The information society and its impacts on human rights

Information and Communication Technologies (ICTs) can be defined as those technologies that facilitate by electronic means the creation, storage management and dissemination of information. While the term ‘Information Technology’ was introduced in the 1970s, the digital technology revolution in the 1990s reintroduced the concept of ICTs in their application to socio-economic development.

“ICTs have nowadays an immense impact on virtually all aspects of our lives … The capacity of these technologies to reduce many traditional obstacles, especially those of time and distance, for the first time in history makes it possible to use the potential of these technologies for the benefit of millions of people in all corners of the world.”

However, the emergence of a global ‘information society’ – driven by the continuing development of converging technologies of telecommunications, multimedia broadcasting and information technology – poses a few challenges in terms of human rights protection.

First of all, modern technologies have had an unprecedented impact on a variety of civil and political rights. On one hand, they ease the implementation of freedom of information or of association; they improve transparency and access to information. On the other hand, owing to the certain restrictions that ICTs impose on certain individual rights (for example, on the right to privacy), they require new or enhanced measures in order effectively to secure these fundamental rights and protect them from government or private intrusion.

Secondly, given the importance that ICTs have acquired in today’s world, access to these new digital media could be understood as forming essential social, economic and cultural rights. Nevertheless, a large portion of the world’s population is still deprived of these modern technologies, separated by a growing ‘digital divide’ from people in industrialized countries. Of the 30% of the world’s population that has access to the internet, only seven out of ten people in the developed and two out of ten people in the developing world have internet. Internet penetration rates by geographic region for Europe are at 58.3% while Asia lags significantly behind (23.8%).

The enhanced protection of cultural rights and liberties seems, however, warranted by the fact that the internet has become one of the prime vehicles through which people express their cultural heritage. With regard to economic matters, the increased vulnerability of intellectual property rights raises questions as to whether new (international) instruments should be created adequately to protect these rights from infringements from state and non-state actors alike.

Thirdly, though the traditional concept of the nation-state guaranteeing minimum standards of human rights continues to apply, the international character of the environment created by the information society poses some considerable and practical problems for states trying to fulfill this role on their own. Indeed, the state infringing on an individual's fundamental rights may not necessarily be the same state of which that individual is a resident. Moreover,

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3 Internet World Stats, accessible at www.internetworldstats.com
considering that rules have inherently a very hard time keeping pace with scientific or technological progress, one could ask what type of regulation (if any) is best suited to cope with the challenges created by the ever-accelerating development of ICTs. For the moment, international standards specifically adapted to the new environment created by the development of ICTs over the last two decades are, to a large extent, still lacking. A notable exception has been the Council of Europe’s work across the region on tackling cybercrime through the Convention on Cybercrime and its Protocol on Xenophobia and Racism⁴.

In sum, while access to ICTs has improved in recent times, issues of equity, sustainability, and complexity remain unresolved. The 12th Informal ASEM Seminar on Human Rights will be addressing some of these key issues and explore the opportunities for ASEM collaboration on ICTs and human rights.

Global Milestones

The international community, in particular the United Nations (UN), has been supportive of the confluence of ICTs and development; when the Millennium Development Goals were adopted in 2000, one of the key questions was how ICTs could be best utilised for their achievement, especially when one of the goals was to ‘promote access to the benefits of new technologies, particularly in the realm of information and communications’⁵.

Sponsored by the UN and the International Telecommunications Union, the first World Summit on the Information Society (WSIS) was held in 2003 in Geneva with the intention to establish political will and take steps towards creating a global Information Society, especially in relation to development. The resultant Geneva Plan of Action was picked up at the second phase of the WSIS in Tunis in 2005; the second summit worked to update and implement the Plan (through the Tunis Agenda for the Information Society).

While ICTs comprise of all types of communications technologies, current focus remains mainly on internet technology. The Tunis Agenda saw the development of a new ‘multi-stakeholder policy dialogue’ called the Internet Governance Forum (IGF). The IGF meets annually to discuss amongst others ‘public policy issues related to key elements of Internet governance in order to foster the sustainability, robustness, security, stability and development of the Internet’⁶.

The Internet and Human Rights: Key Issues

The gap in social development is also reflected in the ‘digital divide’ whereby a large part of the developing world is unable to tap into the power of the internet so that access to ICTs has indeed become a key issue. In a global public poll carried out by the BBC World Service in 2010, 87% of internet users felt that internet access should be a fundamental right whereas 71% of non-internet users felt that they should have the right to access the web⁷.

