Mainstreaming Human Rights in the Work of the IGF

IGF Workshop - 11.30 am, 5th December (Day 3), Room 5.

The aim of this workshop is to explore challenges and opportunities for embedding international human rights standards in the underlying norms and shared principles of internet governance. The focus will be on strategies for mainstreaming rights standards in all internet governance policies, processes and activities. According to this approach, rights should not be seen as a stand-alone issue within internet governance, but rather as integral to all discussions and policy processes.

The workshop will take the form of an inclusive discussion amongst all participants. Rather than having formal panellists in the traditional format, we are inviting a number of stakeholders to make short, concise contributions and comments as part of an interactive debate. Discussants include representatives from the dynamic coalitions, including the coalitions on:

- Accessibility and Disability (Gabriela Barrios)
- Access to Knowledge (Lea Shaver)
- Framework of Principles for the Internet (Gurumurthy Kasinathan)
- Internet Bill of Rights (Shaila Mistry)
- Linguistic Diversity (Viola Krebs)
- Privacy (Ralf Bendrath)

The discussion will also include contributions from a range of other experts in the wider internet governance community including Peter Hellmonds (Head of Corporate Social Responsibility, Nokia Siemens Networks), Miriam Sapiro (President, Summit Strategies International), Shahzad Ahmad (Bytes For All), Jan Malinowski (Head of Media and Information Society Division, Council of Europe) and Chat Garcia Ramilo (Coordinator, APC Women's Programme).

The workshop will be moderated by Andrew Puddephatt, Director of Global Partners and Associates.

This workshop is being organised by Global Partners and Associates, in coordination with the Dynamic Coalition on an Internet Bill of Rights. We would like to invite representatives from all stakeholder groups to contribute to the discussion, helping to identify the main challenges and opportunities for incorporating human rights standards into internet governance and to formulate practical strategies for moving forward.

This workshop will be captioned using Communication Access Realtime Translation services provided by Caption First.

For more information, please contact lisa@global-partners.co.uk

http://internet-bill-of-rights.org
http://www.global-partners.co.uk
http://www.freedomofexpression.org.uk

Mainstreaming Rights in the work of the IGF

IGF Workshop - 11.30 am, 5th December, Room 5.

1) Introduction (5 mins)
- Andrew Puddephatt, Global Partners and Associates (moderator).

2) Can the dynamic coalitions act as vehicles for mainstreaming rights? (30 mins)
- How are human rights issues relevant to the dynamic coalitions?
- Do they use rights standards in their work at the moment?
- What are the main challenges and opportunities that they face in doing so?
- Questions and discussion

Main discussants:
- Accessibility and Disability (Gabriela Barrios)
- Access to Knowledge (Lea Shaver)
- Framework of Principles for the Internet (Gurumurthy Kasinathan)
- Internet Bill of Rights (Shaila Mistry)
- Linguistic Diversity (Viola Krebs)
- Privacy (Ralf Bendrath)

3) Challenges and opportunities for mainstreaming human rights in policy making: perspectives from different stakeholder groups. (30 mins)

Main Discussants:
- Peter Hellmonds (Nokia Siemens Networks)
- Miriam Sapiro (Summit Strategies International)
- Jan Malinowski (Council of Europe)
- Shahzad Ahmad (Bytes For All)
- Chat Garcia Ramilo (Association for Progressive Communications)

4) Discussion and practical suggestions for moving forwards. (20 mins)

5) Conclusions (5 mins)

Mainstreaming human rights in the work of the IGF

IGF Workshop - 11.30 am, 5th December, Room 5.

This document contains some brief notes that are relevant to the workshop. They are intended to act solely as background information to form the basis for discussion and reflect the opinion of the author.

Internet governance has been defined 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."*

The aim of this workshop is to explore challenges and opportunities for embedding international human rights standards in the underlying norms and shared principles of internet governance.

Human rights and global governance

Whilst many global governance institutions are struggling to adapt to changing realities in the global environment, the international human rights system has 'thickened' considerably since 1945 in both the definition and enforcement of rights standards. As an internationally accepted set of moral standards which are rooted in international law, human rights are well placed to serve as a framework to guide the ethical and moral dimensions of global governance.

