DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

STUDY - EXECUTIVE SUMMARY

INFORMATION AND COMMUNICATION TECHNOLOGIES AND HUMAN RIGHTS

Abstract

The rapid evolution of information and communications technology (ICT) and associated digital communications over the past two decades has dramatically changed communication practices across the world. This has had profound implications for human rights on a number of levels. Firstly, communication technologies are presenting new ways to more fully realise our human rights. This is particularly true of the right to freedom of expression. Secondly, ICTs have provided human rights activists with new tools for defending human rights. Internet access via mobile phones gives citizens the power to communicate rights violations in real time to global audiences; social networking tools connect human rights defenders across the world to enhance collaboration and information sharing; censorship circumvention technologies allow people to bypass attempts to monitor and control information and communication flows. However, as well as unleashing tremendous new opportunities for protecting and advancing human rights, digital communications also present a series of serious challenges. These include direct threats to human rights, such as the development of increasingly sophisticated censorship and surveillance mechanisms. They also include deeper, structural problems such as the persistence of digital divides in access to communications infrastructure and capacities along geographical, gender and social lines.

This study was requested by the European Parliament's Committee on   .

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EXECUTIVE SUMMARY

The rapid evolution of information and communications technology (ICT) and associated digital communications over the past two decades has dramatically changed communication practices across the world. The internet and mobile phones have opened up new horizons for communication, connecting people to a global network for sharing information and ideas. This has had profound implications for human rights on a number of levels.

Firstly, communication technologies are presenting new ways to more fully realise our human rights. This is particularly true of the right to freedom of expression, with ICTs enhancing our ability not only to receive information, but also to actively seek and impart it. Digital communications are spurring the development of empowering spaces for communication, collaboration and exchange. As well as enhancing many civil and political rights, ICTs also offer new potential for realising economic, social and cultural rights through providing people with new channels for accessing and improving public services, markets for trade and commerce, and global knowledge resources.

Secondly, ICTs have provided human rights activists with new tools for defending human rights. For example: internet access via mobile phones gives citizens the power to communicate rights violations in real time to global audiences; social networking tools connect human rights defenders across the world to enhance collaboration and information sharing; censorship circumvention technologies allow people to bypass attempts to monitor and control information and communication flows.

However, as well as unleashing tremendous new opportunities for protecting and advancing human rights, digital communications also present a series of serious challenges. These include direct threats to human rights, such as the development of increasingly sophisticated censorship and surveillance mechanisms. They also include deeper, structural problems such as the persistence of digital divides in access to communications infrastructure and capacities along geographical, gender and social lines.

This report was commissioned by the European Parliament's Subcommittee on human rights to examine these opportunities and challenges, highlighting areas in which the European Union could play a positive role in building digital communications environments that protect and expand human rights.

Setting the scene

The first chapter of the report provides an introduction to the issues. It highlights the transformative and disruptive nature of digital communications, demonstrating how they have presented tremendous opportunities for democratising freedom of expression itself. Digital communications have empowered people to communicate directly with each other, rather than having to go through gatekeepers such as government spokespeople and the mass media. The changes that they have wrought on society are comparable to the impact of the invention of the Gutenberg press.

The report presents a framework for examining and understanding the policy intersection between human rights and digital communications. In the past, human rights activists were concerned primarily with the content of communication and whether it was being directly censored. However, in digital networks, the nature and architecture of communications infrastructure and protocols have a strong influence on communications content, capacities and possibilities. It is therefore necessary to consider challenges and opportunities for human rights at four broad layers of digital communications environments: the physical infrastructure; the connectivity and protocols that allow devices to talk to one another; the applications that we use to create, access and navigate content; and the communications content itself. Subsequent chapters of the report use this framework to examine the relationship between ICTs and human rights.