Linking the internet to human rights, the Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, refers to the internet as

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⁴ The Convention on Cybercrime which entered into force in 2004 is the first international treaty on criminal acts committed via the internet and other computer networks. Its attendant Protocol Xenophobia and Racism which entered into force in 2006, extends the Convention’s scope to cover the dissemination of racist and xenophobic propaganda via the internet or other computer networks. More information can be found at http://www.coe.int/t/DGHL/cooperation/economiccrime/cybercrime/default_en.asp

⁵ Target 8.F of the Millennium Development Goals, 2000

⁶ The mandate of the IGF is found in Para 72 of the Tunis Agenda.

“an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress”\(^8\) and that “As such, facilitating access to the Internet for all individuals, with as little restriction to online content as possible, should be a priority for all States”\(^9\).

This recent development prompts the question: should a set of new civil and political rights with respect to ICT be developed, or do the existing frameworks offer sufficient protection? This is especially important when ‘Internet Access’ by necessity includes issues such as the freedom of expression and the right to privacy, yet must also consider the practical demands of the global fight against terrorism and transnational crime, as well as the protection of the rights of vulnerable groups such as women and children.

Another contentious area in an information society is the impact of ICTs on the protection and advancement of cultural rights. While international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) protect the right to conserve and protect a community’s culture, they also call for the right of everybody to enjoy the benefits from scientific progress – including benefits from advancements made in technology.

However, just like other aspects of globalisation, the use of ICTs has yielded both benefits (in terms of connectedness and access of information) and detriments (in terms of marginalisation and exploitation of environmental resources\(^10\) and communities). It has been difficult to regulate and reward intellectual property rights over traditional knowledge and practices once it enters the public domain. Moreover, the impact of ICT usage on indigenous traditions and customs also raises the issue of technological determinism – the influence and counter-influence of technology on societal attitudes, structures, community and culture.

Recognising the importance of cultural rights in its call for an Information Society, the Geneva Plan of Action stated that ‘Cultural and linguistic diversity, while stimulating respect for cultural identity, traditions and religions, is essential to the development of an Information Society based on the dialogue among cultures and regional and international cooperation. It is an important factor for sustainable development’\(^11\).

**Way Forward**

It has been universally acknowledged that all stakeholders in the information society – including governments, the public, civil society actors, the technological and private sectors – will need to engage in constructive dialogue to ensure that ICTs can be included in social and economic development of a nation. In its call for better internet governance, the Tunis Agenda defined it as ‘the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet’\(^12\).

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\(^8\) LaRue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 10 June 2011  
\(^9\) ibid  
\(^10\) Such as the use of conflict minerals in the production of electronic gadgets including cell phones. For further reading please see Prendergast (2009), ‘Can You Hear Congo Now? Cell Phones, Conflict Minerals and the Worst Sexual Violence in the World’, EnoughProject April 2009  
\(^11\) C8, paragraph 23, Geneva Plan of Action, Document WSIS-03/GENEVA/DOC/5-E, 12 December 2003,  
\(^12\) Paragraph 72, Tunis Agenda for an Information Society
The 12th Informal ASEM Seminar on Human Rights shall examine the relationship between ICTs and Human Rights. The four themes identified for this Seminar shall constitute basis for the working groups, with respect to ICT and human rights:

(1) certain aspects of freedom of expression;  
(2) the right to privacy;  
(3) the ‘digital divide’; and,  
(4) the right to cultural enjoyment of the internet.

Cross-cutting Questions
1. What legitimate state interests and public policy concerns have emerged in the question of ICT regulation? What are states’ responsibilities and obligations to ensure protection of the public, particularly vis-à-vis private companies providing ICT services?  
2. Is it the responsibility/obligation of governments to ensure the protection of the legitimate interests and public policy concerns in emerging ICT field? What are the advantages/disadvantages of a secured use of the internet as opposed to zero regulation?  
3. To what extent can the internet be self-governed? How should internet governance be organised? What type of ICT regulation do states need? Does internet governance need international or national regulation?  
4. To what extent and how do ICTs contribute to good governance and democratic processes?  
5. Should a set of new civil and political rights with respect to ICT be developed, or are existing frameworks a sufficient protection? What about economic, social and cultural rights?  
6. How can we address the social impact of the internet vis-à-vis social rights?

