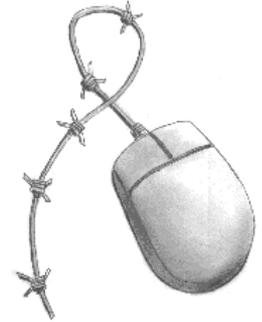***GreenNet CSIR Toolkit Briefing no. 12***

Civil Rights and Internet Regulation

How proposals to control the Internet affect our civil rights

Written by Paul Mobbs for the
GreenNet *Civil Society Internet Rights Project*, 2002.
http://www.internetrights.org.uk/

This briefing looks at issues of civil rights and human rights as they relate to use of the Internet. Human rights, are an accepted part of legal systems in many countries across the globe. The United Nations *Universal Declaration of Human Rights*, and other agreements such as the *European Convention in Human Rights* (ECHR), ensure that minimum standards exist for the citizens of all countries that subscribe to these agreements.

Whilst these rights are accepted as part of everyday life, they are, however, not always recognised on the Internet. Civil rights (such as rights to access official information or to lobby elected officials) granted under national laws are not recognised online. Governments and corporations are promoting the Internet as a new space for communication within society, but they are not doing enough to ensure that the rights we enjoy in everyday life are extended to the field of electronic communications.

Significantly the Internet is largely in the hands of private enterprise; corporations and telecommunications companies own the elements and machines that support it, although they do not directly control the movement of data on the 'Net. Your connection to the Internet is usually based on a financial contract between you as an individual and an Internet Service Provider (ISP). Moves towards greater economic liberalisation, as part of the process of globalisation, mean that governments are not willing or able to impose more regulation than exists at present.

The basis of the argument concerning civil rights and the Internet is this:

> *If governments are promoting the Internet as a new space within society, and if governments are using the Internet themselves as a means of delivering services or making official information available, should not the minimum guarantees of civil and human rights granted under national and international agreements also be applied to the citizens use of the Internet?*

The protection afforded citizens as part of contracts for, for example, electricity, gas or water, should also apply to contractual relationships between citizens and ISPs. The state should also ensure that groups in society are not excluded from the new online services by a lack of opportunity, education or equipment.

In the UK the government has been working to transform many public services,[1] with the eventual aim of providing most information and advice via the Internet[2]. This is not just because of a desire to modernise; it will also save money, by cutting staff and transferring services to the Internet or to call centres. If steps are not taken to ensure adequate access, those unable to use or afford the means to access these new online services will effectively be excluded from the new *information society*.

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[1] Reports on the electronic delivery of services is available in the 'publications section of the '*government e-envoy's*' web site - http://www.e-envoy.gov.uk/publications/publications_index.htm
[2] Reports on the development of *UKOnline*, the central government portal, are available through the e-envoy's site at http://www.e-envoy.gov.uk/ukonline/ukonline_menu.htm

United Nations Universal Declaration of Human Rights[3]

Article 18   Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19   Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20   (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21   (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of the government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 30   Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

European Convention on Human Rights[4]

Article 8   1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10   1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information an ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11   1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 17   Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction on any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

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[3]For the full text see - http://www.un.org/Overview/rights.html
[4]For the full text see - http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm

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Defining human rights in the electronic media

The various international agreements on human rights were drafted immediately after the Second World War. In the context of that time, guaranteeing the fundamental right an individual in society to live, work and participate in the democratic process, according to the rule of law, was entirely appropriate and necessary.

These frameworks of these rights now need to take into account that, as a result of technological developments since then, the state has a much greater ability to monitor and intrude upon the activities of citizens than forty or fifty years ago. Many of those citizens, too, are now able to network together in new ways, thanks to technology.

It could be said that the basis of conflict has moved away from the Cold War between the super powers towards the clash of ideologies between states and minority groups. Ideas of freedom of thought, conscience, religion and association have been tested and redefined in recent years.

The development of the Internet represents a significant challenge to existing human rights principles, on a number of grounds:

- The concept of the nation state guaranteeing minimum standards of human rights cannot be applied to the Internet (which is not geographically based); the nation restricting your rights of expression or communication may not be the state in which you reside;

- The concept of rights of association or expression become more difficult to interpret when this association or expression between people is mediated by technology;

- In a medium which makes it simple to mass-monitor communications, the principles of freedom of expression and association demand that measures should be taken to protect the privacy of online communications.

