

A human right to internet, privacy, information and other considerations for the Policy for Communication networks and services



Summary

The EHRC welcomes the policy and sees it as a necessary and good first step towards the required legislation for the long awaited and much wanted Equiano Cable.

The measures in the policy to widen the access to internet to the less well-off members of our society are very warmly received. The lack of access to internet could mean children from poorer families do less well at school and therefore limit access to work opportunities perpetuating relative poverty, compared to students who have home internet.

Where the EHRC is concerned is in the areas relating to surveillance and the line management of the Regulator. These concerns are detailed below.

Introduction

The right to internet is not yet a fundamental human right in the same way that the right to life, freedom from torture and a fair trial are, but access to the internet is very closely linked to several of the fundamental rights we do have. For example the right to free speech includes access information, the right to privacy and the right to freedom of assembly which may be in cyber space not just physical space. In addition third generation rights, like the right to development are also engaged.

Rights do not just exist in regard to the use of internet, they also extend to who polices it and how it is policed, this must be a fair, open and democratic process that does not inhibit rights above or beyond what is absolutely necessary in a democratic society.

Human Rights fall into the Altogether Safer category of the Island's 10 year plan

Current state of human rights with regard to the internet

In December 2003, the World Summit on the Information Society (WSIS) was convened by the United Nations (UN). The WSIS Declaration of Principles was adopted, reaffirming the importance of the Information Society in maintaining and strengthening human rights:¹

We, ..., declare our common desire and commitment to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights

In July 2016, the United Nations Human Rights Council released a non-binding resolution condemning intentional disruption of internet access by governments.² The resolution reaffirmed that "the same rights people have offline must also be protected online". Internet-related recommendations formulated under the Universal Periodic Review mechanism are as numerous as those related to the right to food and the right to water – both of which are well-established human rights.

The UK calls internet access a legal right, like water and power. In 2017 the United Kingdom decided that all 65 million of its inhabitants have a "legal right" to fast, reliable internet connectivity.

The Rights Engaged

Right to Privacy

Surveillance

The most concerning part of the policy is the power handed to a single individual to breach our right to privacy, i.e. the Governor. For example section 3.3.11 says the Governor acting at his or her discretion may require a retention notice. First of all no matter what the circumstances, there should be more than one person involved in a decision of this importance. The Governor is the Queen's represented on island neither the Queen nor the Prime Minister have such powers in the UK.

The public interest grounds are very vague and too open to misapplication to be useful.

This section has the potential for major human rights abuses to take place and is unacceptable.

Personal Data

The right to private and family life is protected by Clause 13 of the Constitution. While not specifically mentioned in that document the privacy of personal data is accepted as falling under the right to privacy

¹ WSIS-03/GENEVA/DOC/4-E, World Summit on the Information Society, Geneva, 12 December 2003

² Vincent, James (4 July 2016). "UN condemns internet access disruption as a human rights violation". Available at <https://www.theverge.com/2016/7/4/12092740/un-resolution-condemns-disrupting-internet-access>

A human right to internet, privacy, information and other considerations for the Policy for Communication networks and services

in international law. This is of major concern to the EHRC as there is no data protection legislation on island and the UK law cannot be applied here as it was enacted after 2007.

Without data protection the internet becomes a very dangerous and complicated space to visit. With the internet becoming such an integral part of modern life, safety is paramount when considering the type of data that can be so easily shared. Because the internet doesn't belong to anyone the process of applying laws on how we treat personal data is complicated and only works if everyone involved in providing internet services abide by the same laws and regulations.

New technologies that allow specialists doctors to monitor a patient's health in real time, banking applications, university quality education from home are just a few examples of the benefits of internet based technology. In just these few examples, the amount of personal data required for them function creates a hosts personal data issues.

There is also the constant threat of online hacking and malicious software, such as viruses, malware and ransomware. Online hackers are constantly exploring new ways to exploit the online public. Identity theft is becoming more and more common. Tiny software programs that circumvent the security of the computers operating system, such as viruses and ransomware, will attempt to obtain personal information for blackmail or even to simply erase their data. On St Helena it is common to turn off security updates on our computers and phones because of the amount of data they can use without our consent and the costs involved. This already leaves a lot of devices open to attacks when high speed internet arrives.

While data protection doesn't directly combat malicious online activity, it's an assurance that the business or organization handling someone's data has a robust and up-to-date security system in place. It is important to note that any personal data can be used to harm an individual, no matter how harmless it might appear.

The Policy is to encourage the setting up of ground stations on island which begs the question what sort of organization would want to do that when there is no data protection legislation?

Saint Helena is a safe and trusting place we do not think twice about sharing information with each other, this will make us particularly vulnerable. The introduction of online banking has been a great step forward but how safe will the information be once the cable arrives?.

Section 3.3.2 needs clarification – is the data the Regulator can require only business information relating to the service provider?

Will the regulator have the power to require personal data on their customers?