Working Group 1  
Freedom of Expression  
1. How can ICT contribute to the full enjoyment of rights, particularly freedom of expression? How can this be balanced with such needs as protection against defamation or hate speech, crime prevention, protection of vulnerable groups (e.g. women and children, minority groups) and prevention of cyber-crime and of terrorism?  
2. Do existing frameworks provide for the right of association online? What about any protections to use ICT to organize social movements in the ‘real’ world?  
3. How can dual concerns for and against the regulation of social networking sites like Facebook and Twitter be best addressed?  
4. In what ways can ICT usage contribute to the implementation of rights such as freedom of information (FOI)? What experiences can be gained from the field of environment such as the Aarhus Convention and emerging FOI legislation?  
5. Have ICT tools contributed to the development of public participation in local or national democratic processes (e.g. referenda, public consultations or elections) or in environmental rights (Aarhus convention) and of a better administration (nearer and quicker for any citizen), particularly at national and sub-national levels?  
6. How to reconcile the virtual and ‘daily’ democracy online with the real democracy where voters delegate the exercise of power to elected officials (with years between elections)?

13 ‘Certain aspects’ only because the topic ‘Freedom of Expression’ was the focus of the 8th ASEM Informal Human Rights Seminar.  
14 This refers to the UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. For more information: http://live.unece.org/env/pp/welcome.html
7. How does ICT affect the traditional means of information dissemination, such as the print media? Does the emergence of 'citizen journalism' enrich public knowledge and discourse, or does it threaten the quality of information available?

8. The Wikileaks cables in the past year have raised ethical and political concerns. In this regard, to what extent do private organisations such as access providers have a responsibility for hosting sensitive online content? What role does state regulation play? How has emerging jurisprudence helped to resolve these issues?

Working Group 2
The Right to Privacy
1. How does new technology intervene with the right to privacy (government and commercial databases, social databases, mobile and CCTV surveillance and tapping, as well as hacking and cyber-security)? What are the potential threats to human rights and how can they be mitigated?

2. What privacy protections should be introduced in individual profiling from data production and cross-usage of different databases (including official and social networks)? What limits should be set for state agencies and private companies, particularly online social networks, alike?

3. What data is prima facia private and should therefore be protected? What regulatory framework would most effectively balance surveillance (data interception, wire-tapping, public CCTV video) for legitimate security and public policy concerns with the protection of individual rights?

4. What are the different responsibilities of private companies (e.g. internet service providers, search engines) to both states and their users respectively, and how should competing interests be mediated?

5. How are vulnerable groups such as children and minors best protected within regulatory regimes that also protect online privacy?

Working Group 3
The ‘Digital Divide’
1. Apart from the digital divides of ‘north-south’, ‘rich-poor’, ‘educated-non educated’, ‘rural-urban’ populations, young digital ‘natives’ and elder digital ‘migrants’, what other groups are vulnerable to this divide (linguistic minorities, disabled people…)? What is needed to overcome these divides and what public policies are in place to facilitate equal access to technology? In particular, for persons with disabilities, especially visual or hearing impairment, how can access be improved?

2. Do policies determining ICT infrastructure promote equal opportunity to access ICT? To what extent do governments impose conditions on private or public companies to promote equal access? Should states promote equal access through such measures as subsidies or direct provision of equipment?

3. What are the constraints against promoting equal access? What ‘best’ practices or experiences to promote better access can be shared?

4. How do disparities in ICT access have an impact on other rights, such as the right to education or access to information? Which rights are violated or potentially violated by lack of access?

5. Will promoting equal access to ICT eventually amount to “free access”? Is access to ICT, particularly the internet, a basic need and/or a human right?

Working Group 4
The Right to Cultural Enjoyment of the Internet
1. What is the cultural impact of ICT, particularly on access to culture and education, and on preservation or promotion of diversity or minorities rights in the face of globalisation? In particular, what is the impact of the internet on linguistic diversity?
2. Does the internet contribute to the enjoyment of cultural rights, access to culture and education, and preservation of minority cultures (including language)?

3. Should governments, as a form of special measures or affirmative action for the promotion and protection of minority and indigenous rights, provide technology and funding (but not editorial influence) for the ICT activities of minority and indigenous groups?

4. Is the right of cultural enjoyment on the internet an emerging human right?

5. How can the right of cultural enjoyment and the legitimate protection of intellectual property rights be balanced?

6. Does promoting equal access to ICT amount to "copytheft" or rather, copyright alternatives such as those espoused by Creative Commons or Open Source collaboration?

7. What are the human rights implications of anti-piracy measures such as the 'three strikes' laws which prohibit internet access to repeat online piracy offenders for a certain period of time?