Internet Freedom: a Constant Factor
of Democratic Security in Europe

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1. Internet Freedom

Internet freedom has emerged as a key policy concept for states and a litmus test for their willingness and ability to secure human rights in an increasingly networked world. It is a popular term: Internet Freedom Days, Internet Freedom Declarations, Internet Freedom Projects and Programmes abound. Yet, most of these initiatives are small, focused on a subset of issues, such as Intellectual Property or Network Neutrality. True 'Internet freedom' must encompass a much larger concept: freedom of and for all to realize all of their human rights on the Internet. It is this understanding of Internet freedom that has allowed scholars to link its emergence to the "constitutionalization" of Internet governance.[2] Only in conditions of freedom can we, as a society, develop normative orders that can be considered legitimate.[3] International multistakeholder initiatives such as the Freedom Online Coalition are based on this broad understanding of Internet freedom.

The most important normative step towards establishing a holistic concept of Internet freedom was the adoption by the Committee of Ministers, on 16 April 2016, of the Recommendation on Internet freedom.[4] Internet freedom is defined in the Recommendation as the "exercise and enjoyment on the Internet of human rights and fundamental freedoms and their protection in compliance with the Convention and the International Covenant on Civil and Political Rights." States need to follow, proactively, a comprehensive approach to securing and enhancing Internet freedom.[5] They have both negative and positive obligations to respect, protect and promote human rights and fundamental freedoms on the Internet.[6] The adoption of the Recommendation is

[2] Cf. Anne-Claire Jamart, Internet Freedom and the Constitutionalization of Internet Governance, in Roxana Radu, Jean-Marie Chenou, Rolf H. Weber (eds.), The Evolution of Global Internet Governance. Principles and Policies in the Making (Zurich: Schulthess, 2014), 57-78.

[3] Cf. Kettemann, Menschenrechte im Multistakeholder-Zeitalter: Mehr Demokratie für das Internet [Human Rights in Times of Multistakeholderism: More Democracy for the Internet], Zeitschrift für Menschenrechte 2016 (1), 24-36.

[4] Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom, adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies (in the following 'the Recommendation CM/Rec(2016)5' or 'Recommendation on Internet freedom').

[5] Recommendation CM/Rec(2016)5, para. 2.

[6] Recommendation CM/Rec(2016)5, para. 1.

an important marker towards establishing Internet freedom as a matrix to measure progress in the implementation of Council of Europe standards with regards to the Internet.

The Recommendation's adoption was very timely in light of the threats to Internet freedom, and in particular freedom of expression protected by Article 10 of the European Convention on Human Rights. As a comparative study commissioned by the Council of Europe showed, a number of European states have introduced laws against hate speech and terrorism that do not meet the criteria of legitimate restrictions provided by Article 10.[7] Especially arbitrary takedown proceedings and voluntary self-censorship are of growing concern.[8] The application of the standards developed by the European Court of Human Rights on Convention rights is key to ensuring Internet freedom.

OSCE Participating States have engaged with freedom of expression on a political level and have drawn, already in the 2004 Sofia Ministerial Council, a connection between protecting freedom of expression online and strengthening democracy.[9] Recently, the OSCE Guidebook on Media freedom on the Internet,[10] presented at the Conference, develops clear guidelines for policy-makers on issues such as Internet access, freedom of expression online and intermediary liability – all closely connected to Internet freedom, which, in turn, was a signature issue for the German OSCE presidency within the OSCE's Human Dimension.

Against this background the Conference "Internet Freedom, a Constant Factor of Democratic Security in Europe", which this report summarizes, dealt with the important follow-up to the adoption of the Recommendation and sought to showcase and discuss best practices in its implementation in a multistakeholder setting.

To understand the importance of the conference, this report first provides a quick overview of the Recommendation (2), before providing an overview of the conference (3), of key challenges to Internet Freedom (4) and of ways to overcome them – the conclusions of the conference (5).

2. Recommendation on Internet Freedom

The Recommendation provides benchmarks and references for national evaluations of Internet freedom. The indicators can serve – nationally – as an analytical framework for states to implement human rights standards online and – internationally – as a reference for Internet policy development.[11] As the Recommendation on Internet freedom concisely puts it in its para 6., the Council of Europe plays a "key role" in the promotion of Internet freedom both in Europe and in

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[7] Swiss Institute of Comparative Law, Comparative study on blocking filtering and take-down of illegal Internet content (2016).

