

**INTERNET GOVERNANCE AND HUMAN
RIGHTS PROTECTION: RULES AND
INSTITUTIONS**

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Abstract. The idea of this paper appeared after the workshop on ‘Human Rights on the Internet: Legal Frames and Technological Implications’, organized by the Higher School of Economics on 7th Meeting of the Internet Governance Forum in Baku (Azerbaijan) on November 2012. This paper shows importance of the trilateral Internet Governance model in context of the example of governmental insufficiency to control the Internet.

Internet technologists contribute to the practical realization of human rights. First of all, they can improve effectiveness of existing institutions. Unfortunately in the same time Internet technologies give rise to new mechanisms of human rights violations. So we need to create new means, new technologies for human rights protection. We need new technological means, identification and classification of violations, based on predictive analytics. But to improve the situation, we should improve the existing means, and build new

models of communication. Perhaps such models could be based on the concept of Web 2.0 and Web 3.0.

3 levels of Internet Governance

During 7th Internet Governance Forum the Higher School of Economics organized a workshop on ‘Human Rights on the Internet: Legal Frames and Technological Implications’ [1]. Firstly we should indicate some outcomes from the workshop session.

Philosophy of cyberspace stands for maximum freedom of Internet from any governmental and other intervention. However it is impossible to refuse any kind of Internet governance or regulation of its infrastructure. Internet looks like a mirror reflecting the real world, where we have moral and legal rules called to provide and ensure freedom of expression and information accessibility rights, protection from abuse of those rights by criminal and other kinds of wrongful behavior.

The same rules should exist in cyberspace. Nowadays in fact we could discover three levels of Internet governance: *supranational*, *national*, and *self-regulation*. By virtue of specificity of the Internet none of those levels could be proclaimed self-sufficient or unique to set up governing rules. The main purpose of this paper is to compare these three levels of Internet governance and to allocate their roles in this process according to their functional characteristics.

So, to the *supranational level of Internet governance* should be stressed on the following issues.

- Design and establishment of programs and policies devoted to perfection of Internet governance theory, ideology, and methodology.
- Arbitration, counseling, intermediary, and other methods of the dispute settlement between national jurisdictions in sphere of Internet governance.
- Development and propagation of ethical standards of Internet governance, which include development and perfection of the Codes of Ethics for supranational (global and regional) and national levels.
- Explanation and training for perception of internationally approved programs and policies of Internet governance.
- Development of obligatory rules prescribed in multinational treaties and conventions which directed to preserve basic human rights in sphere of information, such as freedom of expression (of speech) and information accessibility rights, with special regards to cyberspace.
- Assistance in ratification of those treaties and agreements, and their implementation in national legislations.

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- Monitoring of states observance of the established rules of Internet governance for the purpose of guaranteeing freedom of expression and information accessibility rights.

National level of Internet governance should be assigned for compliance of following functions.

- Ratification of international treaties and conventions in sphere of Internet governance, and their implementation into national legislation.
- Establishment of the favorable legal environment for realization of the freedom of expression and information accessibility rights in the Internet, including modernization of national legislations according to the modern development of WEB 2.0 and other newest technologies of cyberspace, especially possibility for making user-generated content on websites.
- Protection of constitutional freedom of expression and information accessibility rights on the Internet by judicial and administrative bodies according to legally prescribed order.
- Prevention of abuse of information rights in the Internet by lawful restrictions based on constitutional provisions, for defending

constitutional interests, such as health, morality, another person's rights, national defense and security.

Self-regulation on web resources should be allocated with following functions.

- Formation and development of social networks of users on different websites, establishment of user communities, and increase their information literacy and legal culture.
- Development of rules of the behavior formalized in the user agreements and Terms of Service, their conformation with legal standards.
- Dispute settlement arising in process of realization of freedom of expression and information accessibility rights on different websites in the non-judicial order inside users' network communities, possible arbitration by means of specially appointed conflict commissions, moderators and managers of those web resources.
- Formation of usual (community) rules of Internet governance, on specific websites, which have both ethical and legal character.

