

GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION

Focus on freedom of expression and association online



Internet charters and principles: Trends and insights

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Introduction

A growing phenomenon in the internet governance arena is the emergence of charters and sets of principles which aim to guide policy making and to influence the behaviour of different stakeholders using the internet. The phenomenon is predominately driven by two separate but overlapping purposes: to articulate and promote a particular vision of the internet; and as an alternative to legislation and ex-ante regulation which is often considered ineffective, impractical and/or harmful.

This report provides an overview of the trend. It examines the different types of charters and sets of principles that are emerging and analyses the opportunities and challenges these present for freedom of expression and association on the internet.

Background

The internet developed in a “laissez-faire” environment – where regulation did exist it was mainly aimed at ensuring that the sector was open and competitive, for example, through unbundling and common carrier obligations. However, it has grown to be a foundational infrastructure for social, economic, political and cultural life. At the same time, a number of significant challenges have emerged, such as protecting privacy and combating the rise of cyber crime. The combination of these two factors has led to a growing consensus that the internet is too important to be left alone. The pressing debates now are about the content, form and processes by which governance is exercised.

Governing the internet is a challenging undertaking. It is a decentralised, global environment, so governance mechanisms must account for many varied legal jurisdictions and national contexts. It is an environment which is evolving rapidly – legislation cannot keep pace with technological advances, and risks undermining future innovation. And it is shaped by the actions of many different stakeholders including governments, the private sector and civil society.

These qualities mean that the internet is not well suited to traditional forms of governance such

as national and international law. Some charters and declarations have emerged as an alternative, providing the basis for self-regulation or co-regulation and helping to guide the actions of different stakeholders in a more flexible, bottom-up manner. In this sense, charters and principles operate as a form of soft law: standards that are not legally binding but which carry normative and moral weight.

On the other hand, there is an increasing array of attacks on the open nature of the internet from governments (both authoritarian and democratic) who seek to control the environment and from businesses who seek to monetise it. Concerned that the capacity of the internet to support freedom of expression and association is being eroded, civil society groups are developing charters and sets of principles to push back against these threats by articulating and campaigning for a progressive approach towards the internet.

A summary of internet charters and principles

An enormous variety of charters and principles have been developed, each involving different models, stakeholders and issues. It is possible to divide these into a number of broad groups, although the examples outlined below are not exhaustive:

- **Civil society charters and declarations** John Perry Barlow’s 1996 Declaration of Cyberspace Independence is one of the earliest and most famous examples. Barlow sought to articulate his vision of the internet as a space that is fundamentally different to the offline world, in which governments have no jurisdiction. Since then civil society has tended to focus on charters which apply human rights standards to the internet, and which define policy principles that are seen as essential to fulfilling human rights in the digital environment. Some take a holistic approach, such as the Association for Progressive Communications’ Internet Rights Charter (2006) and the Internet Rights and Principles Coalition’s (IRP) Charter of Human Rights and Principles for the Internet (2010). Others are aimed at distinct issues within the broader field, for instance, the Electronic Frontier Foundation’s Bill of Privacy Rights for Social Networks (2010), the Charter for Innovation, Creativity and Access

to Knowledge (2009), and the Madrid Privacy Declaration (2009).

- **Initiatives targeted at the private sector** The private sector has a central role in the internet environment through providing hardware, software, applications and services. However, businesses are not bound by the same confines as governments (including international law and electorates), and governments are limited in their abilities to regulate businesses due to the reasons outlined above. A growing number of principles seek to influence private sector activities. The primary example is the Global Network Initiative, a multi-stakeholder group of businesses, civil society and academia which has negotiated principles that member businesses have committed themselves to follow to protect and promote freedom of expression and privacy. Some initiatives are developed predominantly by the private sector (such as the Aspen Institute International Digital Economy Accords which are currently being negotiated); others are a result of co-regulatory efforts with governments and intergovernmental organisations. The Council of Europe, for instance, has developed guidelines in partnership with the online search and social networking sectors. This is part of a much wider trend of initiatives seeking to hold companies to account to human rights standards in response to the challenges of a globalised world where the power of the largest companies can eclipse that of national governments. Examples of the wider trend include the United Nations Global Compact, and the Special Rapporteur on human rights and transnational corporations' Protect, Respect and Remedy Framework.
- **Intergovernmental organisation principles** There are many examples of principles and declarations issued by intergovernmental organisations, but in the past year a particularly noticeable trend has been the emergence of overarching sets of principles. The Organisation for Economic Co-operation and Development (OECD) released a Communiqué on Principles for Internet Policy Making in June 2011. The principles seek to provide a reference point for all stakeholders involved in internet policy formation. The Council of Europe has created a set of Internet Governance Principles which are due to be passed in September 2011. The document contains ten principles (including human rights, multi-stakeholder governance, network neutrality and cultural and linguistic

diversity) which member states should uphold when developing national and international internet policies.

- **National level principles** At the national level too, some governments have turned to policy principles as an internet governance tool. Brazil has taken the lead in this area through its multi-stakeholder Internet Steering Committee, which has developed the Principles for the Governance and Use of the Internet – a set of ten principles including freedom of expression, privacy and respect for human rights. Another example is Norway's Guidelines for Internet Neutrality (2009) which were developed by the Norwegian Post and Telecommunications Authority in collaboration with other actors such as internet service providers (ISPs) and consumer protection agencies.