Human rights and internet governance

Signatories to the WSIS Geneva Declaration and Tunis Agenda reaffirmed their commitment to upholding human rights as enshrined in the Universal Declaration of Human Rights. This is particularly important due to the tremendous opportunities and challenges that the evolution of the internet is presenting for human rights. For example, the internet has unleashed new opportunities for us to exercise the right to freedom of expression and expand its positive dimensions such as accessing information and participating in public debate. However, the increasing sophistication of mechanisms for online monitoring, censorship and filtering of information represents a significant challenge.

Mainstreaming human rights in internet governance

If internet governance is to be rooted in human rights standards, it is essential that all policy processes take rights into account. Policy and activity should never violate human rights standards. Where possible, it should advance and expand them. This process of considering the implications that policy and practice has for human rights will also help to strengthen the human rights system, ensuring that rights standards and enforcement mechanisms are relevant to the rapidly evolving global communications environment.

The Global Partners Freedom of Expression Project has defined policy principles for each of the broad "layers" of the communications environment, from infrastructure through to content (see diagram). Partners of the project believe that these principles must be upheld in order to build communications networks that support human rights. The principles cover a diverse range of communications policy issues, from interoperability of networks to protecting service providers from being liable for content. This model is one attempt to develop a framework for mainstreaming rights in communications policy work, making the links between policy and rights issues. We are interested in hearing feedback about this approach, and in discussing other approaches to mainstreaming rights in communications policy such as the Global Network Initiative and the APC Charter.

Using the human rights framework as a tool for decision makers

The international human rights system is made up of international treaties and agreements, as well as guidance on how to interpret rights and balance them against each other. This framework can help decision and policy makers to manage risk through fairly and objectively mediating between competing claims between individuals and groups, and through balancing the rights of one person against the needs of the wider community. Importantly, the human rights framework can help to ensure that decisions are made objectively and take into account the effect on all stakeholders involved.

Practical strategies for moving forwards

This workshop will discuss practical strategies for ensuring that international rights standards are upheld within internet governance processes and policies from the bottom up.

These could include:
- More research to identify the links between specific internet governance issues and human rights.
- Enhancing collaboration between people working on rights issues at the IGF.
- Exploring how the dynamic coalitions can act as vehicles for mainstreaming rights standards, including defining how rights are relevant to their work.
- Examining how civil society, government and business stakeholders can use human rights as a framework for decision and policy making.
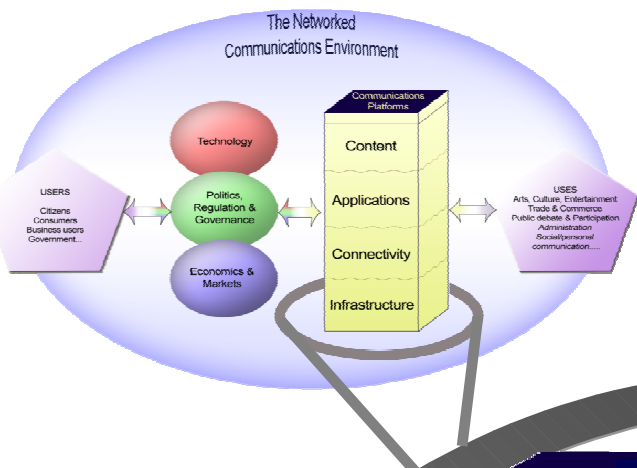
Lisa Horner
November 2008
Contact: lisa@global-partners.co.uk
http://www.freedomofexpression.org.uk
http://www.global-partners.co.uk

Freedom of Expression Project Model: Policy principles for each communications layer in the networked environment.
See www.freedomofexpression.org.uk

COMMUNICATIONS PLATFORMS

CONTENT LAYER

a) The right to **freedom of expression** should be protected. The expansive definition of Article 19 of the ICCPR should be used which includes positive rights and associated responsibilities.

b) The range of content available should be **diverse**, representing the whole spectrum of cultures, interests and knowledge.

c) The objective of intellectual property and licensing agreements should be to balance respect for the **rights of creators** with the need for maximal **creativity and innovation**.

APPLICATIONS LAYER

a) **Gatekeepers of content should be transparent** about the norms and protocols used to select content.

b) **Service providers should not be held liable** for content they help users access.

c) Companies and organisations with access to user data should adhere to transparent privacy policies that protect **privacy rights** as established in international human rights law.

d) People should have access to the means of developing **new applications tailored to meet specific needs**, for example through open source software development.