These three levels couldn't be declared self-sufficient enough for effective Internet governance, and should be connected to each other in order to make

relevant Internet Governance policy for the realization of human rights. Uniquely, each level has its positive and negative effect.

Baku Workshop concluded that we cannot rely on individual governments to respect human rights; we cannot rely on corporations, and civil society to do so. Certainly the Internet Governance Forum community can act as a human rights watchdog and can provide certain tools to help with the exercise of human rights online, but the IGF hasn't enough power or resources or influence to make much of a difference on our own account.

Case Study: Governmental Insufficiency Dilemma

The goal of protecting children from information, which prevents their normal and healthy moral development, is, of course, good. Opponents of these legislative provisions suppose that this goal is ephemeral, but the real purpose is to provide the political, ideological and other kind of censorship. Legislation protecting minors from harmful multimedia products is adopted in majority of developed most countries. And this is certainly positive exercise.

In this aspect, one cannot but agree with Russian constitutional law scholar Mikhail Krasnov, who believes that the cultural component of human rights

definition is the way these rights are restricted. The issue of limitation of rights is a key issue of this problem.

First of all, the restrictions contained in the nature of human rights declared in the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international and European regulations. More specifically, the restrictions are formulated in law enforcement, including practice of the European Court of Human Rights.

The idea here is reduced to the issue of limitation of human rights implicitly contained within these rights or of the limitation of the state power. Although the consequences, it would seem as the same. If limitations are implicitly contained, the legislator is just trying to find these restrictions, which were originally put inside the very human rights. But in fact, if the restrictions are implicitly contained in human rights, the government will just have to recognize that human rights are based, are based on ethical principles [2].

Russian Law on child protection

Recently, in Russia there is a lot of problems is moral nature. They are associated with the breaking experiences of the moral disaster of the twentieth century, which became a turning point. This affected moral principles not only of the younger generation, but also of the society at large.

Now Russian society has no moral authority – even such institutions as church or the family, is no

longer among the authorities, but on the contrary, become an object of ridicule and criticism, including the Internet. The RUNET, Russian segment of the Internet is an outstanding example of the information space, where illegal material (including child pornography and other perversions), could be placed on social networking sites in the public domain. It is real mirror reflection of the moral state of our society.

At present, according to the Constitution of the Russian Federation, Russia is a secular state. No religion can be recognized by a state as obligatory. This means that today the state has no legal grounds to give any guarantees of the authority of the Church. Crisis of the family as an institution, whose value to the Russian society has traditionally been very high, caused many negative social and economic processes in the present time in Russia. There is no public awareness of the meaning of the article of the Constitution, which states that “motherhood and childhood and the family are protected by state” [3].

However, the resent amendments of laws governing the Internet, to ensure the functionality of the law “On the protection of children from information, which prevents their moral and spiritual development”, caused many public protests of the Internet audience.

Debate on the new law

The law “On the protection of children from information harmful to their health and development”

(paragraph 8 of art. 2) defines the information of a pornographic nature. Such is information provided in the form of naturalistic images or descriptions of genitals and (or) sexual intercourse or comparable to sexual intercourse sexual acts, including such acts committed against animals [4]. In July 2012 the law and other legislative acts of the Russian Federation amended to involve filtering of websites of the “blacklist” and block certain Internet sites.

Thus, the law “On Information, Information Technologies and Protection of Information” is supplemented with Article 15-1, introducing automated information system “Single register of domain names, page indexes of sites on the Internet, and network addresses identifying Internet sites containing information, distribution of which is prohibited in Russia”. This register includes sites containing pornographic images of minors, information on narcotic drugs and their precursors, as well as ways of committing suicide. Websites are including in the register either by the court or by a decision of the authorized federal executive body [5].

