**National Research University Higher School of Economics**

**Conflict Management & Human Rights on the Internet**

**Background Paper**

#governance #user\_agreements #humanrights #conflicts #communities

**Statement of purpose**

Today, when the most of the content is user-generated, conflicts on the Internet, and conflicts between users, are unavoidable. Serious conflicts could affect users’ rights, especially freedom of expression and information. In response, national jurisdictions impose difficulties on different websites. We should ensure a balance between the control of information (like censorship) and minimizing harm caused by internet-based conflicts.

Conflict management in the Internet offers a structuration of rights: the right to protection of privacy, intellectual property rights, the right to personal dignity, protection against fraud network users. There are interesting aspects of the understanding of the conflict (it is the nature of inter-territorial and inter-jurisdictional), procedural mechanisms for conflict resolution, preventive measures for conflict prevention. In addition to the legal principles and rules like the rule of law, justice, etc. We will apply specific guidelines proposed by the Internet communities.

For that reason, we should reconsider user agreements of the web resources for human rights protection and conflict management. In case of the internet-based conflict user should be protected from threats and illegal behavior of the other users. This is the one of the most complex issues of the Internet Governance, when different legislations and different jurisdictions applied. Clear rules must be developed to ensure realization of users’ rights on the Internet in case of conflicts.

We can’t imagine the network which can be effectively self-governed without imposing any rules of behavior. Likewise, it is impossible to imagine a lack of laws in real human society, even an ideal democratic society. In such a society, effective implementation of human rights will be impossible.

In terms of public opinion internet is still a self-governing social environment, and the introduction of any rules for it is perceived negatively. In the context of freedom of speech and the right to access information on the Internet, any attempt to impose such rules and observe them called ‘censorship’.

Existing standards of user agreements on jurisdiction substantially complicate lives of users from countries other than the one in which the resource is registered, makes it difficult or virtually impossible to protect the rights of those users legally. Even from the standpoint of civil law, presupposes the equal rights of contractors, such contractual inequality is questionable. If we consider that, by using of these resources, people could realize their constitutional freedom of expression; they become members of the constitutional relationships, as well as they could incur criminal liability for hate speech, threats, and conflicts on the Internet. It is clear that website user and the author of the custom content in this case states as figure whose rights are not really protected by the law.

**Relevance to Internet Governance, IGF themes and subthemes**

The subject lies on the subtheme on human rights and the Internet, the Internet and jurisdiction, and regulation on the network communities.

We must outline positive aspects of self-regulation of web resources as a separate level of Internet Governance:

– freedom of actions of individuals realizing information rights on the Internet, and providing their observance;

– possibility of diversification of regulatory policy, depending on the specific resource is the Internet;

– administration of Internet resource and its community of its users is voluntarily interested in compliance with user agreement of web resource;

– establishment of a competent community of users of Internet resources and their corporate culture with ethical norms, customs and rules of conduct.

Among disadvantages of self-regulation we could see the following:

– apparent optionality of user agreements for users, easy circumvention of the rules and imposed sanctions by registering multiple accounts;

– quality of protection of information rights on the Internet depends on the legal and information culture of users, ways of interacting among themselves and with the administration of the resource;

– possibility of subjective approach to the violation or compliance with user agreements, depending on the policy of the particular resource;

– if the resource is the Internet registered in a foreign jurisdiction, it could lead to a conflict of jurisdictions, which is reflected in the non-applicability of translated versions of user agreements, recognized by informal;

– provided user agreements seems to be not necessarily for the administration of the resource, or easy to change them unilaterally, without any consulting to website users community.

**Review of the current situation.**

Among others, the Internet Corporation for Assigned Names and Numbers (ICANN)which deals with the management systems of unique identification of the internet at a global level, including ensuring stability and security of such systems.

