

CAN INTERNET ACCESS BE A HUMAN RIGHT?

by

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Submitted in fulfilment of the requirements for the degree of Masters in Business Law (LL.M) in the College of Law and Management Studies, School of Law, Howard College, University of KwaZulu-Natal.

DURBAN

2015

Acknowledgements

I would firstly like to thank my supervisor, Devarasi Maduramuthu, for her guidance and feedback throughout the writing of this paper. I would also like to thank my best friends Ektaa and Trishaul who have always been there for me, not only on an academic level but on a personal one as well.

Lastly and most importantly, I want to thank my loving and supportive parents, Logie and Danny, who have always done everything to ensure I succeed in all my endeavours. I thank them for their love, support and help during the writing of this paper.

DECLARATION

I, Ashailyn Moodley, declare that:

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Internet access should be considered to be a human right.²⁷ Skepys, states that: ‘advocates for a human right to Internet access are idealists who lack argumentative weight, as no real argument has been put forth to justify why Internet access should have the protection of contemporary human rights theories’.²⁸ Skepys further asserts that to include Internet access into the exclusive grouping of human rights will result in ‘human rights inflation’ i.e.:

“the eroding expansion of human rights claims, that threaten to undermine the value of human rights and their function as protectors of a specific set of urgent norms.”²⁹

1.2. Problem Statement:

The theme of this paper is establishing whether Internet access can be defined as a human right. My research aims to address the gap in knowledge for a possible future international legal framework to provide for Internet access to be acknowledged as a human right. At present there is still no international uniformity on Internet access rights therefore creating international discord. I believe, there should not be international legal ambiguity for such an important issue, as the Internet is becoming more prevalent in its integration into everyday life and can promote the underlying principles of human rights.

1.3. Purpose of the Study:

The purpose of this study is to determine if Internet access can be classified as a human right. There are many scholars, government officials and members of organisations etc. who believe that Internet access is a human right and therefore should be treated as such by governments which should provide the necessary infrastructure as well as refrain from restricting and censoring online content. However, to some, any human rights claim to Internet access is an exaggeration of its role in society. These critics believe that Internet

²⁷ Skepys (note 15) above.

²⁸ Ibid.

²⁹ Ibid.

illustrated that Internet access does meet the standards of a human rights evaluation. It is further my contention that Internet access is a human right as it operates as a gatekeeper to the ‘three components of our rights as human beings in realisation of our full potential, i.e. freedom of expression, democratic participation and economic livelihood.’³⁵ As such, through this paper’s development, it will become clear that Internet access is essential for a person to realise his or her full human potential and that for an individual to be denied such access, is ‘to be denied the right to be a fully functioning member of the global community.’³⁶

1.7. Issues Addressed

In Chapter 1, the stage is set for the question which is the title of this paper, i.e. ‘can Internet access be a human right?’ An introduction to the issues at hand is provided, accompanied by a background to the concept of a human right to Internet access. The gap in the knowledge is discussed by looking at the purpose and significance of the study within this paper. Chapter 1 also includes the research questions I will use in development of the analysis of whether Internet access can be considered a human right and I will also reach a hypothesis for this argument.

In Chapter 2, I will discuss the historical development of the concept of a human rights claim to Internet access. I will do this by analysing the definition of human rights as well as the development of the human right to freedom of expression as per the Universal Declaration of Human Rights (hereafter referred to as UDHR) and ICCPR³⁷, which is often used in support of Internet access rights claims. The historical development will also illustrate the formation of the ‘Free Flow of Information Paradigm’, which was created via the right to freedom of expression, and how it links to the promotion of the right to Internet access by applying the paradigm to ‘The UN Report’s’ findings. I will further show the aspects which emanate from a possible right to Internet access, as evidenced by ‘The UN

³⁵ N Bernasconi & J Maxlow ‘Is Internet Access a Basic Human Right?’ (2010) *Learning & Leading with Technology* 37 6, 6.

³⁶ Ibid.

³⁷ Note 12 above.

