GLOBAL INFORMATION SOCIETY WATCH 2016

Economic, social and cultural rights and the internet

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Economic, social and cultural rights and the Internet technical community: A snapshot

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Background

This report looks at Internet technical community (or I-star)[1] organisations and the extent to which they consider the human rights framework in their work. It builds on the Association for Progressive Communications (APC) issue paper *How the technical community frames the Internet and economic, social and cultural rights*.[2] The I-star organisations are the main entities concerned with Internet[3] architecture, protocols, names and numbers, and each has operational policies and guidelines to manage these resources. These resources form the basis of the Internet: the numbers, along with the protocols that use them, make up the critical infrastructure resources without which the Internet could not function.

Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that:

> Each State Party to the present Covenant undertakes to take steps, […] especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means […].

Of course the I-star organisations are not governments. Neither are they international governmental organisations nor are they regulators, though some of them are sometimes confused for such.

When trying to define the responsibilities of the non-state actors, the UN Guiding Principles on Business and Human Rights is the next touchstone:

> These Guiding Principles are grounded in recognition of:
> (a) States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
> (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
> (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.[4]

From an overview perspective, (b) and (c) above are applicable to the I-star organisations. Yet these organisations, essentially NGOs, are not governed in the same way as businesses nor by the profit-making incentives that motivate business. While work is ongoing in organisations like Internet Corporation for Assigned Names and Numbers (ICANN) to see if, and how well, these principles can be applied within Internet management and governance, they are not an easy fit.

While not duty bearers in a classical sense, the centrality of Internet technology in much of the work being done to enable ESCRs gives I-star organisations a responsibility that goes beyond the responsibilities borne by companies and individuals. An argument that originated with Broeders states that "we must find ways to continue guaranteeing the overall integrity and functionality of the public core of the Internet." He argues that the best way to do this is by declaring the technical infrastructure of the Internet – which includes the Internet, or TCP/IP protocol suite,[5] numerous standards, the domain name system (DNS), and routing protocols – a common public good.[6]

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1   The technical organisations, including the Internet Society, the Internet Engineering Task Force (IETF), the Internet Corporation for Assigned Names and Numbers (ICANN) and the Regional Internet Registries (RIRs), are often referred to as I-star, sometimes written I*.

2   Doria, A. (2015). *How the technical community frames the Internet and economic, social and cultural rights*. *APC*. https://www.apc.org/en/pubs/how-technical-community-frames-Internet-and-econom

3   While it is the policy of the Association for Progressive Communications (APC) not to capitalise "Internet" as a step towards demystifying the term, the author argues that it is a proper name and needs to be capitalised. This report thus follows the author's preference.

4   Office of the High Commissioner for Human Rights. (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (HR/PUB/11/04).www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

5   For a description of the Internet protocol suite see: https://en.wikipedia.org/wiki/Internet_protocol_suite

6   https://www.ietf.org/id/draft-irtf-hrpc-research-00.txt (work in progess)

As a global multistakeholder entity, the Internet and those who serve as its stewards have their responsibilities; responsibilities that are not yet understood explicitly, but which are expressed in various ways. An avenue of research that has opened up recently involves looking at the work done by John Ruggie on the international football association FIFA and human rights for applicability to ICANN. Ruggie's work builds on the Guiding Principles on Business and Human Rights and answers "what it means for FIFA to embed respect for human rights across its global operations."[7] The work of applying this to Internet organisations has yet to be done, but one can assume that there will be parallel and relevant considerations, given some of the similarities between organisations that are not businesses, but are responsible for a major human activity. Of course FIFA is not a multistakeholder organisation, so the organisational elements are quite different. It is possible that it would take similar work, done expressly on guidelines for NGOs that manage common public goods, to define a usable set of guidelines. This work is needed to make the Guiding Principles less about commerce and product chains and more about the work that NGOs do when working with people-centred issues.

The Internet, and access to the Internet, is a major component of any project focusing on ESCRs these days. So any work done with regard to the architecture or protocols of the Internet needs to be seen in the light of its contribution to or impediment of ESCRs. This is also the subject of research being done in the Internet Research Task Force (IRTF),[8] though that work is still focused on civil and political rights (CPRs) such as expression and assembly, and has not yet moved on to work on ESCRs.

In 2015 the paper *How the technical community frames the Internet and economic, social and cultural rights*[9] discussed I-star organisations and the fact that their missions rarely include human rights, whether CPRs or ESCRs. As the paper suggested, however, the lack of explicit mention did not mean that the concerns were absent or ignored; it just meant that it was rarely an explicit goal of the technical organisations, though it could be understood as tacit in the mission of the various organisations.

