic, social and cultural rights, particularly the Economic, Social and Cultural Rights Committee at the UN, R3D is developing a paper that aims to provide a proposal for understanding this new right to access the Internet.

In summary what the proposal entails is a detailed description of the four types of obligations mentioned before:

- The right to respect would entail an obligation on the State to refrain from conducts that impede or obstaculize the right to access the Internet.
- The right to protect would entail an obligation to prevent and avoid that third parties infringe on the right to access the Internet.
- The right to promote would mean that the State needs to adopt positive measures to create an environment in which individuals and organizations can walk towards more connectivity. The role of the State with regard to this obligation would be of a facilitator of connectivity.
- The right to guarantee would give States a direct obligation to ensure the realization of this right, particularly for vulnerable populations. The role of the State with regard to this obligation would be more direct. This would mean even the direct provision of connectivity by the State.

Additionally, several principles are being identified as core principles of the right to access the Internet, such as accessibility, adaptability, acceptability, quality, neutrality, decentralization among others.

List of questions to be discussed and/or asked to key players

- Should the right to access the Internet be understood as an Economic, Social and Cultural Right?
- Is the framework developed by the UN Committee on Economic, Social and Cultural Rights useful to understand the right to access the Internet?
- Which are the concrete duties that States have with regard to the obligation to respect?

- Which are the concrete duties that States have with regard to the obligation to protect?
- What is the role and responsibilities of the private sector?
- Which are the concrete duties that States have with regard to the obligation to promote (facilitate)?
- Which is the best market and regulatory environment to promote universal access gradually?
- Which are the concrete duties that States have with regard to the obligation to guarantee?
- Which principles should guide State initiatives for connectivity?
- Which principles should be considered as key principles for the realization of the right to access the Internet?
- Which indicators are the best to track the progressive realization of the right?
- Which might be the obstacles for the justiciability of the right?

Description of Expected results

Given the fact that the panel discussion is based on a draft proposal, the main expected result is to strengthen and achieve a final proposal that considers more points of view. This should also make the final proposal more prone to effective implementation and promotion from stakeholders.

This discussion and the final proposal should also feed into other international discussions on what the right to access the Internet means and on how to develop strategies for connectivity based on a human rights framework.