CHAPTER 2 – THE HISTORICAL DEVELOPMENT OF A HUMAN RIGHTS CLAIM TO INTERNET ACCESS

2.1. The Definition of Human Rights

What is a ‘human right’? Human rights can be defined as those rights which are intrinsic to all human beings due to the very fact of them being human¹ ‘irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status’² or circumstance and are therefore universal and inalienable. Hence every person is equally entitled to these rights without discrimination³ and nobody can be deprived of these rights under any circumstance. Human rights are essentially ‘the norms that help to protect all people everywhere from severe political, legal, and social abuses.’⁴ As James Nickel summaries, human rights are:

“those aspects of our lives, which are critical to our capacity to choose and to pursue our conception of a worthwhile life.”⁵

The principle of having human rights and the starting point of international human rights law was first highlighted in the ‘UDHR’ in 1948 and have been echoed in subsequent “treaties, customary international law, general principles and other sources of international law”⁶ with international human rights law obliging member states to act or refrain from acting in certain circumstances to promote these human rights⁷.

¹ M Sepúlveda et al. *Human Rights Reference Hand Book* 1 ed (2004) 3.

² Office of the High Commissioner for Human Rights ‘What are human rights?’ available at <http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>, accessed 5 September 2014.

³ Ibid.

⁴ James Nickel ‘Human Rights’ available at <http://plato.stanford.edu/entries/rights-human/>, accessed 23 September 2014.

⁵ J Griffin *On Human Rights* 1 ed 2008.)

⁶ Note 2 above.

⁷ Ibid.

'The UN Report'¹⁵ uses the right to 'seek, receive and impart information', as its main legal foundation in promoting Internet access, citing Article 19(2) of the International Covenant on Civil Political Rights (ICCPR) i.e.:

"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."¹⁶

To understand the right to 'seek, receive and impart information', requires a historical analysis. This right is underpinned by the 'Free Flow of Information Paradigm', which developed shortly after the end of World War II.¹⁷ Due to the subsequent devastation caused by this war, the international community were united in their need for peace. The UN was formed to ensure that there would be an established set of rights as well as repercussions for those who violated the human rights of others. The UN promoted many principles on how human beings should be treated; 'one of these principles was the promotion of free, unrestricted flow of information and ideas on a global scale.'¹⁸ Free expression of information was thus promoted as foundational right.¹⁹

In 1946, 'UN Resolution 59(I), which was the first declaration on 'Freedom of Information', was adopted by the General Assembly'²⁰ and stated that:

"Freedom of information is a fundamental human right and is the touchstone of all freedoms to which the UN is consecrated;

¹⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Human Rights Council, Seventeenth Session, Agenda item 3. 2011, A/HRC/17/27 16 May 2011).

¹⁶ Note 12 above.

¹⁷ CJ Hamelink *The Politics of World Communications: A Human Rights Perspective* (1994) 152.

¹⁸ Ibid 153.

¹⁹ M Koren 'Human Rights of Children: Their Right to Information' (2001) *Human Rights LR* 54, 55.

²⁰ JW Penney 'Internet Access Rights: A Brief History and Intellectual Origins' (2011) 38 *William Mitchell LR* 9, 24.

CHAPTER 3 – WHY INTERNET ACCESS CANNOT BE CONSIDERED A HUMAN RIGHT

The arguments advocating that Internet access should be considered a fundamental human right have also created high profile criticism over the past decade. The co-founder of Microsoft, Bill Gates, in an interview with 'Financial Times Magazine' stated that: 'there are more important issues to worry about than universal Internet access, such as fighting malaria.'¹ One of the founders of the Internet – Vinton Cerf, does not think that Internet access should be seen as a fundamental human right; his view is that 'technology is an enabler of rights rather than a right in itself.'² In this Chapter, I shall review some of the criticisms of Internet access being recognised as a human right.

¹ Richard Waters 'An exclusive interview with Bill Gates' *The Financial Times Magazine* 1 November 2013, available at <http://www.ft.com/intl/cms/s/2/dacd1f84-41bf-11e3-b064-00144feabdc0.html#ixzz2jQNJ33ly>, accessed on 25 June 2014.

² Don Reisinger 'Vint Cerf: Internet access isn't a human right', available at <http://www.cnet.com/news/vint-cerf-internet-access-isnt-a-human-right>, accessed 20 May 2014.

Internet access is instrumental in providing free expression it is not 'instrumentally necessary'.

