

IGF 2016 Workshop Background Paper

Title of Panel session: Towards a Decentralized Internet Constitution?

Theme: Human Rights, Gender & Youth

Subtheme: Democracy

Tags: digital constitutionalism, digital rights, blockchain, smart contracts, encryption

Summary

The panel will promote discussion on the issue of Internet-related rights in light of some recent decentralising trends, i.e. a technological trend enabled by the growing availability and reliability of technologies such as encryption, blockchain and smart contracts, and a political trend towards a more dispersed (regional, national, and local) and diversified (feminist, labourist, etc.) digital constitutionalism.

The issue of fundamental rights protection in the digital ecosystem has been addressed from multiple perspectives within the IGF since its foundation. A number of recent IGF workshops have been held around the trajectories discussed in this panel. Although this panel is not a direct continuation of previous IGF workshops, it aims at building on foregoing efforts in order to develop a more encompassing understanding about future opportunities and challenges for digital rights.

a. Statement of purpose

The panel will promote discussion on the issue of Internet-related rights in light of some recent decentralising trends, i.e. a technological trend enabled by the growing availability and reliability of technologies such as encryption, blockchain and smart contracts, and a political trend towards a more dispersed (regional, national, and local) and diversified (feminist, labourist, etc.) digital constitutionalism. By digital constitutionalism we mean “a set of otherwise divergent initiatives; that each one seeks to engage with political rights, governance norms, and limitations on the exercise of power on the Internet in some fundamental way” (Gill, Redeker, Gasser 2015). The panel aims to produce and disseminate new knowledge and ideas about the interplay between technological and political decentralization, and to foresee future trajectories in terms of convergence and fragmentation of constitutionalization processes related to the Internet.

The panel will bring together digital rights advocates involved in digital constitutionalism, technical and academic experts from the emerging field of blockchain-based digital rights governance, government officials concerned with these questions from a policy perspective, and representatives of international organizations who facilitate processes of norm and regulatory convergence.

b. Relevance to Internet Governance, IGF themes and subthemes

The need to address the challenges of fundamental rights protection in the digital ecosystem is a constant theme of the policy arena which has been emerging around Internet governance, and it has been addressed from multiple perspectives within the IGF since its foundation. In the last five editions of the Forum, a number of workshops have been held

around the trajectories discussed in this panel, i.e. decentralizing technologies and their impact on fundamental rights protection; and digital constitutionalism initiatives originated in an increasingly heterogeneous political setting (see list below). Although this panel is not a direct continuation of previous IGF workshops, it aims at building on foregoing efforts and discussions in order to develop a more encompassing understanding about future opportunities and challenges for digital rights.

List of previous relevant IGF workshops

2017 Surveillance from the Margins
2017 Between a Rock and a Hard place?: Identifying Encryption Policies that are Human Rights Respecting
2017 The Dark Side of Internet Policy: How flawed policy can lead to censorship, surveillance and shutdowns
2017 Multi-stakeholder consultation on defining Internet Universality indicators to support 2030 Sustainable Development Agenda
2017 State-led interference in encrypted systems: a public debate on different policy approaches
2017 Redefining Rights for a Gender Inclusive Networked Future
2017 A Net of Rights: Human Rights Impact Assessments for the Future of the Internet
2016 Implementing Human Rights Standards to the ICT Sector
2016 Law Enforcement, Cyberspace & Jurisdiction
2016 Encryption and Safety of Journalists in the Digital Age
2016 Human Rights advocacy: strategies for the digital age
2016 Surveillance and International Human Rights Law
2015 The Italian proposal for an Internet Bill of Rights
2015 The Politics of Encryption
2015 Benchmarking ICT companies on digital rights
2015 AfricanInternetRights: whose rights are these anyway?
2015 Law enforcement in a world pervasive encryption
2015 Encryption and Anonymity: Rights and Risks
2015 Cybersecurity, human rights and Internet business triangle
2015 A multistakeholder and human rights approach to cybersecurity
2014 Human Rights for the Internet: From Principles to Action
2014 Launch of an African Declaration on Internet Rights&Freedoms
2014 Crowdsourcing a Magna Carta for "The Web We Want"
2013 Oppression Online: Rights And Restriction On The Network
2013 Charting The Charter: Internet Rights And Principles Online
2013 Connecting Our Rights: Strategies For Progress
2013 Human Rights/ Freedom Of Expression On The Internet
2013 Human Rights Online: Emerging Threats And Opportunities

c. Review of the current situation¹.

During the 1990s, the Internet underwent a great transformation under the influence of a broad set of processes. Popularization was fostered by the invention of the World Wide Web, which opened cyberspace to the masses by providing it with an effective graphical user interface (HTML pages) and an intuitive exploring method (hyperlinks).