CONNECTIVITY AND CODE LAYER

a) Communications infrastructure and protocols should be **interoperable** whenever possible.

b) **Protocols** governing access to public content should enable access for all people who want and need it.

c) Networks should be **'neutral'** in the sense that the flow of content should not be subject to undue or arbitrary discrimination for monetary, cultural or political reasons. Controls should not be embedded in networks themselves.

PHYSICAL LAYER

a) All people should have **affordable and equitable access** to the means of receiving and disseminating opinion, information and culture.

b) Regulation to achieve equitable access should be **tailored to local conditions** and should be flexible, subject to ongoing evaluation and review.

NOTES FROM WORKSHOP PARTICIPANTS

Access To Knowledge: Human Rights Approaches
Workshop contribution from Lea Shaver (A2K Programme Director, Information Society Project, Yale Law School)

The Access to Knowledge community probably has a less-developed human rights approach than some of the other dynamic coalitions. Many of our member organizations do advocacy on rights-related topics, but not necessarily within the legal or institutional framework of international human rights norms. For example, the Electronic Frontier Foundation focuses on issues of privacy and freedom of expression, but framed in the paradigm of "civil liberties" rather than "human rights," with a focus on US constitutional law rather than international norms. Many A2K organizations do work relevant to the right to health as impacted by patents, and the right to education as impacted by copyright, but this work is more likely to be expressed in terms of "development goals" or "human needs" rather than "human rights."

Some members of the A2K dynamic coalition, however, have begun to make more explicit human rights connections. The organization 3D has long used the human rights frame in its advocacy, including advocacy on intellectual property and other A2K issues related to trade. Several scholars at Yale Law School are also focusing on developing a human rights approach for access to knowledge issues. This includes emphasis not only on the UDHR Article 19 freedom of expression, but also the Article 27 rights to cultural participation and access to science and technology. The right to health and right to development offer additional points of intersection, as does the right to education in the context of copyright on the Internet. A recent A2K conference featured a panel examining the intersection between human rights and access to knowledge.

However, many members of the A2K community remain unpersuaded or even concerned about the appropriateness of a human rights framework for our advocacy. We are accustomed to hearing the term "rights" used to describe intellectual property entitlements that often seem as barriers to our goals. Is intellectual property a human right? This uncertainty has led many in the A2K community to conclude that human rights is an unfriendly terrain for our issues. Notably, the A2K community pushed (successfully) for a "WIPO Development Agenda" rather than a "WIPO Human Rights Agenda." Can a human rights approach offer advantages for our work? Or is the human rights framework tied to a narrow conception of freedom of expression that cannot challenge the intellectual property status quo, or worse, seems to reinforce it?

Further reading:

Molly K. Beutz, Protecting Rights Online, forthcoming Yale Journal of International Law, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1295448 (examining differences and common ground between the human rights and A2K agendas in Internet governance).

Molly K. Beutz, "Intellectual Property Rights and the Right to Participate in Cultural Life," Submission to the Committee on Economic, Social and Cultural Rights, 31 October 2008, at: http://dotank.nyls.edu/institutewhitepapers/CESCR_Submission.pdf.

Caterina Sganga and Lea Shaver, "Access to Knowledge and the Right to Take Part in Cultural Life, Submission to the Committee on Economic, Social and Cultural Rights, October 2008, http://www.law.yale.edu/documents/pdf/ISP/article15.pdf

3D: Trade, Human Rights, Equitable Economy, Presentation to the Working Group on the Right to Development (urging consideration of the WIPO Development Agenda), http://www.3dthree.org/pdf_3D/3DpresWGRD2008.pdf.

BACKGROUND NOTES ON THE DYNAMIC COALITIONS

These notes are drawn from the websites and progress reports of the dynamic coalitions.

ACCESSIBILITY AND DISABILITY DYNAMIC COALITION
(http://www.itu.int/themes/accessibility/dc/)

ITU organized the workshop "Making Accessibility a Reality in Emerging Technologies and the Web" during the 2nd meeting of the Internet Governance Forum (IGF), Rio de Janeiro 12-15 November 2007. The event brought together experts from around the world to examine the best way to resolve accessibility needs in ICT and emerging technologies. As a result ITU proposed to the IGF on 26 February 2008 the establishment of a Dynamic Coalition on "Accessibility and Disability".