3.2.3.5. The Assembly Argument:

The final argument falling under the political approach is that of assembly. The argument is set out as follows:

'1) Membership in a political community is intrinsically valuable and 2) Some level of assembly is instrumentally necessary for membership and seeing as 3) Internet access is instrumentally necessary for assembly, and further that 4) anything that is instrumentally necessary for something that is intrinsically valuable is a human right. Therefore, 5) there is a human right to Internet access.'⁴²

The problem Skepys has with this argument is that, 'it is not readily identifiable what minimum standard is required with regard to assembly for membership in terms of the political approach to be met.'⁴³ While Skepys submits that the Internet provides the largest and most efficient means of assembly, he believes it would be unfounded to claim that the right to assemble which we as human beings are entitled to must be on a level provided for by Internet access. Skepys concludes that premise 3 causes the assembly argument to fail as not having Internet access does not completely exclude your ability to assemble. Skepys' reasoning in this regard is valid as not having Internet access would not extinguish a person's ability to assemble as Internet access is not 'instrumentally necessary' for assembly.

⁴² Ibid.

⁴³ Ibid.

conducted on five of the most popular arguments advocating a human right to Internet access. Through this review of the political and orthodox human rights theory approaches, it was observed that while some arguments meet the requirements of a human rights theory evaluation others do not. However, every argument need not fulfil such an evaluation; if only one argument can succeed, then that would be sufficient to answer in the affirmative to the question: 'can Internet access be a human right?'.

CHAPTER 4 – WHY INTERNET ACCESS SHOULD BE CONSIDERED A HUMAN RIGHT

The Internet, as a medium of learning and communicating is extremely valuable to our growth as human beings; however, this is only true for the minority who have access to it. To those who have access, a veritable super highway of information is freely available at their finger tips, connecting them to millions of people in the sharing of ideas and information. Not only are Internet users connected to each other by the Internet but we're connected to hundreds of terabytes of data via our personal computers which have access (through cabling and routers) to 'external servers', which store the information. Dr Hamadoun Toure (the Secretary General of the International Telecommunication Union) stated that, 'the Internet is the most powerful potential source of enlightenment ever created.'¹ The former Minister of Justice of New Zealand, Judith Tizard, believes that, 'Internet access should be viewed as almost a human right, similar to how water and electricity are viewed.'² These recent opinions by prominent individuals such as Toure and Tizard evidences a trend towards the growing belief of the invaluable role Internet access can play in society and its possible recognition as a human right. In this chapter, I will focus on and consider not only why Internet access is of value but also why it should be acknowledged as a human right.

4.1. Public Perception

During a 2010 BBC survey, consisting of more than 27 000 individuals (across 26 countries) on both sides of the digital divide, 79 % of interviewees answered in the affirmative to the question, 'Is Internet access a human right?'.³ Another survey by the Centre of International Governance Innovation (CIGI) found that '83% of Internet users

¹ BBC 'Internet access is 'a fundamental right' available at <http://news.bbc.co.uk/2/hi/technology/8548190.stm>, accessed on 3 July 2014.

² JW Penney 'Internet Access Rights: A Brief History and Intellectual Origins' (2011) 38 *William Mitchell LR* 9, 14.

³ Note 1 above.

4.2. A Brief Analysis of the Human Right to Freedom of Expression

The Parliamentary Assembly of the Council of Europe has affirmed that:

“for a democratic society to exist it must promote and uphold the fundamental right to freedom of expression, as the progress of society and the development of every individual depends on the possibility of receiving and imparting information and ideas.”¹⁰

In the European Court of Human Rights case of *Handyside v United Kingdom 1976 (App 5493/72) ECHR*, the court stated that:

“Freedom of expression constitutes one of the essential foundations of society, one of the basic conditions for its progress and for the development of every man.”¹¹

These examples of European law promote the essentiality of the human right to freedom of expression which can be linked to Internet access as Internet access allows the free flow of information and ideas, enabling users to express themselves greater than ever before. Hence, to be without access to such a medium is argued to be tantamount to having your freedom of expression infringed, as the same values underpinning freedom of expression, are also promoted by Internet access. Therefore, it becomes possible to use these underpinned values of freedom of expression as a basis to argue that Internet access can be acknowledged as a human right. This concept of a nexus of underpinned values between freedom of expression and Internet access will be discussed in detail further in this chapter but first a discussion of some of the arguments in favour of a human right to Internet access will be done.

¹⁰ Parliamentary Assembly of the Council Europe, Recommendation 1510, 28 June 2006.

¹¹ *Handyside v. United Kingdom 1976 (App 5493/72) ECHR* at 49.