Internationalization of Internet usage was the long-term result of design principles created during the first decade of the network development process, such as the openness of basic protocols and standards, and their implementability on the least powerful equipment, which allowed interconnection and interoperability to heterogeneous networks, systems and devices all over the world (Braman, 2012). Privatization and commercialization of the Internet were triggered by specific public policies formulated and implemented by the US government, seamlessly between different administrations over a decade (Mueller 2004, 2010; Goldsmith and Wu, 2006). These processes, together, produced profound changes in the Internet architecture as well as in its governing arrangements (Padovani and Santaniello 2018). A peculiar response to these processes is what has been termed digital constitutionalism, i.e. 'a constellation of initiatives that seek to articulate a set of political rights, governance norms, and limitations on the exercise of power on the Internet' (Gill, Redeker and Gasser, 2015).

Currently, new major transformations are re-shaping the Internet and creating new opportunities and challenges for digital rights. The rise of the Internet of Things, the building of Smart Cities, the exploitation of Big Data for political purposes, the use of drones and robots in patrolling and war, the deployment of artificial intelligence and augmented reality in the security field, the weaponization of digital networks (Nissen, 2015; Kosenkov, 2016), the militarization of the Internet (Zittrain, 2017), the widespread use of interconnected devices which put the Internet in direct contact with the human body such as remotely controlled bio-medical devices; all these new socio-technical trends are urging a reconsideration of the political and juridical implications of fundamental rights protection in the digital context, and call for innovative frameworks and approaches.

These transformations are stimulating, on the one hand, the development of new technical solutions and applications, such as encryption-based services, blockchains, smart contracts, dispersed networks, etc., and on the other hand are multiplying normative efforts and initiatives of digital constitutionalism all over the world. The main goal of the proposed workshop is to understand how these processes work and how they can interplay with each other. Moreover, the workshop will explore how decentralized technologies can be deployed to support, not undermine, ongoing efforts to protect Internet-related fundamental rights, locally and globally.

Short bibliography

Braman S (2012), Internationalization of the Internet by design: The first decade. *Global Media and Communication* 8(1): 27–45.

¹ Adapted from the proponent's article: Padovani, Santaniello (2018) Digital constitutionalism: Fundamental rights and power limitation in the Internet eco-system THE INTERNATIONAL COMMUNICATION GAZETTE. Vol 80, Issue 4, Pag.295-301, ISSN:1748-0493, journals.sagepub.com/doi/abs/10.1177/1748048518757114

- Gill L, Redeker D and Gasser U (2015) Towards Digital Constitutionalism? Mapping Attempts to Craft an Internet Bill of Rights. Report, Berkman Klein Center for Internet & Society, Harvard University, US, November. Available at: <http://ssrn.com/abstract=2687120>.
- Goldsmith J and Wu T (2006) *Who Controls the Internet? Illusions of a Borderless World*, Oxford: Oxford University Press.
- Kosenkov A (2016) Cyber Conflicts as a New Global Threat, *Future Internet* 8(3):45. DOI: 10.3390/fi8030045.
- Mueller M (2004) *Ruling the Root: Internet Governance and the Taming of Cyberspace*. Cambridge: MIT Press.
- Mueller M (2010) *Networks and States. The Global Politics of Internet Governance*. Cambridge: MIT Press.
- Padovani C and Santaniello M (eds. 2018) Digital constitutionalism: Fundamental rights and power limitation in the Internet eco-system, Special issue of the International Communication Gazette, Vol 80, Issue 4, Sage. Available at: <http://journals.sagepub.com/toc/gazb/80/4>
- Nissen TE (2015) *#TheWeaponizationOfSocialMedia @Characteristics_of_Contemporary_Conflicts*, Royal Danish Defence College. Available at: <http://www.fak.dk/publikationer/Documents/The%20Weaponization%20of%20Social%20Media.pdf>.
- Zittrain J (2017) 'Netwar': The unwelcome militarization of the Internet has arrived. *Journal Bulletin of the Atomic Scientists* 73(5): 300-304.

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

- How can technical decentralization (blockchain) and decentralized digital rights advocacy lead to better human rights protection on the Internet?
- Which opportunities and threat are posed to digital rights protection by technologies such as blockchain and encryption?
- How is digital constitutionalism evolving and how can it be bridged with decentralizing technologies and practices?
- What happens to the context-specificity of digital rights advocacy as expressed in newer initiatives of digital constitutionalism when standardized smart contracts protect rights?
- Is digital constitutionalism fragmenting in local/specific initiatives or a process of convergence towards global norms is ongoing? Which is the role of smart contracts in this context?
- Which is the actual impact of digital constitutionalism and decentralizing technologies on human rights protection on the Internet? How can it be improved?
- Which is the role of different stakeholders in turning principles and declarations of fundamental digital rights into effective design and applications?

e. Description of Expected results

The workshop will bring together digital rights advocates involved in digital constitutionalism, technical and academic experts from the emerging field of blockchain-based digital rights governance, government officials concerned with these questions from a policy perspective, and representatives of international organizations who facilitate processes of norm and regulatory convergence. The workshop aims to produce and disseminate new knowledge and ideas about constitutionalization processes related to the Internet, to involve in this process different stakeholders and to take into account multiple perspectives. As a result the workshop will explore how decentralized technologies can be deployed to support, not undermine, ongoing efforts to protect Internet-related fundamental rights, locally and globally.