This report is based on personal observations, often as a participant, in the organisations described. Professionally I split my time between

being involved in research in the technical community and participation in APC and other advocacy efforts.

Organisations

The I-star organisations function using a variety of multistakeholder models, each organisation having its own variation of the model, usually developed through the bottom-up activities of its participants.

Internet Corporation for Assigned Names and Numbers (ICANN)

ICANN's bylaws state the following:

> In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets.[10]

ICANN is skittish when it comes to human rights. Not only the corporation itself, but many of those who participate in its policy making. Some are afraid that it will interfere with their business plans, others are afraid that it may make their companies liable for their behaviour. For example, ICANN is concerned about the effects on sovereign considerations when assigning country code top-level domains, which are organised along national lines. During the recent work done on the transition of stewardship of the Internet Assigned Numbers Authority (IANA), the technical organisation that maintains the databases of critical Internet resources, there was an attempt to include the simple respect for human rights as one of the organisation's core values. After extensive discussion, this was not fully possible. Instead they put in the shell of a bylaw, one that only gets activated after a framework of interpretation is created to explain what is meant by respect for human rights at ICANN. The Universal Declaration of Human Rights (UDHR) is not good enough, neither are the International Covenants on CPRs and ESCRs good enough, and the Ruggie UN Guiding Principles are anathema. None were good enough because of fears, uncertainty and doubt that they might be used inappropriately to bring suit against the organisation or be used to cut into profits or to disturb intellectual property "rights". Often these arguments are cast as a necessity to prevent ICANN

7   Ruggie, J. (2016). *"For the Game. For the World." FIFA and Human Rights*. https://www.hks.harvard.edu/content/download/79736/1789834/version/1/file/Ruggie_humanrightsFIFA_reportApril2016.pdf

8   https://irtf.org

9   Doria, A. (2015). Op. cit.

10 Bylaws for Internet Corporation for Assigned Names and Numbers. https://www.icann.org/resources/pages/governance/bylaws-en

mission creep, and though there are some genuine concerns about expanding the scope of ICANN's mission, this was not always the case.

The new bylaw recently adopted by ICANN requires that there be respect for human rights in the actions it takes:

> 1.2 (b) viii .... within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

Some wanted a bylaw that just dealt with freedom of speech – but there was serious concern that rights not be cherry picked and that all rights be included, which would include ESCRs. On the other hand the concern about ICANN mission creep, and any application of human rights that would be content-related (e.g. restrictions of freedom of expression),[11] was strong. Any rules concerning content are specifically defined as outside the mission of ICANN:

> 1.1 (c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.

ICANN conversations have never gotten so far as to discuss ESCRs specifically. One can assume that any commitment to respect human rights would need to include respect for ESCRs. And it might, as long as it does not call for actions that go beyond the scope of ICANN, i.e. that there should not be any mission creep in support of human rights.

The question then becomes, what aspects of ESCRs are within ICANN's remit? This is a discussion that is ongoing at ICANN. In a sense, ICANN may never do anything direct to support ESCRs, yet can still support ESCRs through its operational activities.

Regardless, the Internet is important to ESCRs and ICANN plays a key role in the Internet and in making it possible for people around the world to gain access. And there are areas where it is fitting that ICANN play a role in helping to secure ESCRs. For example, one of the major efforts that ICANN has engaged in is the deployment of Internet naming that uses international domain names (IDNs) that are expressed in scripts other than ASCII, and languages other than English. Giving people access to the Internet in their own languages is one of the major underlying requirements for ESCRs on the Internet. ICANN has a peculiarly named programme, Universal Acceptance, dedicated to working with developers, vendors, Internet service providers (ISPs) and all other intermediaries to make sure that the Internet not only works in ASCII/English, but works in the diversity of scripts and languages. If people cannot use the Internet in languages and metaphors that they understand, it cannot be fully supportive of any of the ESCRs. Access includes the ability to understand the content.

Internet Society (ISOC)

The vision of the Internet Society is that "the Internet is for everyone." Its mission is "to promote the open development, evolution, and use of the Internet for the benefit of all people throughout the world."[12]

Unlike ICANN, ISOC considers human rights relevant to its mission. ISOC projects centre around the promotion of technology, access, the creation of Internet exchanges (IXPs) for the localisation of data, and training for network operations. Its governance work tackles many issues, including access, children and Internet, online identity, Internet addressing including IPv6, and net neutrality.[13] It works within all the major Internet governance bodies, not only providing excellent analysis to the community, but by providing funding and cooperation on projects that increase access to the Internet.[14] It is also a significant contributor to global Internet education and policy development:

> We focus on local actions and global diversity, bringing together Members, Chapters and partners to enable open and widespread access to one of the greatest avenues for human innovation, creativity, and expression in recent history: the Internet. Our Regional Bureaus lead the Internet Society's mission. They undertake and support initiatives in each of the regions and advise Internet Society departments on policy, politics, technology and culture-related issues which impact our work.[15]

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11 Or First Amendment rights as it is often termed in US-based discussions.