The adoption of the law has caused a great public outcry. Thus, the Russian segment of Internet encyclopedia "Wikipedia" was closed July 10, 2012 in protest. On behalf of the community "Wikipedia" was issued the following statement: “Wikipedia in Russian language was closed on July 10 to address the community in protest against the proposed amendments

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to the law “On Information”, the discussion of which will be held in the State Duma of the Russian Federation. These amendments can be the basis for real censorship on the Internet, building a list of banned sites and IP-addresses and their subsequent filtration.

Lobbyists and activists who support this amendment, claim that they are directed exclusively against content such as child pornography, “and things like that”, but following provisions will entail the creation of a Russian analog of the “Great Chinese Firewall”. The enforcement exists in Russia, indicates a high probability of worst-case scenario, in which soon access to Wikipedia will be closed throughout the country” [6].

The largest Russian Internet portal Yandex has changed its logo “Everything would be found”, dashing the word “everything”. Chief Editor of Yandex has also issued the following statement.

“For civil society are obvious the need to combat child pornography and illegal content in general, and the maintenance of the constitutional principles of freedom of speech and access to information.

The State Duma is working on a draft bill № 89417-6 “On Amendments to the Federal Law on Protection of children from information harmful to their health and development, and some legislative acts of the Russian Federation on the restriction of access to illegal information on the Internet”. Among other things, the

bill proposes amendments to the law “On Information, Information Technologies and Protection of Information”. They relate to important issues and affect the interests of many parties: the citizens, the state of the Internet industry. Such decisions cannot be taken hastily, as it does now.

The proposed methods provide the way for potential abuse and cause numerous questions from users and representatives of Internet companies. We believe it is necessary to balance the public interest, as well as meet the technological features of the Internet. Therefore it is necessary to postpone the consideration of the bill and discuss it in the open air with the participation of the Internet industry and technical experts [7].

We should keep in mind that the Russian law on the protection of children from information that is harmful to their spiritual and moral development primarily concerned for multimedia products. And its age ranking is not something outstanding. Such age-ranking of media products is used in the user agreement of Microsoft in the case of computer games to be installed on operating system Microsoft Windows 7.

In background documents Microsoft explains that special commission should create recommendations for video game content for different countries and regions, assigns evaluation of games. The commission usually assigns each game age assessment. Review Commission also examines the contents of each game and together with an assessment gives a brief description of the game.

Assessment and brief descriptions are very similar to the system of assessing and reviewing movies. Age assessment contents divided into types of games that are appropriate for different age groups – young children, older teenagers or adults only [8].

Ambiguity of interpretation of ‘censorship’

Let us analyze the situation from the standpoint of constitutional law. Censorship, as we know, is prohibited by Article 29 of the Constitution. But what this means? Is it relating of any restriction on access to information?

Article 3 of the Federal Law “On mass media” censorship is understood as a call from the editorial board of the media by the officials, government agencies, organizations, institutions or associations to coordinate previously messages and materials (except where a person is the author or interviewee), as well as a ban on the dissemination of information and materials, their parts [9].

In the Russian historic Brockhaus and Efron dictionary the following concept of censorship is outlined. It is an oversight seal to prevent the spread of information which is harmful to the dominant government [10]. However, there are no current concept of censorship is broader and includes, for example, self-censorship, although target criterion in the definition of censorship does not exist. This creates difficulties in enforcement and denies the value of the constitutional

prohibition of censorship, designed to protect the freedom of speech and expression.

In our view, however, a more effective protection of morals could be made not by censorship (prior control the content of sites on the Internet), but by bringing perpetrators of morality to justice. However, in fact there is inefficiency of the law, leading often to the fact that the pornography and other harmful and inappropriate content is available free on Russian resources. This was the reason that the Russian sites have imposed bans in other countries.

Thus, in accordance with the two court decisions (№ 230 and № domain vk.com 55,210 for vkontakte.ru), taken in Istanbul on May 2, 2012, a Russian social network "VKontakte" recognized questionable from an ethical point of view, and the Service, and access in Turkey was banned [11].