[8] Cf. also the Report by the Secretary General of the Council of Europe, State of democracy, human rights and the rule of law. A security imperative for Europe (2016), 48ff.

[9] OSCE, Twelfth Meeting of the Ministerial Council, 6 and 7 December 2004, Sofia, Permanent Council Decision No. 633, Promoting Tolerance and Media Freedom on the Internet (PC.DEC/633 of 11 November 2004): "[…] Reaffirming the importance of fully respecting the right to the freedoms of opinion and expression, which include the freedom to seek, receive and impart information, which are vital to democracy and in fact are strengthened by the Internet …. […] 1. Participating States should take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools;"

[10] Yaman Akdenzi, Media freedom on the Internet: An OSCE Guidebook (2016).

[11] Recommendation CM/Rec(2016)5, para. 5.

the wider world. National evaluations and reports and subsequent comparative and diachronic analyses will allow the Council of Europe to compare evolving regulatory frameworks within States on human rights on the Internet. This process can then inform the further evolution of Council of Europe Internet-related policies.

Using the indicators in the appendix, States should carry out national evaluations of Internet freedom on a regular basis and, wherever appropriate, reflect the assessments in national reports. [12] The process of evaluating Internet freedom nationally should be multistakeholder-based with representatives from the private sector, civil society, academia and the technical community participating. States should consider sharing their outcome with the Council of Europe, let themselves be influenced in their international dialogue and policy-making by the indicators and promote them.

The Appendix to Recommendation CM/Rec(2016)5 contains five Internet freedom indicators that are derived from "existing and established human rights standards and enforcement mechanisms"[13] and intended as guidance for member States in conducting their periodic evaluations of Internet freedom. In order to help member States with compiling their reports the Recommendation offers a toolkit with five indicators which can be used by States to measure progress.[14]

1. An enabling environment for Internet freedom: Human rights and fundamental freedoms on the Internet are guaranteed in law and any restriction is in full compliance with the Convention. Laws and policies relating to the Internet are assessed at the drafting stage as to their impact on human rights. Individuals are effectively protected from cybercrime. Where such measures risk interference with human rights, they are subject to conditions and safeguards against abuse. They are prescribed by a law, which is accessible, precise, clear and foreseeable; pursue a legitimate aim; are necessary and proportionate in a democratic society and allow for effective remedies. States commit to implementing the United Nations "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect, and Remedy' Framework".

2. The right to freedom of expression: States protect the freedom to access the Internet: by making it available, accessible and affordable to all groups of the population without any discrimination.. States recognize that disconnecting individuals from the Internet, as a general rule, represents a disproportionate restriction of the right to freedom of expression.

States protect the freedom of opinion and the right to receive and impart information. Any measure taken by State authorities or private-sector actors to block or otherwise restrict access to an entire Internet platform or information and communication technologies (ICT) tools, or to block, filter or remove Internet content, or any request by State authorities to carry out such actions, complies with the conditions of Article 10 of the Convention regarding the legality, legitimacy and proportionality of restrictions.

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[12] Recommendation CM/Rec(2016)5, paras. 4., 7.
[13] Appendix to the Recommendation CM/Rec(2016)5.
[14] The following section is based on, and partially paraphrases or quotes, the indicators contained in the Recommendation

States protect the freedom of the media by ensuring the editorial independence of media operating on the Internet and not subjecting journalists and other media actors using the Internet to threats or harassment by the State.

3. The right to freedom of peaceful assembly and association: Individuals are free to use Internet platforms, such as social media and other ICTs in order to associate with each other and to establish associations,. Any restriction on the exercise of the right to freedom of peaceful assembly and right to freedom of association with regard to the Internet is in compliance with Article 11 of the Convention, namely it is prescribed by a law, which is accessible, clear, unambiguous and sufficiently precise to enable individuals to regulate their conduct; pursues a legitimate aim as exhaustively enumerated in Article 11 of the Convention; is necessary in a democratic society and proportionate to the legitimate aim pursued.

4. The right to private and family life: The right to private and family life is guaranteed in compliance with Article 8 of the Convention. Any restriction to this right pursues one of the legitimate aims exhaustively enumerated in Article 8 of the Convention, is necessary in a democratic society and proportionate to the legitimate aim pursued. Personal data are processed lawfully (with the unambiguous consent of the data subject or on the basis of law) for legitimate purposes and not in excess of such purposes, accurately and securely. These conditions apply also to profiling (personal data automatic processing techniques that collect and use information about an individual in order to identify, analyse or predict his or her personal preferences, behaviour and attitudes).