12 www.Internetsociety.org/who-we-are/mission

13 www.Internetsociety.org/what-we-do/Internet-issues

14 www.Internetsociety.org/what-we-do

15 www.Internetsociety.org/what-we-do/where-we-work

While ISOC does not specifically focus on ESCRs, it focuses on the enabling technologies that help to realise ESCRs. There is, however, a direct connection to ESCRs in the number of educational programmes ISOC provides on best practices and technical aspects on the creation of exchange points. ISOC efforts have been critical in establishing IXPs throughout the developing world, increasing local access within these regions of the world.

Internet Engineering Task Force (IETF)

As an engineering group the IETF is an independent standards development organisation. Its procedures are, however, accountable to the ISOC Board of Trustees.

The mission of the IETF, though protocols and architecture improvement, is "to make the Internet work better. And when the Internet works better, everyone benefits."[16] The idea that everyone benefits, including with respect to ESCRs, is a fundamental belief of those who work on Internet protocols and architecture. In a sense, the IETF provides the blueprint for the Internet infrastructure that allows for all the benefits of Internet communication. In so far as ESCRs rely on Internet technology for implementation, the IETF has a role in defining the technical capabilities that enable those technologies and applications. Without the continual development of new capabilities through new and improved interoperable protocols, the Internet could not progress in its outreach to the world in the service of ESCRs.

Internet Research Task Force (IRTF)

The IRTF's role is defined as follows:

The Internet Research Task Force (IRTF) promotes research of importance to the evolution of the Internet by creating focused, long-term Research Groups working on topics related to Internet protocols, applications, architecture and technology.[17]

Two groups are specifically working on human-rights related issues: the Global Access to the Internet for All Research Group (GAIA) and the Human Rights Protocol Considerations Research Group (HRPC).

GAIA's aims include:

- To create increased visibility and interest among the wider community on the challenges and opportunities in enabling global Internet access,
in terms of technology as well as the social and economic drivers for its adoption.

- To create a shared vision among practitioners, researchers, corporations, non-governmental and governmental organisations on the challenges and opportunities.

- To articulate and foster collaboration among them to address the diverse Internet access and architectural challenges (including security, privacy, censorship and energy efficiency).[18]

GAIA's work grows out of surveys done by ISOC in 2012 that showed that many consider Internet access a human right. Given the persistence of the digital divide, however, Internet access remains unavailable to approximately half of the world's population. In this regard, the work in GAIA contributes directly to the realisation of ESCRs using the Internet.

The HRPC research group focuses on the study of "whether standards and protocols can enable, strengthen or threaten human rights." The three main aims of the research are:

- To expose the relation between protocols and human rights, with a focus on the rights to freedom of expression and freedom of assembly.

- To propose guidelines to protect the Internet as a human-rights-enabling environment in future protocol development (...).

- To increase the awareness in both the human rights community and the technical community on the importance of the technical workings of the Internet and its impact on human rights.[19]

The HRPC is currently working on the release of its first research document explaining linkages between protocols and human rights.[20]

The Regional Internet Registries (RIR)

There are five Regional Internet Registries (RIRs) that manage the distribution of Internet number resources including IP addresses and autonomous system numbers. Each RIR consists of the Internet community in its region.[21] The registries per region are AFRINIC in Africa, APNIC in the Asia Pacific region, ARIN in North America, LACNIC in Latin American and the Caribbean, and RIPE NCC in Europe and the Middle East.

Each RIR is an independent organisation with direct accountability to the Internet community

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16 Alissa Cooper, a member of the Internet Engineering Task Force, celebrating and reflecting on the IANA stewardship transition, 1 October 2016. https://www.facebook.com/alissacooper/posts/10102572226539193

17 https://irtf.org

18 https://irtf.org/gaia

19 https://irtf.org/hrpc

20 https://datatracker.ietf.org/rg/hrpc/documents

21 https://www.nro.net/about-the-nro/regional-Internet-registries

in its region. While they self-coordinate with an organisation called the Numbers Resource Organization (NRO),[22] they are not governed by that body. Likewise, while the number resources they receive are assigned by IANA, there is no oversight in this respect.

The RIRs are tasked with making sure that IP addresses are available, as needed, in their regions. Every device, subnet and network needs at least one IP address, and often times many more. Autonomous system (AS) numbers are used in Internet routing and define routers along the forwarding path. All traffic in the Internet follows a forwarding path. They are a basic component of the routing of data that makes the Internet possible.