In an effort to both protect its citizens as well as creating a standard for how personal data is protected and processed online, the European Union created the GDPR (General Data Protection Regulations) which specifically includes the following rights to the user –

- 1 – The right to be informed about the data about you held

- 2- The right to access that data
- 3- The right to rectification of errors
- 4- The right to erasure of material/information that is incorrect or illegal i.e. photographs etc.
- 5 – The right to restrict processing of the data
- 6 – The right to portability
- 7 – The right to object to the use of data held about you
- 8 – The right to stop automated decision making

All members of the European Union must produce their own data protection regulations to the standards of the GDPR. While it may have been thought that this will not matter after Brexit, the EU has also made the GDPR a requirement for trade. In doing this, the influence of data protection spreads to any person, country or organization that collects or processing personal data from EU subjects. The GDPR allows EU citizens to challenge how and where their data is stored. Failure to fulfil these obligations can result in penalties as high as 20 Million Euro, or 4 percent of national income. This is how the European Union spreads data protection for its citizens throughout the globe but also raising the protection standards of anyone trading with the EU.

Furthermore anyone visiting the island, knowing St Helena is a UK territory, will expect a reasonable level of data protection. Especially when we entrusted with an individual's personal information, such as credit card numbers, passport information, home address, medical information and any other data required for stay on the island.

For the people who live on the island, it will mean the assurance that their fundamental rights and freedoms will be protected by anyone handling their personal data on island.

Right to freedom of expression

The right to Internet access is closely linked to the right to freedom of expression. Two key facets of the Internet play a part in this; the Internet's content and the Internet's infrastructure. The infrastructure is necessary in order to deliver the service to the people and the content is something that should be available to all, with few or no restrictions; limits on content have been viewed as the key breach of human rights, usually the right to freedom of expression.

The removal or censorship of Internet is defined by the UN as a breach of the human right to freedom of expression.

In the report to the Organization for Security and Co-operation in Europe on Internet access as a fundamental human right, Professor Yaman Akdenian argued that the right to freedom of expression is

universal and this includes, including the technology which enables it.³ Restrictions on this right and any mediums required to fulfil it should only be permitted if they comply with international norms and are balanced against the public interest. Furthermore, it was also noted in the paper presented to the OSCE that extra measures should be taken to ensure vulnerable groups such as children have access to Internet and literacy programs.

Right to freedom of assembly

Traditionally the right to freedom of assembly covered peaceful gatherings such as protests in physical public spaces but as technology progresses we are seeing a revolution in the way people meet and interact. Covid-19 has brought into sharp relief the necessity and the relevance of internet and the right to freedom of assembly. As our children, young people and the vulnerable also have this right we have a duty to educate our citizens about online safety. To educate parents on methods to protect children online. To educate children on the dangers of sharing personal data online.

The Right to Self –determination

This right (sadly not properly protected by the Constitution of St Helena, Ascension and Tristan da Cunha) may be promoted through access to the internet for consultation, online petitions, surveys and for electoral purposes.

Right to development

The right to development is a third generation right recognized by the UN General Assembly. The Internet's role in securing this right has been noted by human rights scholars. The increasing access to technology such as mobile phones has already proven to provide developing nations with further economic development opportunities. Increasing access to the Internet on St Helena is likely, to improve not only access to information, but also business opportunities.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, in his 2011 report to the UN Human Rights Council emphasised that

"without Internet access, which facilitates economic development and the enjoyment of a range of human rights, marginalized groups and developing States remain trapped in a disadvantaged situation, thereby perpetuating inequality both within and between States".⁴

La Rue's report led to arguments that in order to secure Internet access as a human right and to facilitate every nation's economic development, governments should act to ensure universal access, just as governments should act to ensure access to utilities such as water and electricity. The advocacy group A Human Right estimates that 4.6 billion people worldwide currently do not have Internet access

³ Yaman Akdenian "Freedom of Expression on the Internet" available at (<http://www.osce.org/fom/80723>)

⁴ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, Human Rights Council, Seventeenth session Agenda item 3, United Nations General Assembly, 16 May 2011

A human right to internet, privacy, information and other considerations for the Policy for Communication networks and services

and that increasing access to the Internet by just 10% can add 1.28–2.5% to the GDP of developing countries.⁵

The cable presents St Helena with a great potential for economic growth. High speed internet is a major driving force of modern business. Ascension Island enjoys the interests of many companies interested in its locational advantages in HF communications. For the first time, St Helena will be in a position to enter the world of communications or provide services previously hampered by slower speeds. Online business will become a very real possibility for everyone from the home entrepreneur to large organization trading online. There is potential to host data centres, ground stations to help relay large capacity internet across the globe and many other communications related services.

The Role of the regulator

The EHRC welcomes the idea of a Regulator and in general believes that the role and the appeals procedure will enhance and protect human rights. The EHRC especially welcomes the accountability and transparency arrangements which do likewise.

Para 3.38 lists the additional skills that may be required; as well as economists, engineers etc. there will also be a need for Human Rights input/advice.

The EHRC is concerned about the reporting arrangements and the potential conflict of interest in the Attorney General acting as line manager and temporary Regulator. The Attorney General is the Governments lawyer, there to advise Government but also to act as its advocate.

What if SHG wanted something and the Regulator wanted something which conflicted with that?

Conclusion

The EHRC recognizes the hard work and research that has gone into this policy and believes that access to a faster and hopefully cheaper internet system that everyone can afford, will increase people's access to their rights especially freedom of expression, freedom of association and the right to development. The EHRC recommends that the reporting lines for the regulator be reconsidered and that a human rights compliant solution is found to replace section 3.3.11. The EHRC cannot emphasize enough how important robust data protection legislation is in order to protect the public's right to private and family life.

⁵ WDR16-BP-Exploring-the-Relationship-between-Broadband-and-Economic-Growth-Minges.pdf