Any surveillance measures taken by public authorities (such as security services) comply with the requirements of Article 8 the Convention and are subject to effective, independent and impartial oversight. Surveillance measures are carried out in accordance with the law, which is accessible, clear, precise and foreseeable, pursue a legitimate aim as exhaustively enumerated in Article 8 of the Convention, and are necessary in a democratic society and proportionate to the legitimate aim pursued. Surveillance measures carried out by State authorities either directly or through/in collaboration with private-sector entities are authorised by an independent and impartial tribunal established by law or another State body which is independent from both the authorities carrying out such measures and the executive.

5. Remedies: States ensures that individuals have access to judicial or administrative procedures that can impartially decide on their claims concerning violations of human rights online, in compliance with Article 6 of the Convention, including effective non-judicial mechanisms, administrative or other means for seeking remedy such as through national human rights institutions. The State, as the primary responsible entity, takes appropriate steps to protect against human rights abuses with regard to the Internet by private-sector actors and to ensure that those affected have access to an effective remedy, by implementing policies and measures to encourage all private-sector actors to respect human rights with regard to the Internet throughout their operations, in particular by establishing effective complaint mechanisms to address early and remedy directly grievances of individuals.

3. The Conference

The Conference "Internet Freedom, a Constant Factor of Democratic Security in Europe" took place on 9 September 2016 on the Council of Europe premises in the Agora building in Strasbourg, France. It was jointly organised by the Council of Europe, the Estonian Chairmanship of the Committee of Ministers and the German Chairmanship of the OSCE with high-level speakers including Mr Thorbjørn Jagland, Secretary General of the Council of Europe, Dunja Mijatović, OSCE Special Representative on Freedom of the Media, and Joseph Cannataci, UN Special Rapporteur on the Right to Privacy.

Over 200 experts were present in Strasbourg and another 200 watched the webcast transmission online. The Twitter conversation was vivid with over 350 users tweeting more than 1000 recorded tweets relating to the conference (@NetFreedomCoE #NetFreedomCoE and #InternetFreedom) that, taken together, combined to a total of almost 1,800 000 potential interactions with Conference-related content.. The most successful tweet had almost 10,000 direct views.[15]

4. Key Challenges to Internet Freedom

4.1. Setting the scene

In his opening speech Thorbjørn Jagland, Secretary General of the Council of Europe, underlined that a complete harmonization of laws related to freedom of expression online was neither feasible nor necessary. Rather, we should rely on common approaches and common standards based on human rights as protected by the Convention: "The role of the Council of Europe is helping our members take a more unified approach, in line with our shared values."[16] These shared common standards guarantee that "no matter where you live [in Europe] […] you can exercise your human rights online, in full compliance with the European Convention on Human Rights and the case law of our Court."[17]

Mart Laanemäe, Undersecretary of the Ministry of Foreign Affairs of Estonia, underlined this notion: "[Your] level of Internet freedom should not depend on your country of residence. Everyone has right to express themselves without fear of retribution." All stakeholders have a shared responsibility for protecting human rights: "states [have] primary responsibility for protecting against human rights abuses online in co-operation with non-state actors, in particular major Internet companies."

Similarly, Gernot Erler, Special Representative of the Federal Government of Germany for the OSCE Chairmanship, reminded participants that the Internet was not a space without rules: "human rights need to be respected online" especially in times of changing notions of security. A comprehensive approach was necessary, such as the one pursued by OSCE through its three dimensions: The German OSCE Chairmanship's approach to Internet freedom include security aspects, economic perspectives and human dimension concern.

4.2. High Level Panel: human rights standards and practice constantly on the verge of conflict

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[15] Figures provided to the rapporteur by the Council of Europe.
[16] Conference, Speech by Secretary General Thorbjørn Jagland
[17] Ibid.