In fulfilling their task, the RIRs are responsible to ensure the possibility of spreading Internet technology to all of the world's people. There is no Internet access without IP addresses. There is no new Internet service provider without an AS number. If the digital divide of developing regions of the world is to be removed, the RIRs need to provide this basic addressability, the ability of each person, machine, object or service accessed on the Internet to be directly addressed in a unique manner.

The least well known of the I-star organisations, the RIRs are in many ways the most critical to Internet growth. In recent years, one of the major goals of the RIRs has been the global deployment of IPv6. The current Internet architecture requires that each endpoint, that is each computer or service, have its own address. The original addresses of the Internet, IPv4, have become more difficult to obtain since so few free ones remain for RIR distribution. The RIRs, therefore, have been leading the effort to see that IPv6, with its much, much bigger address space, is deployed globally. While they do a lot of capacity building and engage in many activities, this deployment of IPv6 is quite possibly the most critical thing they do for ensuring that the Internet is accessible, and as a result can be used in the fulfilment of ESCRs.

Other entities

In addition to the organisations listed above, there are other organisations that have not been included in this report. Specifically these are the Institute of Electrical and Electronics Engineers (IEEE),[23] a membership organisation responsible for many of the protocols that are used in the infrastructure sitting under the Internet protocols, and the World Wide Web Consortium (W3C),[24] a membership organisation responsible for many of the protocols and guidelines that run over the Internet architecture and make the web possible. As part of the Internet infrastructure, they too are key to providing an Internet that can be used in the service of ESCRs.

Conclusion

When looking at the ESCRs and looking at global development goals such as the Sustainable Development Goals (SDGs), it becomes clear that access is still the entry point for the realisation of ESCRs online. While the SDGs have largely ignored information and communications technologies (ICTs), analysis done by the International Telecommunication Union (ITU)[25] shows how each of these goals can be enabled by some aspect of ICT and the Internet. Digital Watch puts it this way: "Access to ICTs is part of the Sustainable Development Agenda, which commits to 'significantly increase access to ICTs and strive to provide universal and affordable access to the Internet in least developed countries by 2020' (Goal 9.c)."[26]

Access in this context needs to be defined beyond just the wires and the bits to the house or mobile devices. People need addresses and the RIRs are working to make sure they have them. People need communication in scripts and languages they can understand, and the IETF as well as ICANN are working on this: ICANN's Universal Acceptance programme is an effort make sure that the Internet works not only in ASCII/English, but in the diversity of scripts and languages. People need local information and need to be able to get that information without the need to access their local information through routers in countries on the other side of the world: ISOC is working hard on IXPs to make this local access possible.

The people who work in the Internet technical community organisations genuinely believe in their goal of a single global Internet that reaches all people, making its service accessible to all people, always. This is a first and most crucial step in resolving the digital divide, which in turn leads to enabling ESCRs with the assistance of the Internet.

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22 https://www.nro.net
23 https://www.ieee.org

24 https://www.w3.org
25 WSIS-SDG Matrix: Linking WSIS Action Lines with Sustainable Development Goals. www.itu.int/net4/wsis/sdg
26 digitalwatch.giplatform.org/issues/access

Economic, social and cultural rights and the internet

The 45 country reports gathered here illustrate the link between the internet and economic, social and cultural rights (ESCRs). Some of the topics will be familiar to information and communications technology for development (ICT4D) activists: the right to health, education and culture; the socioeconomic empowerment of women using the internet; the inclusion of rural and indigenous communities in the information society; and the use of ICT to combat the marginalisation of local languages. Others deal with relatively new areas of exploration, such as using 3D printing technology to preserve cultural heritage, creating participatory community networks to capture an "inventory of things" that enables socioeconomic rights, crowdfunding rights, or the negative impact of algorithms on calculating social benefits. Workers' rights receive some attention, as does the use of the internet during natural disasters.

Ten thematic reports frame the country reports. These deal both with overarching concerns when it comes to ESCRs and the internet – such as institutional frameworks and policy considerations – as well as more specific issues that impact on our rights: the legal justification for online education resources, the plight of migrant domestic workers, the use of digital databases to protect traditional knowledge from biopiracy, digital archiving, and the impact of multilateral trade deals on the international human rights framework.

The reports highlight the institutional and country-level possibilities and challenges that civil society faces in using the internet to enable ESCRs. They also suggest that in a number of instances, individuals, groups and communities are using the internet to enact their socioeconomic and cultural rights in the face of disinterest, inaction or censure by the state.

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