The UN Universal Declaration of Human Rights and the ECHR (see above) both contain articles relating to freedom of thought, expression and association. Significantly, the European Convention also contains an article relating to the right to private life and private correspondence. Both Conventions also contain limiting clauses that ensure that the exercise of rights by one group do not interfere with the rights of another. In the context of civil rights on the Internet, all of these principles could be covered by a more general *right to communicate*.

The issue of rights and human well-being in the "real" world is an important and fundamental issue. But equally, given the development of a networked society and the speed of change wrought by digital media in the industrialised world, the importance of people's rights to access and use these new media should not be dismissed. Otherwise we may see rights to use these new digital media being restricted not merely by the actions of governments but by the companies which design and operate them.

Human and civil rights are intended to be applied on a universal basis. There is no technical bar to the application of these principles to the online world, but problems arise because of the way the legal instruments setting out these rights have been conceptualised, written and interpreted. Rights to associate or protest in public, to freedom of expression and to privacy have not been explicitly extended to the virtual world. Although the ECHR protects the right to privacy and private correspondence, for example, the monitoring of Internet communications (by employers and service providers) is commonplace; means of preventing such intrusion (through encryption, for example) are being restricted by governments.

In terms of the general use of the Internet and digital media, basic rights of access and communication are contained in Article 19 of the UN Universal Declaration of Human Rights:

> *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any*

media and regardless of frontiers.

The "digital divide"

Communication via computer networks, and the use of digital media in general, is significantly restricted by the issue of access. There are significant barriers to the exercise of rights relating to digital media:

- Access to the *equipment* necessary for communication - this includes hardware, operating software, telecommunications links, and the costs entailed in obtaining them, and as such is greatest obstacle to be overcome;

- Access to *education and skills* is necessary in order to be able to use the new media - the ability to use computers and information technology will become increasingly crucial in our society;

- The *language* in which these new media can be accessed - the electronic media are dominated by English, and the languages of the other main industrialised nations. Many people are not able to access significant parts of the Internet, for example, in their first language.

These barriers make up the *digital divide* - that is, the gap between people who have the ability to access the new digital media, and people who do not. The digital divide is a clear example of the failure to address human rights within the initial development of new digital media, both within states (at the level of individual rights), and between them (at the global level - some countries have become networked whilst others have not).

The digital divide is not always clear or constant. Most often it is shows up as a lack of access to computers or the Internet. Even when people have access to the Internet, it can be seen as arising through other inequalities in society. The current emphasis on the Internet as a means of buying things, and the necessity of having a bank account and a credit card to do this, is a good example of how many poorer people, who are unable to obtain credit, are excluded from participation. As we noted above, another example of the digital divide is where people have problems in accessing computers or the Internet in their first language. This is partly because most software is produced by companies in the main industrialised nations, but also because it can be difficult to obtain software, and hardware (such as keyboards) outside the country where they were developed, due to copyright or patent licensing restrictions.

There has been little research on the digital divide in the UK. Research by the Information Society Commission in the Republic of Ireland has resulted in a number of reports on social implications, however. It shows that despite government initiatives, many poorer people are still not participating in the new information society. A recent survey[5] found that 41% of the Republic's population had access to the Internet; 54% of adults were familiar with the use of personal computers, 43% with the use of the Internet and 41% with the use of email. But the study also found that 30% of the unemployed had no understanding of personal computers; only 13% had some familiarity with the Internet, and only 10% were familiar with email, compared to 64% 45% and 39% respectively for those in employment.