This panel moderated by Mart Laanemäe, Undersecretary of the Ministry of Foreign Affairs of Estonia, challenged the notion of a dichotomy between freedom and security on the Internet. Dunja Mijatović, OSCE Special Representative on Freedom of the Media, underlined that often security measures are used merely as a pretext to silence critical voices online. Joseph Cannataci, UN Special Rapporteur on the Right to Privacy, criticized governments for instrumentalizing 'freedom' to spy on their people. Concrete safeguards and concrete remedies needed to be effectively implemented with regard to human rights online. Marietje Schaake, Member of European Parliament, called for more political will to ensure human rights protection and Internet freedom – and a more principled approach. States need to act. If they left a normative vacuum, private companies would set their own rules designed to maximize profits, not protect human rights.

Robert Spano, Judge at the European Court of Human Rights, called the Recommendation on Internet Freedom an extremely important development as a soft law international instrument. From the Court's jurisprudence he developed a "clear obligation on states to introduce a right of access to the Internet". He identified four concrete challenges States face: intermediary liability (Article 10 does not mandate any particular model to frame intermediary liability), the repurposing of online data, the effectivity of norms and of rule of law in the international arena, and the legality of surveillance.

Volodymyr Ariev, Chairperson of the Committee on Culture, Science, Education and Media, Parliamentary Assembly of the Council of Europe, called for more protection from nationalist propaganda and from cyberattacks against companies, individuals, and Council of Europe member States – this, too, he argued was included in the concept of Internet freedom. In this vein, the Parliamentary Assembly recommended to States taking measures against large-scale cyberattacks by persons under their jurisdiction or emanating from their territory.

4.3. A human rights approach to Internet freedom – best practices and leading examples

In the second panel, the moderator, Katrin Nyman Metcalf, invited experts to provide examples as to how an Internet freedom-based approach can provide added value to policy-making.

Oliver Schenk, from the German Federal Ministry of Foreign Affairs, Chair of the Committee of Experts which drafted the Council of Europe Recommendation on Internet Freedom, highlighted the list of indicators that can serve as a toolbox to allow states to properly evaluate their level of Internet freedom. He stressed the importance of understanding how various human rights and freedoms are affected by the Internet in different ways. Only few states had completed comprehensive analyses and reports on the state of Internet freedoms in their jurisdiction.

One of these is Estonia. Karmen Turk, an attorney and lecturer in IT law at the University of Tartu, explained the process of the Estonian report on Internet freedom. Most stakeholders engaged very positively with the process. The reporting process organizers learned, however, that it was important to provide guidance to stakeholders on how to assess the indicators, to provide any questionnaire in (the) local language(s), to allow for non-standardized responses, and to ensure a very user-friendly responding format.

Carl Frederik Wettermark, Swedish Ministry of Foreign Affairs, provided an overview of the multistakeholder-based work of the Freedom Online Coalition which was undergoing a strategic review. He underlined the importance of having informed global discussions and avoiding any fragmentation of normative approaches to Internet freedoms and rights. As a concrete example of useful initiatives by states he mentioned the added value of transparency about State actions regarding online content restrictions or access to users' personal information, notably based on antiterrorist legislation. Stephen Lowe of the Foreign and Commonwealth Office (UK) underlined the importance of multistakeholder debates on human rights online. However, coalitions such as the Freedom Online Coalition could only work if multistakeholderism was implemented properly and not used only as a fashionable catchphrase.

Xianhong Hu, UNESCO, underlined the role of international organisations in advancing reviewing and reporting on the state of Internet freedoms. For these processes, data and indicators are essential. She outlined the practical monitoring work of UNESCO and various forms of reports that make findings accessible and thus the real situation transparent – as a necessary prerequisite to know what problems to tackle. Similarly, Frane Maroevic from the Office of the OSCE Representative on Freedom of the Media underlined the importance of information gathering, especially by international organisations, in order to conduct legal analysis and provide criticism, where needed.

The panelists agreed that multistakeholder approaches to Internet governance and the collection of disaggregated data to compare states' normative trajectories with regard to the level of Internet freedom are essential. Commitments without implementation, however, were not enough.

4.4. New Horizons for Internet Governance – bringing actors together

The third and final panel, moderated by Matthew Shears, Director of the Center for Democracy & Technology's Global Internet Policy and Human Rights project and Co-Chair of the Freedom Online Coalition Working group "An Internet Free and Secure", shifted the perspective to that of non-state stakeholders, such as private sector companies and non-governmental organisations. Panel participants highlighted the effectiveness of the private sector and civil society for developing transparency and accountability initiatives regarding Internet (and media) freedom. The panel first considered initiatives to bring increased transparency to attempts to censor Internet content by States and then turned to the importance of transparency reporting by Internet companies on requests for content takedowns by governments. Strong calls for increased transparency, both by Internet companies and by States when it came to requests directed at the private sector, were heard throughout the panel.

