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“How to ensure that the Internet remains an open and public forum for exercising freedom of opinion and expression and facilitating other human rights and fundamental freedoms”

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I would like to start with a figure: from July to December 2011, Google received requests from 15 governments around the world to remove content from their services – and this includes also European governments. The Internet has extended new opportunities for strengthening democracy in a way that is unprecedented - at least for the speed of this change. However, it has also created a space that can be used to restrict human rights and fundamental freedoms.

The rapid development of Internet thus comes with both potential problems and gains. It is vital for our freedoms to communicate and associate to address existing temptations to over-regulate Internet content. At the same time, we need to ensure better protection of personal integrity.

In this context, I would like to outline three challenges which require reflection and action.

(1) Internet as the “last haven” for free expression

In various repressive contexts, the challenge consists in developing the Internet as one of the few unrestricted sources of information. Internet often remains journalists’ only free space in case of oppression.

Internet and online media provide new possibilities for individuals to share publicly information which is of concern, such as information about abuse of power, corruption, organized crime as well as human rights violations. It is also a means to promote democratic values and helps to build a well informed and responsible civil society. Internet has thus become an increasingly important tool through which human rights activists can mobilise and advocate for political, social, and economic reform. Social media in particular have played an important role in strengthening freedom of association and freedom of assembly in various contexts (e.g., Tunisia, Moldova, Russia, elsewhere).

However, new ways to block, filter, monitor, and otherwise obstruct or manipulate the openness of the Internet have appeared. In a report on freedom of expression and media freedom in Turkey published last year, my predecessor Thomas Hammarberg noted that some blocking orders in that country appeared to have been issued on grounds not provided for by the Internet Act: for example, because the content of the website was considered to have insulted the Turkish identity (Article 301 of the Criminal Code); or to be in breach of anti-terrorism legislation; or because the content in question was infringing intellectual property rights.

In other instances, resort has been made to various provisions, such as those concerning incitement to racial, national and religious hatred, hooliganism, tax evasion, drug possession and terrorism, to prosecute bloggers, or - more generally - to silence undesired voices. This appeared to be the case in the criminal proceedings against the two youth activists from Azerbaijan, Emin (Milli) Abdullayev and Adnan Hajizadeh, who were charged with ‘hooliganism’ and ‘inflicting minor bodily harm’ in July 2009, shortly after having posted a critical video on YouTube.

It is our task to ensure that Internet remains a space of freedom – a safe and open environment where freedom of expression and freedom of assembly can thrive.

(2) Potential threats to the free flow of online information

Even a number of 'old democracies' have considered or implemented various restrictions in response to the potential legal, economic, and security challenges raised by new media. In the UK for instance, the government has proposed new legislation that would enable domestic intelligence agencies to monitor all private calls, emails, text messages and website visits of everyone in the country.

Motivated by national security concerns, some States have developed vast surveillance measures over online communications. Combating terrorism and preventing child abuse have been invoked to justify the interception of communications and filtering measures.

These measures are important if we want Internet to remain a safe place and not a tool that can be used to perpetrate crimes. At the same time, Internet must only be subjected to restrictions that are strictly necessary if we want to ensure the free flow of information. The extent to which the State can intrude into our private lives and communications, and supervision of the ways in which the authorities process our personal data, should be regulated. Proportionality must be strictly respected in this endeavour. This is linked to the third challenge: the risks to privacy associated with the increasing placement of personal data on the Internet, especially social media.

(3) Data protection

The fact that uprisings across the Arab world were to a considerable extent made possible by social networking, primarily on Facebook, raises a human rights question: if information is flowing freely enough over social networks to precipitate social change, what protections are in place to ensure that our personal data cannot be trawled from those networks and put to altogether different, less salutary purposes?

Social Networks indeed host a vast and growing repository of personal data, all of it in digital form. It falls to our national and international authorities to ensure that our individual rights to privacy and data protection are not sacrificed to social media, but rather reinforced to recognise and meet the range of new challenges these powerful new media present.

The Council of Europe has developed some useful standards in this area. The most important instrument is most probably the Convention for the protection of individuals with regard to automatic processing of personal data. This Convention was adopted in 1981 – that is more than 30 years ago, which explains why the Secretary General of the Council of Europe has launched a public consultation in view of the modernisation of this Convention. One of the main objectives of the revision process is precisely to deal with privacy challenges resulting from the use of new information and communication technologies (ICTs).

The Committee of Ministers of the Council of Europe has recently reinforced these standards, by adopting two recommendations, dealing respectively with the protection of human rights with regard to search engines and the protection of human rights with regard to social networking services. These Recommendations address the risks that search engines and social networking sites pose to human rights and fundamental freedoms, particularly the right to freedom of expression and information and the right to respect for private and family life. They seek to provide guidance to the governments and private companies trying to balance these rights.

The case-law of the European Court of Human Rights is also of particular importance. The European Court has made it clear that Internet publications fall within the scope of Article 10 of the Convention, guaranteeing freedom of expression, and its general principles. However the particular form of that medium has led the Court to rule on certain particular restrictions that have been imposed on freedom of expression on the Internet, such as those aiming at the protection of minors.

The Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer system is another useful instrument. The purpose of this Protocol is twofold: firstly, harmonising substantive criminal law in the fight against racism and xenophobia on the Internet and, secondly, improving international co-operation in this area.

States have a positive obligation to adopt appropriate legislation and provide accessible and effective procedures for the exercise of the right to receive and impart information. When adopting such legislation, European states should pay attention and give effect to the Council of Europe standards.

Human rights activists, as well as private companies providing Internet services, have also a role to play and should be more actively involved in debates on the risks and human rights potential of new media. This is something my Office will be actively engaged in over the coming years.

But this raises above all another question: is access to the Internet a human right? Certainly, today access to the Internet is perhaps the single most important pre-requisite for the enjoyment of freedom of expression – and a crucial instrument for the exercise of other rights and freedoms. It is also clear that access alone is not enough, and that it must be accompanied by Internet literacy and education initiatives that enable users to make the most of this instrument.

As for access which is genuinely free from unnecessary and disproportionate content restrictions, Article 10 of the European Convention expressly imposes on States an obligation not to interfere with the freedom to receive and impart information. The Strasbourg Court has not yet had the occasion to rule on a complaint concerning a denial or restriction of access to the Internet. However, there are currently several cases pending which concern state interference in the form of blocking, filtering or otherwise restricting access to Internet – which will help to clarify the issues at stake.

This, in turn, requires an access to the necessary means to connect. The Council of Europe is also working towards the promotion of the public service concept of the Internet: Internet services must be accessible and affordable, as well as secure, reliable and continuously available.

The increasingly recognised centrality of the Internet for the exercise of the human right to freedom of expression (and other rights) should make us reflect on what countries should do to ensure the progressive realisation of universal access to the Internet. After all, there is an intimate link between developing access to the Internet and preserving Internet freedom: extending the ability to enjoy human rights through the Internet to as many people around the world as possible is probably one of the best guarantees we have to ensure that all relevant stakeholders are constantly reminded of the importance of a free Internet. This is an aspect which I hope we will be able to discuss further during this Conference.