4.3. Arguments in Favour of a Human Rights Claim to Internet Access

4.3.1. 2011 UN Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression:

The idea of Internet access being considered a human right has grown globally over the last decade, with the most noteworthy proponent undoubtedly being ‘The UN Report’¹² submitted by human rights lawyer, Frank La Rue. Whilst ‘The UN Report’ does not explicitly state that Internet access should now be considered a human right, it strongly implies this via its warning of member states against restrictions on Internet access as well pleading to these states to hold themselves positively obligated to provide adequate infrastructure to ensure Internet access. In ‘The UN Report’, La Rue continually reiterates the value of the Internet in attaining the same goals of other human rights as well as the positive outcomes that arise from its use. A human right can be argued to have been created by ‘The UN Report’ prohibiting governments of member states from restricting Internet access and online content as well as placing an obligation on member states to provide the necessary infrastructure in the pursuit of universal Internet access to its citizens.

‘The UN Report’ explored ‘key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet’ and cites its source as Article 19(2) of the ICCPR, which states:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹³

In La Rue’s report, he made 88 recommendations to promote the right to freedom of expression online as well as further its protection. These include numerous

¹² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Human Rights Council, Seventeenth Session, Agenda item 3. 2011, A/HRC/17/27 16 May 2011).

¹³ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, 23 March 1976, Article 19(2).

or less than the average monthly income. The committee has a projected target of providing 50 % of the population with Internet access at 5 Mbps by 2016, 90 % at 5 Mbps by 2020 and 100% at 10 Mbps, with 80 % being provided with the option of 100 Mbps by 2030.⁴⁴

4.3.3. Values Underpinning Both Freedom of Expression and Internet access:

While everybody can agree on the value the Internet possesses, some believe that it should not be equated to the level of a human right. As mentioned in previous chapters, Vinton Cerf believes that it is a mistake to equate a technology to other human rights and that technology such as the Internet, is merely an enabler of rights, not a right itself.⁴⁵ However, Mr Cerf's argument is based on 'an extremely narrow definition of human rights'⁴⁶ as many of these rights owe its roots to technology. Rights such as housing and education all require technology to be realised. 'All the cables and coding that form the Internet are no more special than the nails and hammers used to build a house and as such neither should be considered a human right as they are enablers.'⁴⁷ Building on this point, Internet access rights advocate, Kosta Grammatis, has stated that:

"Just as a house is more than the sum of its parts so too is the Internet; which is built on top of the brick and mortar society, we call civilisation. The Internet is its own unique society that enhances and grants a global perspective to our lives. To access the Internet is to be allowed global citizenship – the ability to collaborate, learn, empathise and participate globally."⁴⁸

⁴⁴ Government Notice, Department of Communications, Electronic Communications Act, 2005, South Africa Connect: Creating Opportunities, ensuring inclusion South Africa's Broadband Policy. Government Gazette 6 December 2013. No. 953

⁴⁵ Vinton G. Cerf 'Internet Access Is Not a Human Right', available at <http://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html>, accessed 7 October 2014

⁴⁶ KostaGrammatis 'VINT CERF: INTERNET IS A HUMAN RIGHT', available at <http://ahumanright.org/press/releases/2012/01-12-12%20A%20Human%20Right%20Release.pdf>, accessed 4 October 2014

⁴⁷ Ibid

⁴⁸ Ibid.

'Internet access can be seen to be in direct nexus with the human capabilities that are considered to ensure a life worth living'⁶³ and so interwoven are they, that to deny Internet access, is to allow its associated capabilities to also be denied.

4.4. Conclusion

Freedom of expression is a fundamental human right that is required for all individuals to live a life of dignity and reach their full potential; this also applies to Internet access as evidenced above. It can thus be argued that, Internet access can be classified as a human right as the values and capabilities which underpin the already established human right of freedom of expression are the very same as Internet access. The concept of a human right to Internet access has already gained legislative and judicial support by various countries who believe Internet access should be provided to every human being. These countries lead the way forward and others should follow suit, as fast as reasonably possible, to promote the quality of their citizens' lives and growth of their country as a whole. While a well structured, shared definition of what a right to Internet access really entails has not yet materialised, a formal declaration by the international community will assist in clarification. Whilst 'The UN Report' falls short of this, it is a good starting point toward a formal legal structure. However, in the mean time, 'The UN Report' will surely have a very significant impact on realising the promotion of Internet access as a human right as courts and legislators will be persuaded to follow the reasoning behind it, especially due to the huge publicity and support it gained. An international, legal acknowledgment of Internet access rights, which has been negotiated by the international community, will quell any discord that may arise as a result of the borderless nature of the Internet. Through positive and negative obligations bolstered by 'The UN Report', there will be a greater acceptance of a human right to Internet access, which is not just an enabler of other human rights but should be correctly classified as a human right in itself. The acknowledgment of Internet