Advocacy, campaigning, dialogue and networking

Civil society uses charters and principles to raise awareness about the importance of protecting freedom of expression and association online through policy and practice. The process of drafting these texts provides a valuable platform for dialogue and networking. For example, the IRP's Charter of Human Rights and Principles for the Internet has been authored collaboratively by a wide range of individuals and organisations from different fields of expertise and regions of the world. The Charter acts as an important space, fostering dialogue about how human rights apply to the internet and forging new connections between people.

Building consensus around demands and articulating these in inspirational charters provide civil society with common positions and tools with which to push for change. This is demonstrated by the number of widely supported civil society statements which refer to existing charters issued over the past year. The Civil Society Statement to the e-G8 and G8, which was signed by 36 different civil society groups from across the world, emphasises both the IRP's 10 Internet Rights and Principles (derived from its Charter of Human Rights and Principles for the Internet) and the Declaration of the Assembly on the Right to Communication. The Internet Rights are Human Rights statement submitted to the Human Rights Council was signed by more than 40 individuals and organisations and reiterates APC's Internet Rights Charter and the IRP's 10 Internet Rights and Principles.

As charters and principles are used and reiterated, so their standing as shared norms increases.

When charters and statements are open to endorsement by different organisations and individuals from around the world, this helps to give them legitimacy and demonstrate to policy makers that there is a wide community of people who are demanding change.

While the continuance of practices which are detrimental to internet freedom indicates that these initiatives have not, so far, been entirely successful, there are signs of improvements. Groups like APC and the IRP have successfully pushed human rights up the agenda in the Internet Governance Forum. Other groups are hoping to emulate these efforts to increase awareness about human rights in other forums. The At-Large Advisory Committee, for instance, is in the beginning stages of creating a charter of rights for use within the Internet Corporation for Assigned Names and Numbers (ICANN).

An alternative to hard law

An increasing number of governments around the world are introducing new laws and regulations designed specifically to govern internet communications. These can have adverse implications for freedom of expression and association. One illustration of this is the increasing trend of governments placing formal requirements on intermediary service providers to monitor the activities of their users. This effectively stifles innovation among service providers and reduces the range of platforms that people can use to express themselves and associate online. On a global level, there are increasing calls for a global treaty to govern the internet. Many human rights advocates are concerned that, given the present push back against human rights standards by powerful countries, the outcome of such a treaty may erode rather than advance freedom of expression and other rights. Policy principles offer a more flexible alternative, enabling coordinated policy making without running the risk of enshrining detrimental standards in international law, or stifling innovation. Freedom of expression and association are already enshrined in internationally legally binding conventions such as the International Covenant on Civil and Political Rights. Many argue therefore that we do not need new legal standards, but to find ways of enforcing those which already exist in the context of digital communications.

Furthermore, processes for defining policy principles tend to be more open than those establishing international conventions or national law, allowing civil society greater opportunity to influence and shape the approaches adopted. Over time, charters may help to forge international

agreement around the normative dimensions of internet policy. The influence and input from civil society can be inferred from the fact that most sets of principles invoke similar language to that of civil society declarations – particularly with respect to freedom of expression.

Nonetheless, principles will not automatically promote human rights; for example, the OECD Communiqué, while widely praised for following a multi-stakeholder process and recognising principles including freedom of expression and access to infrastructure, also includes language that would push intermediaries to police and enforce laws on their networks. Because of this it is an ongoing challenge to ensure that the principles approach furthers rather than reduces respect for human rights.

Charter overload?

A growing concern is that there are now too many different charters and principles. This could fragment civil society efforts: when different groups congregate around different sets of principles they have less power than if all civil society groups were to promote the same set. However, those charters and principles which are high quality and perceived to be legitimate are likely to stand the test of time, being adopted by a critical mass of stakeholders. Those with less support will be neglected. Furthermore, different kinds of charters may be useful in different contexts. For example, the Brazilian principles are useful for advocacy in Brazil as they were formulated by local stakeholders for a national audience. However, charters with a more specific international orientation may be more useful in international advocacy work.

This viewpoint, however, neglects the fact that charters with support from economically and politically powerful groups are more likely to prevail. Civil society declarations usually do not have the same power as those developed by large companies, powerful governments or intergovernmental agencies. Because of this there is no guarantee that these will provide adequate protections for freedom of expression and other public interest dimensions of the internet. This is exacerbated by a lack of meaningful multi-stakeholder participation in the formulation of many charters and declarations.

The proliferation of charters and principles can also contain conflicting standards. This enables governments and companies to pick and choose those standards which are most in line with their own interests. Similarly, soft law and voluntary standards can lack effective enforcement and

accountability mechanisms, allowing stakeholders leeway in how they interpret and implement the standards. Charters can be manipulated to support brand and image without actually resulting in a change in policy or practice.

Conclusion

The proliferation of charters and sets of principles in recent years has been, to date, a positive phenomenon, raising awareness about the importance of protecting and promoting freedom of expression and association; building consensus about what international human rights standards mean in the internet environment; and allowing diverse actors to feed into internet governance processes. As new charters and declarations continue to emerge, the challenge for human rights advocates is to push for policy coherence between different initiatives

and to ensure that rigorous protection of human rights is upheld in them all. A further challenge is to ensure that governments and companies act in accordance with the charters and policy declarations that they sign up to, scrutinising their policies and behaviour to guarantee that they are in line with their commitments.

While charters and declarations are important tools in internet governance, recent years have seen growing calls for formal and binding international treaties on the world stage. Any standards that are codified in the future are likely to follow the course of emerging agreement around existing charters and declarations. Because of this it is critical that civil society engage with all ongoing processes to promote the highest protection for human rights in the emerging consensus on internet governance norms and principles. ■

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GLOBAL INFORMATION SOCIETY WATCH

2011 Report

www.GISWatch.org