Two significant cross cutting issues emerge throughout the report. The first is the challenge of applying the human rights framework to the digital environment. The fact that such a wide range of stakeholders use and depend on ICTs for different reasons, coupled with the complex interaction between technology, politics and economics across the "layers" of digital environments, can make it difficult for policy makers to balance between rights and social goods. The report calls on the human rights community to provide guidance on the issues, and on policy makers to apply human rights values and principles to policy decisions. Policy should always aim to protect the open and empowering dimensions of digital environments.

The second cross cutting issue is the trend of governments placing increasing liability on intermediary service providers operating in digital environments. Whilst businesses do have responsibilities to respect human rights, placing excessive liability on companies that simply host content online or facilitate communication can have chilling effects on expression and innovation. Governments, companies, civil society and internet users should work together to find appropriate solutions.

Subsequent sections of the report examine four broad sets of opportunities and challenges that ICTs present for human rights.

Freedom of expression censorship and control

Opportunities and challenges relating to the rights to freedom of expression and association are explored in Chapter 2. The internet is increasing the ability of individuals to seek, receive and impart information and to collaborate with each other. Mobile phones are enhancing these capacities, allowing people to communicate with anyone, anywhere at any time. However, these new opportunities for freedom of expression and association are being eroded by a number of negative trends. These include the use of increasingly sophisticated and hidden censorship tools, and the use of the internet by human rights enemies and criminals for hate speech, child pornography and terrorism.

This chapter stresses the importance of achieving the correct balance between individual rights, and between these rights and the wider public interest, in online environments. It argues that any limitations placed on human rights online must be strictly proportionate, defined in law and necessary within a democratic society. Too often these strict principles, enshrined in international law, are ignored. The EU needs to lead by example, ensuring that its internal attempts to control hate speech and child pornography online do not provide a smokescreen for repressive states to censor legitimate speech.

The chapter also introduces the complexities involved in defining the roles and responsibilities of corporate actors to respect and protect human rights. It argues that the EU has an important role to play

in positively supporting the corporate sector to behave in ways that respect and expand human rights. Top down legislation is not likely to be the most effective way to promote corporate social responsibility whilst also protecting the empowering and innovative characteristics of digital communications environments.

Privacy, security and surveillance

Chapter 3 explores opportunities and challenges relating to the right to privacy. Governments and businesses across the world are using ICTs to monitor the behaviour of citizens in increasingly sophisticated and hidden ways. Digital communications make it easier to collect, manipulate and share information about user activities and profiles. Business models are increasingly based around data mining practices in the search to maximise advertising revenue, consumer relevance and market share. Enhanced surveillance by governments has been spurred on by the so-called "war on terror" and the pursuit of public security. As a result, people are effectively losing the power to decide who has access to their personal data and what it is being used for.

In order to ensure that digital communications can support human rights as they continue to evolve, it is paramount that attempts to monitor and control communication in the name of security or consumer interest are strictly proportionate and maintain the careful balance between rights and social goods that is enshrined in the international human rights framework. Unfortunately, current practice does not achieve this, and urgent steps need to be taken by the EU to ensure that balance is restored.

Access to knowledge, culture and ideas

Chapter 4 concerns the right of people to take part in cultural life, to benefit from scientific progress and to access knowledge and information. Digital communications have unleashed tremendous new opportunities for creating, accessing and sharing knowledge in the public domain. This in turn enhances prospects for human empowerment and development. However, established gatekeepers and power holders feel threatened by the free flow of information and ideas that the internet facilitates. The result has been increased protection of copyright to unprecedented levels. This threatens to undermine individual rights to access knowledge and participate in cultural life, benefiting big business rather than human rights.

On balance, the EU has not played a positive role in supporting human rights within this policy sphere. Immediate remedial action needs to be taken, for example within ongoing negotiation on the multilateral Anti-Counterfeiting Trade Agreement. Rather than simply supporting dominant players within the creative industries, positive alternatives should that mutually support creators' rights, innovation and trade should be given serious consideration.