⁶³ Ibid.

access as a human right will inevitably become a more prevalent and accepted idea over time, as the Internet unavoidably becomes more integrated into our daily lives and no matter what the outcome of this debate in the short-term, Internet access will definitely be considered (someday) as the basic tap water of the future.

and ideas of all kinds...'⁴ and has propelled worldwide debate and acceptance of Internet access being a human right.

The implications of 'The UN Report' are far reaching, as the reasoning behind La Rue's assertions will influence domestic legal jurisdictions to adopt legislation; promoting the right to Internet access. This will not only occur due to La Rue being a high profile UN official but also as a result of the global attention and support 'The UN Report' has received. La Rue's findings will thus prompt governments to initiate the provision of universal Internet access, following countries such as Estonia and Finland; where governments realised the 'Internet's universality, integrity and openness would be consistent with a human rights approach.'⁵ This idea of a right to Internet access is far from static, being a continually evolving concept that is being strengthened by proponents such as 'The UN Report' and various countries' legislative and judicial efforts. These latest developments will shape perceptions toward the belief that Internet access is not merely a tool to garner human rights realisation but rather a right in itself that deserves a higher threshold of human rights protection and promotion.

Whilst no one can reasonably dispute the value which the Internet can bring to the lives of every human being, many argue that Internet access fails to meet the criteria of what a human right truly is and thus, to place a human right status on a form of technology, will only promote a 'human rights inflation.'⁶ A 'human rights inflation' occurs when too many things are proclaimed as human rights thereby diluting the reverence the framework holds. However, Internet access is not merely an enabler of other rights or a modern luxury but is rapidly becoming 'essential for the preservation and participation of democracy'⁷. In the course of this paper, human rights were defined to be 'those rights which are

⁴ Note 2 above, Article 19(2).

⁵ S Tully 'A Human Right to Access the Internet? Problems and Prospects' (2014) 14 *Human Rights LR* 175, 176.

⁶ B Skepys 'Is There a Human Right to the Internet?' (2012) 5 *J of Politics and Law* 15, 15.

⁷ Winter (Note 3) above.

in driving political change around the world. Therefore, denying Internet access would promote the denial of its associated capabilities.

Another argument put forward against a human right to Internet access, is that while various countries have put in place policies to provide universal Internet, these same countries fail to provide more urgent human rights such as water and housing. Thus, by this reasoning, a promotion of a human right to Internet access would amount to a waste of crucial funds that could help uplift the lives of the disadvantaged through the adequate provision of more urgent human rights. However, in providing Internet access to its citizens, states can help these individuals realise various human rights. Internet access can not only help people find economic opportunities, it can create them, as many can start their own online business ventures. Therefore, enormous economic progress Internet access can bring to a 'developing country' cannot be understated. Healthcare is another human right that can be attained via Internet access, as 'telemedicine technologies are revolutionising how the disadvantaged, poor sectors of society are able to attain access to adequate healthcare.'²⁰ These healthcare technologies allow doctors who are continents away from their patients, to successfully diagnose diseases and health issues. The Internet can also be an invaluable medium to aid in disaster relief; by helping those isolated villages in 'developing countries' to communicate with those who can come to their aid. Those who are able to help can be notified immediately and therefore the efficiency of such communication can save countless lives. Internet access is therefore capable of enabling other human rights, however, from the arguments put forth in this paper it is clear that it can also promote its own values as a separate human right. Internet access can truly aid society, especially those individuals from the disadvantaged sectors of society to realise various human rights and consequently, Internet access should be viewed as crucial to the lives of every human being in their pursuit of a life worth living.

²⁰ A Human Right '4.6 billion people live without Internet access', available at <http://ahumanright.org/>, accessed on 23 September 2014.