In the Russian criminal law there are rules on the responsibility for the illegal distribution of pornographic materials or objects (Art. 242 of the Criminal Code), manufacture and distribution of materials or objects with pornographic images of minors (Article 242.1 of the Criminal Code). In this case, given the fact that the rules of criminal law apply only to individuals, it is unclear how to apply these provisions of the Criminal Code to regulate the Internet, although the area most in need of legal regulation. From our point of view, the web content filtering preventing abuse of freedom of speech and the

right of access to information, i.e. in order to combat the spread of pornography is justifiable practice.

International experience of filtering and blocking inappropriate content

T.J. McIntyre recalls policy initiatives carried out from 2006 and supported by the European Union, which contribute to blocking immoral content. It was one of the first Action Plan CIRCAMP (project against Internet resources, offensive for children), adopted by the European Chief Police Task Force in 2006. This project, funded under the “Safer Internet Plus”, assists member countries in establishing national blocking systems.

This trend continued in May 2007. The European Commission issued a policy paper [12], which determines the general policy on fight against cybercrime. It argues that Europe is becoming more and more accessible sites that contain materials on violence and sexual material. Enforcement action against such sites is very difficult to apply, as the owners and managers of sites are often located in other countries and often outside the EU. Websites can be quickly moved outside the EU. Determining the illegality also vary considerably across countries.

In response, the paper proposes to introduce policies to encourage public-private agreement for the Europe-wide blocking of sites of illegal content, especially of a sexual nature. In March 2009, this approach was developed in Commission's proposals

concerning the Framework Agreement on the fight against sexual abuse of children [13], which required the Member States to block access to such material on the Internet. With the entry into force of the Lisbon Treaty it is replaced the draft proposal for a Directive, which requires the same penalties.

The effectiveness of Internet blocking is hotly contested. Some proponents argue that the blocking and other technological mechanisms to ensure the rule of law are necessary to meet the democratically enacted laws.

At the same time it is suggested that in practice these national blocking systems are often ineffective. Proponents of this view argue strongly that the Dutch law on child pornography blocking system was adopted without adequate research, not achieving its objectives and is based on the “naive faith in technology”. Human rights groups have gone further and call blocking counterproductive activity that offers only the illusion of action, reduces the effectiveness of policies that can be implemented by the international community to address this fundamental issue.

Leaving aside the question of effectiveness, we should mention the almost unanimous opinion of the researchers that the blocking system creates special challenges for the fundamental rights and freedoms due to excessive blocking (including legitimate content), and their regulatory framework, in fact, is opaque (especially in the implementation of policy is not legally blocked). In some countries, this may lead to a violation of the

constitutional provisions on freedom of speech. Thus, even the proponents of blocking generally agreed that the implementation of lock-out policy must take into account the above problems [14].

Bruce Mann, professor at Memorial University in St. John's (Canada) noted that the general wording of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, describes the right to respect for private and family life, home and correspondence. But in the context of social networking section 2 of Article 8 is a double-edged sword. On the one hand the authorities can intervene only if there is a question of national security or public safety. On the other hand, the non-interference of public authorities leaves “innocent” people “at the mercy” of those who can use this information for illegal purposes. In addition, Article 10 of the Constitution on freedom of expression, suggests that any restriction of the right to say all users, including the disclosure of private life is a denial of their right to freedom of expression [14].

In addition to European, should, in our view, include a different of such filtering and blocking of inappropriate content. On the website of Etisalat, the only Internet access provider in the UAE is the full list of banned materials in the country. When trying on a similar site, it is redirected to the page of the network provider [16].

The UAE has banned a number of top-level domain (TLD). This category includes internet content for top-level domain names that offend, are undesirable, or contrary to the public interest, public morality, public order, public and national security, morality, religion or otherwise prohibited by any applicable laws of the United Arab Emirates.

Thus, it seems clear that distribution of the pornographic and other harmful to health and development, materials, and couldn't be the realization of freedom of expression, access to information, or any other was the rights and freedoms of citizens. In any case, distribution of these materials is a crime, punishable by strict enough in the jurisdictions in which we have in the country is considered to be democratic.