Pursuing development and equality in and through digital communications

The fourth main set of opportunities and challenges relate to the broad umbrella right to development, discussed in Chapters 5 and 6. ICTs provide new tools for individuals and governments to improve access to income, employment, public services and overall economic development. Through enhancing information and communication flows, they also have an indirect empowering effect. However, the persistence of digital divides in access to ICTs and capacities to use them mean that these new opportunities are not accessible to all. This is particularly true of minority groups, poor communities and people with disabilities. There is also a significant gender divide in capacities to use and participate in

the governance of ICTs. These divides serve to reproduce and exacerbate structural inequality and discrimination. Proactive steps to enhance equality in and through digital communications are needed.

Conclusions and recommendations

As a powerful actor on the world stage and global region with the strongest human rights system, the EU has an important role to play in actively ensuring that digital communications environments at local and international levels support and expand human rights. Chapter 7 of the report identifies four main ways in which this should be done.

Firstly, the EU can influence international standards and practice indirectly through its internal policy, leading by example through ensuring that human rights within Europe are upheld, advanced and properly balanced within all policy that impacts upon communications. Secondly, the EU can influence international standards and practice directly through advancing progressive policy in international fora such as the Internet Governance Forum, the World Trade Organisation and the World Intellectual Property Organisation, and through bilateral and multilateral cooperation in policy spheres such as trade, copyright and development. Thirdly, it can use foreign diplomacy to encourage or pressure countries and institutions to uphold human rights. Fourthly, it can support companies and other stakeholders within its jurisdiction to build progressive business models and online practices that uphold and expand human rights.

Rather than following these policy approaches to build a positive policy framework, the report finds that policy makers have on the whole have tended to emphasise the negative dimensions of digital communications over the positive new opportunities that they present. As a result, there is an overarching trend towards taking measures to clamp down on the openness of communications environments, a trend which threatens to undermine their empowering nature and prospects for enhancing human rights. The challenge for the human rights community is therefore to find ways to maximise opportunities for harnessing ICTs to enable, promote and protect the realisation of human rights, whilst at the same time mitigating new challenges that threaten to undermine these efforts.

Particular care needs to be taken not to undermine the openness of digital environments inadvertently, for example through imposing excessive legal liability on intermediaries that simply facilitate online communication. This is because the empowering characteristics of digital communications stem from their openness, which in turn facilitates people-driven innovation, creativity and collaboration.

The report concludes that the EU should take the lead in building a positive and enabling policy framework to encourage digital communications to evolve in such a way as to support and expand human rights and the public interest. Communications are converging around internet-based networks, and the internet is central in nearly all policy areas and aspects of daily life. The EU's policy framework therefore needs to be developed and applied in a consistent manner across a range of policy areas and across all "layers" of communications environments.

In Chapter 8, the report presents a number of recommendations and steps that the EU should take to support and expand human rights in the digital world. These are grouped under four main headings:

1.   Creative and coherent diplomacy and standard setting
−   Digital communications concerns should be prominent in bilateral dialogues on human rights.
−   Respect for human rights online should be pursued within trade negotiations.
−   Rights-based policy should be promoted in and through the UN and other multilateral institutions, across all policy spheres, including those relating both indirectly and directly to internet governance.

2.   Promoting awareness and understanding of the issues
−   Independent research should be commissioned to find solutions to complex problems and to ensure that policy is firmly rooted in evidence.
−   Dialogue should be promoted between different actors to promote learning and collaboration.
−   Public education should be undertaken to increase awareness and build the capacity of citizens to navigate around the issues and respect human rights.

3.   Fostering multi-stakeholder collaboration and problem solving
−   Innovative and effective co-regulatory models should be developed and supported.
−   Partnerships between stakeholders to create tools to advance human rights online should be supported.
−   Multi-stakeholder governance and cooperation should be encouraged.

4.   Providing expertise and direct support
−   An expert team on human rights and digital communications should be established within the EU's External Action Service.
−   A resource centre for the deployment of ICT tools and solutions in emergency and humanitarian situations should be established.
−   Support should be provided directly to groups and networks that are defending human rights online.
−   Expanding communication access and capacities should be central within EU development cooperation.