The Internet can help an individual become a global citizen who can become engaged in a larger, global democratic participation. Those with Internet access are able to publically interact, pursue knowledge and participate politically in an unprecedented, far reaching manner, not provided for by any other medium. The Internet has thus become a crucial part of our contemporary, technologically advanced society as a whole. The nature of the Internet allows for not only a one sided dissemination of information but a multi-faceted one, promoting intellectualism and debate rather than indoctrination. The Internet possesses the sum total of all human knowledge; it is an endless supply of continually, exponentially growing knowledge. From the Internet, your right to education can be fulfilled, as you can learn what you want, when you want. We all know the proverb – ‘If you give a man a fish, you feed him for a day but teach a man to fish and he can feed himself for a lifetime’ however, Kosta Grammatidis states further, ‘but give that man the Internet, and he can teach himself to fish and anything else he wants to do.’²¹

It is also argued that ‘to join a state of technology to human rights is an incorrect notion as human rights are unique in that we possess them by the very reason that we are human.’²² However, if we analyse Article 19(2) of the ICCPR, we see it was indeed revolutionary; adopted in the 1950’s, it had the consequences of being able to protect future communication technologies such as the Internet.²³ Article 19 therefore fosters an early basis for an ‘international law of the Internet’ and can provide guidance in terms of Internet governance debates.²⁴ This Article, in protecting technologies of communication, promotes the closing of the ‘void in human rights law as there are various decisions on technologies that, while not violating international human rights law, affects them greatly.’²⁵ Protection of such technologies, allows intervention and discussion on many decisions in the broader realm of affecting human rights.²⁶

²¹ Note 21 above.

²² E Sterner ‘The Folly of Internet Freedom -The Mistake of Talking About the Internet as a Human Right’ (2011) 32 *The New Atlantis* 134, 137.

²³ M Land ‘Toward an International Law of the Internet’ (2013) 54 *Harv Int LJ* 393, 408.

²⁴ *Ibid*, 394.

²⁵ *Ibid*.

²⁶ *Ibid*, 395.

The argument that Internet access should not be a human right as ‘not having access to computer hardware and software would amount to a human rights violation and basic human rights do not depend on the availability of resources,’²⁷ has no argumentative weight as water and housing which are established human rights, requiring many infrastructural components to allow its provision. Therefore, Internet access should not be treated any differently due to its infrastructural obstacles. Just as governments have policies in place with the eventual goal of providing human rights such as water and housing to every citizen, so too can governments in terms of a right to Internet access. With an international human rights framework in place, states will be compelled to adopt legislation and can thereafter put in place strategic policies that further the goal of universal access.

This paper posed the question, ‘can Internet access be a human right?’ Evidence suggests that any state can independently proclaim that it is such a right and subsequently enact legislation to provide it to all its citizens. However, what this paper pursued was a determination as to whether it was appropriate for Internet access to be structured within an International human rights framework; this is a crucial question to provide global uniformity on the matter. This paper reviewed arguments against and for the promotion of Internet access as a human right and ultimately concludes that Internet access can and must be a human right as among other advantages, it is important for the preservation of democracy.

Currently, in the majority of the world, Internet access is treated as merely a technology in pursuit of various pre-existing human rights and therefore is not treated as an independent right.²⁸ While the current human rights framework, i.e. Article 19(2) offers some protection for Internet access (as it is a medium that can be used to seek, receive and impart information), it is not sufficient. There has to be some change and in pursuit of this; a formal, international human right to Internet access must explicitly be adopted via a

²⁷ N Bernasconi & J Maxlow ‘Is Internet Access a Basic Human Right?’ (2010)*Learning & Leading with Technology* 37 6, 7.

²⁸ Tully (note 5) above, 175.

declaration by an international body. Although ‘The UN Report’ will assist in persuading governments to recognise Internet access as vital, it falls short of a formal, explicit declaration that will be binding on member states. A formal embodiment of a right is recommended as an international legal acknowledgement will spark ‘the implementation of a right to Internet access based on mutual understanding and negotiation.’²⁹

A right to Internet access entails not only protection against state governments which illegitimately restrict Internet access and censor online content but also to provide the necessary infrastructure to provide access. In pursuit of this, strategic policies need to be adopted to provide the disadvantaged sectors of society with access. Policies need to keep in mind issues of affordability, practicality and the socio-economic climate within the country. A human right to Internet access will however not be unqualified. Just like any other human right, a right to Internet access will be subject to restrictions. The aims of these restrictions (e.g. rights of others, public interest, national security etc.) will have to be balanced against the interests of Internet users.