ICANN proclaims basic values, including protection and enhancement of stability, reliability, security and global interoperability of the internet, introduction of mechanisms for the development of an open and transparent policy that support informed decision-making based on reliable information and expert advice and provides for the participation of most stakeholders in the development of such policy. ICANN promotes the impartial and unbiased decision-making, fair and just solutions through the use of documented policy guidelines. The organization performs prompt actions to meet the internet requirements that constitute the part of decision making process, with due account of the information and data from the parties involved

International Federation of Library Associations and Institutions (IFLA), which represents the interests of library users, is also involved in internet governance to ensure the right to access information in the public domain. IFLA opposes any measures that could lead to exerting control over the access to information and restricting the freedom of expression on the part of commercial and government agencies or by any individual organization

In Russia, there are also civil society organizations engaged in the elaboration of programs and policies aimed to develop internet governance, find solutions to problems relating to the freedom of expression and information accessibility rights in the internet. According to the Charter of the Russian Public Center of internet Technologies (ROCIT), the Center aims its activities to unite persons interested in Russia’s accession to the global information space through the spread of technologies based on the use of the internet as a global computer network.

**List of questions to be discussed and/or to be asked to key players**

1. How internet-based conflicts could be classified?
2. Are internet-based conflicts dangerous for the real world?
3. How internet-based conflicts could affect ‘real-life’ human rights?
4. Who is responsible for resolution of the Internet conflicts?
5. Are User Agreements effective for the resolution of the internet-related conflicts?
6. How to ensure balance between freedom and responsibility in resolving conflicts?
7. What are the best operational principles for the respectable internet-community?
8. What is the role of governments in resolving conflicts on web resources?
9. What jurisdictional model could be applied to specific web resources and communities?
10. How to make user agreements legally strong and valuable?

**Description of Expected results**

**1. The need to streamline regulation.** In our point of view, following a three-tier division of Internet governance (supranational, national, and community level) in order to realize freedom of expression and the right to access information, it is necessary to provide necessary conditions for participation of online communities in the governance on separate web resources. For that reason, it is required to streamline regulation of the rules of behavior on these resources, and introduce strict system of monitoring.

**2. Revaluation of the legal nature of user agreements.** It is possible to challenge the civil-law nature of the user agreements. The realization of the freedom of expression and the right to access information on the Internet is undoubted constitutional law value. Civil law cannot settle number of public law by nature of social relations connected with the implementation of human rights and freedoms, if freedom of expression on the Internet could be considered in this context. According to Article 9 of the Civil Code of Russia, the refusal of citizens and legal entities from exercising their rights does not entail the termination of those rights, except for what is provided by law. In accordance with article 168 of the Civil Code, a deal which doesn’t meet requirements of law or other legislation, is negligible. Such deals may include transactions that illegally limit realization of the freedom of expression and the right to access information guaranteed by the Constitution of the Russian Federation and provisions of the international law.

**3. New understanding of jurisdiction in cyberspace.** Cyberspace should be treated as separate jurisdiction with their own rules, which reflect its unique character. Internal rules were designed as horizontal, in which the subjects of law are standing as their creators. Consequently, there is need for a new understanding of the Internet governance and territoriality in cyberspace.

**4. Establishment of the web communities.** In social networks and other sites hosting user-generated content, user agreements do not contribute to the establishment of competent user communities. In this case, the term ‘competent’ includes such community of users, which user agreements have links to legislation and universally recognized principles and rules of the international law, as well as clear procedures for resolution of disputes by the appointment of responsible persons in an open and democratic manner. in this context it is also required to increase level of legal and information culture of users and administration of web resources.

**5. Revision of the standards of responsibility.** Rules on liability in the Internet, which existed in the era of ‘static’ web, should be reconsidered, because of the significance of the user-generated content. Resource owner is often just provides technical conditions for the activities of users. Thus, the responsibility of the owner of the resource is his need to establish rules of the website, to draft such rules for discussion of interested stakeholders, and comply with the conditions for their implementation. These rules shall not conflict with the law and impede the realization of the freedom of expression and the right to access information on the Internet. The administration of the resource is an intermediary between the owner and resource users. Its main task is monitoring of the implementation of user agreements, avoiding abuse of the freedom of expression and the right to access information on the Internet.