Sanja Kelly, Director Freedom on the Net, Freedom House, highlighted the work that Freedom House was doing to assess and report on the state of Internet freedom around the globe. Sadly, Freedom House's 2016 Report[18] showed how press freedom had dropped to its lowest point in 12 years in 2015. When asked about the importance of such reporting and its impact, she noted that Freedom House had seen governments and other stakeholders react to the reporting, noting that

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[18] Freedom House, Freedom of the Press 2016. Key findings include that "[p]ress freedom declined to its lowest point in 12 years in 2015, as political, criminal, and terrorist forces sought to co-opt or silence the media in their broader struggle for power. […] Only 13 percent of the world's population enjoys a Free press – that is, where coverage of political news is robust, the safety of journalists is guaranteed, state intrusion in media affairs is minimal, and the press is not subject to onerous legal or economic pressures" (ibid.)

transparency was a credible and powerful tool for bringing about change, particularly when political, criminal and other forces are actively trying to silence those who spoke out against or sought to bring clarity to the working of governments.

Pauline Adès-Mével, Head of EU-Balkans and new media desk, Reporters without Borders (RSF), highlighted the importance of empowering activists locally so that they can bring transparency to the activities of governments and other powerful stakeholders. Adès-Mével and a colleague highlighted the recent RSF World Press Freedom Index and how 38 journalists had been killed since January 2016.[19] Ms. Adès-Mével described how RSF was developing a set of tools for human rights activists to increase their physical and digital safety. These toolkits included information on how to chat and exchange files anonymously, how to browse securely and to protect one's identity. Enhancing the security of journalists and others was critical to ensuring their ability to report on and bring to light abuses of human rights, law and due process.

Jodie Ginsberg, Chief Executive, Index on Censorship, introduced Index's work on mapping censorship[20] and then transitioned the discussion to the importance of increased transparency by Internet companies. While commending Internet companies for producing transparency reports and noting how the reports had evolved over time, Jodie Ginsberg raised concerns about the transparency of these transparency reports regarding government requests.

Allon Bar, Policy and Engagement Manager, Ranking Digital Rights (RDR), highlighted the importance of independent third party assessments of transparency reporting of companies by, e.g., the Ranking Digital Rights Corporate Accountability Index,[21] which measures public commitments and disclosed policies affecting users' freedom of expression and privacy measures.

Alexandria Walden, Counsel, Free Expression & Human Rights, Google, noted that Google's first transparency report was published in 2010 and since then private sector companies have developed even stronger interests in showing more transparency.[22] Not only were the transparency reports published by private companies helping to push other companies do the same, they were also a key element of instilling a culture of transparency in the private sector players when it came to government requests for content takedown. In some situations, however, company transparency reports could not reveal the nature and number of requests due to government restrictions. Here, more openness by governments and changes in law were necessary.

Michael Rotert, Honorary Spokesman of EuroISPA and Chairman of the Association of the German Internet Industry, called for a meta-report to analyze existing reports. He also posed the

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[19] Reporter Without Borders, 2016 World Press Freedom Index. The Index, inter alia, "shows that there has been a deep and disturbing decline in respect for media freedom at both the global and regional levels". Among the reasons the Index identifies "increasingly authoritarian tendencies of governments […], tighter government control of state-owned media, even in some European countries […], and security situations that have become more and more fraught […], RSF, 2016 World Press Freedom Index, Indicators).

[20] Index on Censorship, About.

[21] Ranking Digital Rights, 2015 Corporate Accountability Index. The Index evaluates 16 of the world's largest Internet and telecommunications companies in light of their public commitments and policies regarding users' freedom of expression and privacy.

[22] Google Transparency Reports. The site includes links to other institutions and companies that have initiated transparency reporting. These include AOL, AT&T, Apple, Deutsche Telekom, Dropbox, Facebook, Microsoft, TeliaSonera, Tumblr, Twitter, Uber, Verizon, Vodafone, Wikimedia Foundation , WordPress, Yahoo!, and reddit.

important question as to who the reports were primarily for: consumers, competitors, researchers or States and whether their utility and impact was appropriately tailored. Yaman Akdeniz, Istanbul Bilgi University, joining remotely, suggested that transparency reports needed to be more expansive and not based only on good-will, but rather on obligations.