5.2. Recommendations

Going forward, I suggest the adoption of an international legal framework to protect a human right to Internet access. I further suggest that all states, in providing legislation in promotion of such a human right should consider and incorporate the following 7 factors:

- Proportionate response,

The retaliation by state governments for any expression online should be focused on offensive content alone and not go too far in its punishment, i.e. a complete ban from Internet access for minor infringements. Restrictions to Internet access ‘should only target legitimately threatening content that could incite violence

²⁹ Winter (note 3) above, 44.

- Formation of an Independent body,

Legislation regulating a right to Internet access must be applied by an independent, sui generis body which has no commercial or political interests; such a body has also been recommended by 'The UN Report'.³⁶ This body must perform its function in a non-arbitrary or discriminatory manner, while protecting users from abusive restriction.³⁷ This body should have the power to hear evidence and then apply domestic law to uphold the values which the Internet promotes.³⁸ It is suggested that such a body 'should act like an administrative court by weighing the evidence in determining issues such as blocking, restricting and censoring Internet content of individuals.'³⁹ The role and responsibilities of ISPs in helping to regulate a right to Internet access needs to be further analysed and applied. ISPs can help this body by providing information about users' infringements as set out in legislation to help the independent body in its decisions to restrict or disconnect users.⁴⁰

- Judicial Review,

The decisions decided by such an independent body mentioned above, should be open to judicial review by a higher court already established in a country's domestic legal framework.⁴¹ An Internet user who is of the opinion that his/her Internet rights were infringed by the body's decision 'should have the ability to seek redress in a court of law.'⁴²

³⁶ Note 23 above.

³⁷ Tully (note 5) above, 192.

³⁸ Lim & Sexton (note 30) above, 316.

³⁹ Ibid.

⁴⁰ Tully (note 5) above, 191.

⁴¹ Lim & Sexton (note 30) above.

⁴² Ibid, 317.

- Transparency

The proposed legislation and the decisions made by an independent body should be absolutely transparent. Processes of enforcement, court proceedings and legislative documents; detailing restriction criteria should be made public for every citizen to make themselves aware of; this is to foster greater accountability and will provide for a more legitimate right to Internet access.⁴³

- International Co-operation

For an efficient, legitimate system of Internet rights protection, co-operation between different jurisdictions is key; this being the need for an international human rights framework. The Internet is an international construct, the use of which can have international implications. Therefore, a legal authority on Internet access within a state 'is just one player in a global web of authorities.'⁴⁴ Hence, co-operation between jurisdictions will be ideal in addressing issues of online content, as someone who posts illicit content might be present in one country whilst an infringing downloader is in another – this is the borderless nature of the Internet.

- Partnership between government and technology companies

Governments, in forming legislation, should consider the role technology companies can play in promoting Internet access rights. A more active role by technology companies should be promoted as 'their position in the market and subsequent decisions can affect possible human rights to Internet access.'⁴⁵ Whilst governments will play the lead role in enforcing Internet access rights, technology companies can be prompted to rectify a conflict of interest as governments will not

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Land (note 23) above, 396.

be too eager in restricting their own ability to control online expressions. By being placed outside the sphere of users and government control, technology companies can enforce freedom of expression online by creating technology that makes it harder for governments to violate an international right to Internet access.⁴⁶

These factors will help promote a well developed system of Internet protection as a human right to Internet access fast becomes the primary method of communication, fostering a more technological society. The question of whether Internet access is a human right is crucial at present, due to the various examples of recent governmental online censorship and blocking practises. This has resulted in increasing interest around this debate, creating an urgency to take immediate action. I submit that sufficient argument has been tendered in this paper in support of a human right to Internet. The shortcomings of such an acknowledgement are greatly outweighed by the advantages. It is also submitted that 'in the future, technological developments are likely to force the creation of new human rights'.⁴⁷ International bodies should therefore start the implementation of an international human rights framework to Internet access. The road ahead to a universal human right to Internet access will be a long, arduous journey due to issues such as domestic governments' infrastructural obstacles and/or their unwillingness to acknowledge the immense value which the Internet has at unlocking human potential, promoting economic growth and facilitating the achievement of other human rights. Therefore, building towards a human right to Internet access is a venture worth pursuing for the betterment of all society.

⁴⁶ Ibid.

⁴⁷ R Brownsword & M Goodwin, *Law and the Technologies of the Twenty-First Century* 1 ed (2012) 225.