So far, the Internet has largely developed on laissez faire basis, with little state involvement. As has moved from being a minority interest to a means of mass communication, however, the attitudes of governments have changed. States have begun to perceive public use of the Internet by the public as a potential threat to the state - either because it is difficult to control (in terms of content, for example, and in particular content that is critical of the state), or because encryption systems prevent the state monitoring what people are sending to each other. This has led to a variety of responses:

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[5]*How the General Public is Adapting to the Information Society in Ireland*, Information Society Commission, October 2000. For more information see the ISC's website at http://www.isc.ie/

- In the UK, the Regulation of Investigatory Powers Act 20006 was developed to allow the widespread tapping of the Internet, and to require the decryption of encrypted data on demand. The new Anti-Terrorism Act7 widens state powers still further;

- In Singapore, new laws require web sites to be registered;8 otherwise, their transit across telecommunications systems is blocked so that the public cannot access them (originally intended for hate or pornography sites, in August 2001 the government minister responsible indicated that these measures would be enforced against "political" sites);

- In the USA, following the terrorist attacks on New York and Washington, new laws9 seek to implement not only powers to monitor the use of the Internet, but also to control activities such as Internet gambling, or the use of the new digital media for activities that might involve proprietary information.

Some regulation of the Internet is of course necessary in order to protect the rights of individuals and to prevent the spread of racial or sectarian hatred via the Internet. But it can be argued, in Europe at least, that current proposals for regulation of the Internet do not strike an appropriate balance between the threat presented by serious crime or terrorism using the Internet[10] and the rights people have to use the new media for expression and communication under Article 10 of the ECHR.

Individual states' approaches to Internet regulation threaten the right under Article 19 of the UN Convention (see above) of people to communicate "regardless of frontiers". Regulation may block communication or access to information between those within a state, and also between states. People who carry out activities that are lawful in one state may be criminalised under the law of another. The applies, for example, to the use of the Internet to express dissent against repressive states.

The recent rush to develop laws in relation to the Internet therefore represents another form of digital divide - between those to whom the Internet is freely available, and those for whom the same uses may carry legal penalties.

If steps are not taken to make new technologies and means of communication available to everyone, people who are already disadvantaged within society will be further excluded. At the global level, too, the divide between those states who are networked, and those who are not, will further reinforce economic divides between countries.

Towards a charter for Internet rights

Many governments have been promoting rights for electronic commerce and strengthening intellectual property rights, but few have done parallel work to represent the interests of the general public. Despite many European Union directives on e-commerce and the new digital media, there has been no specific move to protect rights to access and use *information and communications technologies* (ICTs).

The Association for Progressive Communications has, however, been developing a *Charter for Internet*

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[6] *Regulation of Investigatory Powers Act 2000* - http://www.legislation.hmso.gov.uk/acts/acts2000/20000023.htm   For an analysis of the RIP Act 2000 see the GreenNet CSIR Briefing no.13 on *Interception Capabilities*

[7] *Anti-Terrorism, Crime and Security Act 2001* - http://www.legislation.hmso.gov.uk/acts/acts2001/20010024.htm For an analysis of the Act see the GreenNet CSIR Briefing no.15 on *New Terrorism Legislation*

[8] See '*Foreign Websites that Refuse to Register can be Blocked*', Straits Times, 1 Sept. '01 - http://straitstimes.asia1.com.sg/singapore/story/0,1870,67711,00.html

[9] *Wired* 13th Oct., '01 - '*House Endorses Snoop Bill*'. See http://www.wired.com/news/conflict/0,2100,47549,00.html

[10] For current news and analysis of the regulatory agenda for the Internet in the UK visit the *Foundation for Information Policy and Research* (FIPR) web site - http://www.fipr.org/

Rights[11] as part of its current work on Internet rights. The charter was developed by APC members and partners at the APC Europe Internet Rights Workshop, held in Prague, from 18 to 21 February 2001. It draws on, and is associated with the *People's Communications Charter*[12] and the statement of *A Global Movement for People's Voices in Media and Communication in the 21st Century.*[13]

The themes and principles outlined in the Charter centre on the rights of people and organisations to use the Internet freely, particularly in their work for social, economic and environmental justice. While the Charter makes specific reference to the Internet, the principles embodied in it are relevant to all other information and communication technologies. The Charter currently set goals in terms of seven key themes:

1. ***The Right to Communicate*** - The right to communicate is a fundamental human right, and therefore affordable information and communication technologies (ICTs) must be available to all; governments should consider this fundamental right as part of social legislative proposals;

2. ***Freedom of expression and information exchange*** - This is based on Article 19 of the UN Convention on Human Rights, and aims to ensure that the Internet can be used to organise public protest, that there is no censorship or restriction on use of the Internet, and that there are also effective means to challenge the publication of content that is harmful to women, children, other vulnerable groups, or that may incite violence and hatred;