The panel concluded with noting the importance of transparency in all its forms to securing and promoting Internet freedoms, from assessing censorship around the globe to efforts to bring transparency to requests of Internet companies and telecommunications companies for content takedowns by governments. Panelists suggested creating a portal for company transparency reports; the development of broader transparency guidelines including for governments, possibly through a transparent and multistakeholder standard-setting initiative under the auspices of the Council of Europe; and concluded in calling upon States to increase their own transparency regarding their interactions with Internet and telecommunications companies.

5. Analysis

Implementing the Recommendation on Internet freedom

As Director General Philippe Boillat., Directorate General of Human Rights and Rule of Law, reminded the participants in his closing speech, the protection of freedom online remained a "défi commun" – a "challenge for all". The digital world, Director General Boillat underlined, was a global world, in which multistakeholder-based consultation on a national level with a view to implementing the Recommendation on Internet Freedom had to be ensured.[23] The Conference's key output was thus reaffirming that reviewing State's record on Internet freedom with a view to compiling periodic country reports was essential to measuring progress in Internet freedom.[24]

As the OSCE and the Council of Europe have shown, partnerships between European international organisations and the support of Internet issues by key states are essential to ensuring the success of multistakeholder-based approaches to protecting human rights online. Multistakeholder forums can be used to exchange best practices regarding the implementation of indicators. These need to be more than performative acts, but should really take into account the expertise provided by members of the multistakeholder community. Non-governmental organisations assessing human rights performances should consider using the Recommendation's indicators as a common template. Multistakeholderism also implies that states can learn from best practices by other stakeholders, including private sector companies and non-governmental organisations.

The Council of Europe's Recommendation on Internet Freedom provides an essential framework for states. Yet, as the Council of Europe study on blocking and filtering practices shows, the differences even between European states in both law and practice are substantial. Both, the Recommendation and the filtering study, need to be closely followed-up in an open and constructive dialogue with all Council of Europe member states. Some challenges need to be addressed by changing the law; others can be addressed by increasing the dialogue with other

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[23] Conference, <u>Speech by Director General Philippe Boillat</u>.
[24] Conference, <u>Speech by Secretary General Thorbjørn Jagland</u>

stakeholders in multistakeholder forums or initiatives, such as the Freedom Online Coalition, the Internet and Jurisdiction Project, or the IGF.

The right to Internet access as the central right on the Internet is challenged in a number of ways. Taking together the Council of Europe Recommendation on Internet freedom and the case-law of the European Court of Human Rights and also the Court of Justice of the European Union, however, we already have some important guidance regarding norm-setting on intermediary liability, the use of online data, the rule of law online and the legality of, and limits to, surveillance.

In implementing the Recommendation, its indicators are a powerful tool for States to compare over time the development of Internet freedom; they are best used in multistakeholder-based, transparent reporting procedures. Estonia is the first state that undertook a process to implement the indicator-based model of the Internet Freedom Recommendation. The organizers found that communication with all stakeholders is essential for successful reporting. Other states should similarly develop plans to implement the indicator-based evaluations of Internet Freedom within their country – in close consultation with national civil society organisations and all other stakeholder groups. The Estonian example also showed that making reports publicly available and openly discussing ways to optimize the evaluation process is key to successfully implementing the Internet Freedom Recommendation.

Transparency, rules and trust

Due to the Internet's massive contribution to growth and sustainable development it has become a central global infrastructure. It is based on rules and on trust. This is why transparency should apply to all norm-creation regarding the Internet.

Transparency in evaluating the Internet Freedom indicators, and transparency and dialogue in the follow-up process, are key to ensuring trust in national approaches to Internet freedom. States thus need to take additional efforts to increase transparency in a national dialogue with stakeholders. Private sector companies and non-governmental organisations should actively participate in States' implementation of the Recommendation and the indicator-based reporting procedures.

The private sector and civil society have been very effective in developing transparency and accountability initiatives regarding media freedom. These include – from the side of civil society – initiatives by Reporters without Borders, Freedom House, the Index on Censorship, and Ranking Digital Rights. Unveiling the human rights-insensitive approaches by certain IT companies is essential to changing them.   Furthermore, only objective assessments of transparency (self-)reporting can lead to clear evaluations of the quality of the data published.