Users of telecommunications and information technology have a varied capability of handling information and the controls for its presentation. The source of this variation lies in cultural and educational backgrounds as well as in age-related functional limitations, in disabilities, and in other natural causes. Although new ICTs have provided substantial benefits to modern society, there are still a large number of people who cannot enjoy them due to the lack of accessibility features. This problem is exacerbated by the Internet revolution. It is now common place to encounter phrases like e-health, e-education, e-trade, e-finance or e-medicine, describing important services that are entering into the everyday lives of ordinary people. So it is imperative that everyone has equal access to these ICT services on the Internet.

ACCESS TO KNOWLEDGE
(http://www.a2k-igf.org)

The purpose of the A2K@IGF Dynamic Coalition is to support and expand Access to Knowledge (A2K) and promote freedom of expression in the realm of information and communication technology.

The A2K@IGF Dynamic Coalition will focus on the following issues:
1. Developing best practice norms for:
    a.   limitations and exceptions to copyright, patents and other intellectual property rights;
    b.   third-party liability for intellectual property infringements;
    c.   implementation of anti-circumvention provisions in 1996 WIPO "Internet Treaties" and other international agreements;
    d.   on-line access to scholarly research, government funded research, and essential documents such as legal information;
    e.   the support of alternative business models for creating knowledge goods, including free and open source software, or open scholarly and scientific journals; and
    f.   protecting freedom of expression and cultural diversity in issues relating to intellectual property rights.

2. Coordinating participation and awareness of A2K activities such as the WIPO Development Agenda including the proposal for an Access to Knowledge Treaty at WIPO.

FRAMEWORK OF PRINCIPLES FOR THE INTERNET

The dynamic coalition on 'Framework of Principles for the Internet' has the objective to understand, influence and contribute to the processes of making international laws, conventions, treaties etc in the area of Internet Governance – both of the soft law and hard law varieties – incorporating the multi-stakeholder principle. For this purpose, the coalition will explore the possibility of civil society taking the lead in collaboratively developing some overall normative principles for the Internet which can underpin such international processes, and/or themselves be adopted through a framework convention kind of a process.

INTERNET BILL OF RIGHTS
(http://internet-bill-of-rights.org/en/)

Who we are
"Internet Bill of Rights" (IBR) is a Dynamic Coalition that has set out to make Rights on the Internet and their related duties, specified from the point of view of individual users, a central theme of the Internet Governance debate held in the IGF context.

Vision
The Bill of Rights platform wants to be a decentralized, distributed, collective effort to advance Internet rights in all their dimensions, not only by promoting specific initiatives, but also by providing a conceptual and practical framework to support this effort. It also aims to raise the awareness on the importance of this endeavour to curtail the existing digital divides, to ensure the collective participation of all stakeholders, and to support an inclusive and solid development of the Internet which respects cultural and social diversities but adopts the global public interest as its main objective.

Mission
Responding to the IGF's mandate for multi-stakeholderism, the Coalition welcomes and indeed explicitly seeks participants from all stakeholder groups, including individuals, civil society groups, the academic sector, governments, intergovernmental organizations, the technical community, and the private sector.

Our mission is as follows:
- Bring awareness and promote fundamental human and civil rights and liberties on the internet;
- Identify ways in which these rights and liberties can be translated on the Internet, and evaluate the applicability of existing legislation;
- Promote the addressing of issues of human and civil rights in policy-making proposals by all stakeholders;
- Promote the specification of how the existing rights can be applied and what they practically imply in the context of new ICT technologies;

- Identify ways in which new rights and principles deriving from the innovations caused by the Internet can be defined, agreed and promoted when necessary;
- Seek to identify measures for the protection and enforcement of these rights;
- Seek to engage the various stakeholders within the Coalition's mission and express the Coalition's interest to work with them.

We believe that a lot of work done for and around the IGF is thematically overlapping. Therefore the IBR coalition wants to be first and foremost a platform facilitating collaboration and dovetailing the work of the Dynamic Coalitions especially as they relate to Rights on the Internet. It wants to build a collection and showcase for the federated results of all the Dynamic Coalitions from the IGF. It sets out especially to promote a process and instruments to frame and enforce Rights in the Internet.