Among other things, the availability of illegal content on the Internet is in our view no more than a violation of a number of human rights (and not only children), in the first instance, the right to privacy, the protection of honor and dignity. Therefore, along with the right of access to information on the Web, it is time to speak and the right to restrict access to harmful content. Of course, we are not the problem in the exercise of freedom of expression and political rights and freedoms. Legislator should finally settle the relations in order to protect the most vulnerable segments of the population, as is done in many other countries, where such restrictions do not cause protests.

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So how do we regulate the Internet in a way that respects human rights if we cannot rely on governments, corporations or civil society to do so? The best answer we've is that we should do so by combining the strengths and weaknesses of all those stakeholders in a multistakeholder policy development process intended to explicate common principles or guidelines upon which governments, the private sector and civil society can agree as a basis for their respective actions. Such as passing legislation, or concluding treaties, moderating online services containing user generated content, and in common shared norms of online behavior.

The Internet Governance Forum can be a good place to start developing global policies for human rights online, particularly in areas where there are no other global fora that have responsibility for particular issues, such as, for example, privacy and cloud services. However, the IGF, as it is currently constituted, is not quite up to the task. Its mandate does call on it to develop recommendations on emerging issues that can be transmitted to decision-makers through appropriate high level interfaces, but it hasn't yet developed the capacity to do that.

One of the questions that come up first is whether to treat the human rights regime in a comprehensive manner as the so-called package of intersecting rights, or whether to keep the rights separated and have this list of independent things. We already have several core legal

instruments in place at the international level, but their interpretation is by no means uncontroversial. Access to Internet, for example, as a human right has been derived from several articles of the universal declaration of human rights, such as Article 2 on equality, Article 19 on freedom of expression, or Article 26 on education. Secondly, at the international level on the international human rights regime remains strongly dependent on enforcement, which is done through government and through the court system. The tension here is between two conflicting paradigms. On the one hand, the traditional human rights regime, which assigns a major role to states, and on the other hand, an emerging Internet rights paradigm in which the role of the state is kept the at a minimum or is ideally kept at a minimum, and discussions are now going on regarding a set of norms applicable to the Internet, but also in regard with conserving, for example, different frameworks of intellectual property rights.

The Internet is recognized as one of the most valuable public resources available to humanity in the current age. Navigating in "cyberspace" is a challenging and interesting journey that broadens horizons and unleashes potential. However, this experience is not without risks. Young people and children face threats of abuse and exploitation online. As the main users of the internet, youth have an intrinsic interest in exploring constructively ways to preserve it as a forum for freedom of expression, while being a safe place for themselves and the next generations. To achieve this goal, a

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participatory approach involving youth, as well as different stakeholders, is imperative.

Generally, Information and Communication Technologies (ICT) are changing the way people, think, learn and act. The New technologies have offered them new instruments to cope with their societies and environments. Politically, the Internet offers a forum for expression that is open to everyone, as well as innovative means for advocacy and conflict resolution. For example, the role of ICT as a facilitating mechanism within various aspects of the conflict cycle and in humanitarian interventions has been recently recognized. Economically, the Internet empowers people, especially youth with tools for a more efficient means of living. Culturally, ICT creates platforms, applications for multicultural dialogues that bypass geographical, religious and cultural boundaries. ICT's contribution to society helps shape a better future, with opportunity, prosperity, harmony and peace.

According to these points, we could make conclusions.

Necessity of establishment of Internet governance policies, where all roles will be precisely determined, follows from the analysis of *three levels of Internet governance, i.e. supranational, national, and self-regulation.*

Legal responsibility for the *user-generated content* should be heard by its author, but neither Internet

service provider nor the owner of web resource. Difficulties of user-identification should induce interested parties to develop more precise mechanisms of user-identification to avoid attraction of the legal responsibility to non-guilty side.

In case of realization of *content-filtering policies* it is necessary to prefer alive, instead of an automatic filtration as last one could display incorrect results and finally threat realization of information accessibility rights of their users.

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