3. ***Diversity of content, ownership and control, and the protection of user rights*** - this seeks to tackle the increasing concentration of media ownership, to ensure the diversity of content, the preservation of languages and culture, access to the new digital media by the public, and the evaluation of social impacts as part of evaluating new media technologies;

4. ***The licensing and control of Intellectual property*** - this goal seeks to implement a review of the use of intellectual property rights to control monopoly markets, the use of proprietary systems as part of Internet and other technical standards, and of the need to develop *open source* software to ensure that the public has cost-effective access to new communications technologies;

5. ***Privacy*** - this goal relates to data protection, surveillance and data encryption. It seeks to ensure that the Internet is not used as a means of mass surveillance, by the state or private organisations, and to ensure that the public have access to encryption systems to actively protect their privacy where they desire to do so;

6. ***Global, regional and national governance of the Internet*** - this relates to the setting of technical standards and controls over the Internet and electronic media, and seeks to ensure that the development of standards is transparent, open and accountable to all;

7. ***Rights awareness and realisation of rights*** - this involves the promotion of Internet rights, in order that people can understand and positively act to enforce their rights to communication, and to ensure that systems are developed by the state to handle complaints about the violation of communications rights.

The Charter is not a comprehensive document. It attempts to highlight specific issues that individuals, civil society organisations, community media, and policy makers and regulators need to consider in their efforts to protect rights to free communication via the Internet and to realise its potential for creating a better informed and more just world. It is hoped that other organisations will be able to adopt and use the document as part of a broad coalition to lobby for the global development of Internet rights.

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[11]The Charter is currently in its fourth draft, and can be obtained from the APC's web site at -
http://rights.apc.org/charter.htm
[12]See http://www.waag.org/pcc/
[13]See http://www.comunica.org/v21/statement.htm

Further work

This briefing has been written in the context of the legal framework currently in force in the UK. If you live outside the UK you will need to make yourself aware of the procedures operating in your own country. Key points you will need to find out are:

- Has your state incorporated the ECHR or the Universal Declaration of Human Rights into its law; and if so, how far does the law protect the right to communicate?

- Do the courts that enforce human rights in your state (if any) consider Internet rights a valid issue?

- What laws on freedom of expression, privacy and state surveillance exist in your state; how do these laws relate to the public use of the Internet as a means of communication, and to what extent have these laws been challenged on the basis of their impact on human rights?

You should also contact any civil liberties organisations operating in your country. They may be able to provide you with much of the information you need relating to the exercise of human rights, and they may have some knowledge of cases involving the Internet.

The GreenNet Internet Rights Project

GreenNet[14] is the UK member of the Association for Progressive Communications[15] (APC), and is leading the European section of the APC's Civil Society Internet Rights Project[16]. The primary goal of this project is to provide the resources and tools necessary to defend and expand space and opportunities for social campaigning work on the Internet against the emerging threats to civil society's use of the 'Net. This involves developing ways and means of defending threatened material and campaigning, as well as lobbying to ensure a favourable legal situation for free expression on issues of public interest.

Until recently, the social norms of Internet communities, together with a very open architecture based on supporting these norms, regulated the Internet, and was responsible for its openness. The main forces of regulation now, however, are the business sector and government legislation. Corporations and governments are pressing for fundamental changes in legislation and in the architecture of the Internet. Unless challenged, these moves could radically change the nature of the 'Net, making it a place of oppressive controls instead of freedom and openness. It is in this context that APC's Internet Rights project is being developed.

This briefing is one in a series[17] that document different aspects of work and communication across the Internet. Although written from the perspective of the UK, much of its content is applicable to other parts of Europe. There is continuing work on these issues, as part of the European project. If you wish to know more about these briefings, or the European section of the APC Civil Society Internet Rights Project, you should contact GreenNet. You should also check the APC's web site to see if there is already a national APC member in your country who may be able to provide local help, or with whom you may be able to work to develop Internet rights resources for your own country.

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[14]GreenNet - http://www.gn.apc.org/
[15]APC - http://www.apc.org/
[16]CSIR Project - http://rights.apc.org/
[17]http://www.internetrights.org.uk/

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