We strongly believe that the Universal Declaration of Human Rights (UDHR) is the basis for our work and we should build on all the existing work that has been done in this field. We therefore ask you to contribute to the collection of information and links to documents, projects and organizations we have started in our wiki, and contribute the results of this work to the platform. Hence the Bill of Rights Platform will in fact be made of a set of several documents, some existing, some new - some substantial, some procedural or related to enforcement.

LINGUISTIC DIVERSITY
(http://maayajo.org/spip.php?article27)

The Dynamic Coalition for Linguistic Diversity is one of the Dynamic Coalitions recognized within the Internet Governance Forum (IGF) which was constituted by the World Summit on the Information Society (WSIS). The **World Network for Linguistic Diversity MAAYA** is presided by his excellency Adama Samssékou, President of the PrepCom of the WSIS Geneva Phase. Under the guidance of its president, the MAAYA network is acting as coalition coordinator. The goals of the coalitions are stemming from recommendations 29 and 53 of the Tunis Agenda in regards to Internet Governance, which are:

*29. We reaffirm the principles enunciated in the Geneva phase of the WSIS, in December 2003, that the Internet has evolved into a global facility available to the public and its governance should constitute a core issue of the Information Society agenda. The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations. It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, **taking into account multilingualism**.*

*53. We commit to working earnestly towards **multilingualization of the Internet, as part of a multilateral, transparent and democratic process**, involving governments and all stakeholders, in their respective roles. In this context, we also support local content development, translation and adaptation, digital archives, and diverse forms of digital and traditional media, and recognize that these activities can also strengthen local and indigenous communities. We would therefore underline the need to:*
- *Advance the process for the introduction of multilingualism in a number of areas including domain names, e-mail addresses and keyword look-up.*
- *Implement programmes that allow for the presence of multilingual domain names and content on the Internet and the use of various software models in order to*

fight against the linguistic digital divide and to ensure the participation of all in the emerging new society.

- *Strengthen cooperation between relevant bodies for the further development of technical standards and to foster their global deployment.*

**PRIVACY
(http://wiki.igf-online.net/wiki/Privacy)**

Origin, Purpose, and Working Structures
The IGF Dynamic Coalition on Privacy was established at the first IGF annual meeting in Athens in November 2006. In coherence with the IGF mandate, its purpose is to foster and facilitate public policy debate on privacy issues in the digital age. The Coalition has produced a detailed FAQ page (available at the coalition wiki) to describe its activities and working methods. Its work is coordinated through
- a mailing list at http://lists.apc.org/cgi-bin/mailman/listinfo/privacy-coalition
- a public wiki at http://wiki.igf-online.net/wiki/Privacy

Participants in the Coalition have met in Geneva in February 2007, in Montreal in May 2007, and at the IGF in Rio de Janeiro in November 2007. Between meetings, work was coordinated on the mailing list, and individual members have been meeting at relevant privacy-related conferences throughout the world.

Membership Development
The Coalition is still growing slowly and now gathers participants from more than seventy entities (see the full list at the coalition wiki). The coalition has members from all world regions as well as from governments, industry, international organizations, civil society, and data protection authorities.

Participation is open to any individual interested in supporting the purpose of the Coalition. In order to facilitate broad participation and open discussion, the views expressed by participants are not considered as official statements by their respective entities, unless explicitly stated. The biggest challenge still seems to be the active involvement government representatives, even with the previous sentence as a "shield" that was introduced at the setting-up of the coalition to make their participation easier. Outreach efforts to attract new participants, especially from the developing world, have been difficult, because of the lack of funding for coalition activities, including the important face-toface meetings.

Themes and Activities in 2008
The draft synthetic issue papers on privacy and identity, privacy and development, and privacy and freedom of expression have been further refined. These and other documents are available at the coalition wiki site.

At the meeting at the IGF 2007, participants also agreed that the Coalition work should go beyond the original three themes discussed in Athens in 2006, including conceptual work on
- the difference between privacy offline and online
- privacy and surveillance
- the value of privacy and the "nothing to hide" argument in the web 2.0 context.

Follow-up has been slow, though, mainly for the reasons mentioned above. There have been no tangible outcomes yet, though members of the coalition have continued to cooperate individually on these issues.

The Coalition members at the IGF 2007 also agreed there is a need to build bridges
- between technologists and policy-makers
- between privacy community and development policy / developing countries
- between experienced actors and newcomers
    o on privacy practices, processes, etc.
    o on case studies of privacy breaches and how to deal with them.