Internet companies also have substantial experience with transparency initiatives, including Google and Twitter. These transparency initiatives are a good start but they need to be even more expansive and not based on the good-will of companies. States should refrain from obliging companies to keep content-related requests secret. Transparency must cut all ways and should not be used unless necessary and proportionate for protecting a legitimate societal aim.

On the other hand, companies and governments can support the implementation of the Internet freedom indicators by using them and responding to them in their transparency and accountability reports and in their transparency mechanisms and policy processes.

Internet Freedom as a Constant Factor of Democratic Security

Internet Freedom is a constant factor of democratic security in Europe. The work of the OSCE and the Council of Europe, and the initiatives undertaken under the German and Estonians chairmanships, respectively, have made important contributions to the future of Internet freedom. Such initiatives need to be built upon. Finally, States need to be much more transparent when approaching Internet and telecommunications companies with removal requests. At the very least they should refrain from forcing private sector companies to *not* disclose these requests.

6. Conclusions

Internet freedom is a key priority for States and the Council of Europe

- With the Internet having become a transformative power for our political, economic and social relations and interactions, Internet freedom has emerged as an important priority in foreign policy agendas and a leading principle in rule-making.

- The work of the Council of Europe and the OSCE shows that Internet freedom has developed into an important normative tool for ensuring human rights and rule of law online.

- Internationally, ensuring Internet freedom means that states must not act in a way that causes transboundary harm to the Internet. Multistakeholder-based initiatives such as the Internet Governance Forum and state-based initiatives such as the Freedom Online Coalition should seek to promote the concept and ensure its global implementation.

- Internally, ensuring Internet freedom means that human rights and freedoms that impact human activity on the Internet are respected. The level of Internet freedom should not depend on the country of residence. The indicators provided in the Recommendation on Internet Freedom need to be closely studied, as in the Estonian pilot study.

Implementing the Recommendation on Internet Freedom is essential to measuring progress by States

- The Conference was an essential step towards furthering the implementation of the Recommendation CM/Rec(2016)5 of the Committee of Ministers by strongly encouraging the use of the multistakeholder-based indicator-oriented reporting model by states.

- Implementing the Recommendation is a shared objective and common commitment of all stakeholders: governments, civil society and the private sector.[25]

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[25] Cf. Council of Europe, Internet Freedom: a constant factor of democratic security in Europe, Strasbourg, 9 September 2016, Conference Conclusions, 9 September 2016.

- In order to implement the Recommendation, States should develop roadmaps towards evaluating an reporting on Internet freedom, publishing these reports freely and sharing them with another. The Council of Europe should support States in this endeavor by observing Internet-related developments and offering technical assistance, and continuing the dialogue with Internet companies. Cooperation between the Council of Europe and international organizations, including OSCE, UNESCO, and the EU, should be reinforced. Companies should mainstream human rights into the business practices, publish detailed transparency reports, and cooperate with States in their national evaluations of Internet freedom. NGOs should use the indicators contained in the Recommendation as tools when reporting on Internet freedom, and should participate actively in the national evaluations of Internet freedom.

Online just as offline, security and freedom are interconnected and mutually reinforcing

- Security measures are used as a pretext to silence critical voices online; and the false dichotomy of security vs. freedom is instrumentalised by many states, including in Europe. Governments should not use laws to stop people making jokes or criticizing persons of note. However, there need to be clear red lines – hate speech amounting to calls for violence or genocide is forbidden under international law and states have a duty to fight it.

- Concrete safeguards and concrete remedies need to be implemented with regard to human rights online. With regard to privacy, especially, there is a substantial disproportionality between the measures of surveillance taken and the threats that exist. Any restrictions need to be provided by law, have a legitimate aim, necessary in a democratic society and be proportionate to the aim pursued.

- Political will is key to ensuring human rights protection and Internet freedom. National security is a central responsibility of governments but so is keeping society open and ensuring Internet freedom. For that, we need a more principled approach. If states do not provide the norms necessary to ensure Internet freedom, private sector actors will (often reluctantly) fill the void with norms that may not be primarily in the public interest.

- Internet freedom also means ensuring Internet access and the protection of individuals, media companies and state actors from cyberattacks. In this vein, the Parliamentary Assembly has recommended to states to take measures against large-scale cyberattacks by persons under their jurisdiction or emanating from their territory.