

# LCRM – Legal Resources Centre from Moldova

## Is access to internet a human right?

Gribincea Vladislav · Friday, January 22nd, 2021

The COVID-19 pandemic has changed us irreversibly. We work increasingly more from home, staff meetings have moved from conference rooms to ZOOM, and we shop more online to avoid going physically to stores. Even a consultation with a doctor can now take place in a virtual medical room during a telemedicine appointment.

None of these changes would be possible but for one thing—the Internet, the tool that allows us to adapt in a world where we have to isolate ourselves. That the Internet is essential in 2021 is an undeniable truth. During the pandemic, we managed to leverage the possibilities offered by the Internet. It has become an important medium of communication and contact with other people. Using the Internet, we have changed how we socialize, find information about what happens every day worldwide and locally, or conceive the idea of a new business.

Can we consider, however, that access to Internet is a human right (much like the right to health or work)? Why do some states want to limit access to Internet? We try to find answers to these questions in this blog.

### ***What do human rights treaties say?***

The signatories of the [Universal Declaration of Human Rights](#) (UDHR)—the main document addressing human rights protection internationally—could not provide for the right of access to Internet for the simple reason that this invention would come to be piloted only 20 years later. The declaration was signed in 1948, whereas the Internet appeared by the end of 1968.<sup>[1]</sup>

In the absence of a “separate right,” access to Internet became integrated and interpreted as part of the fundamental right to freedom of expression. Freedom of expression is provided for in a series of international human rights treaties.<sup>[2]</sup> It includes, among other, freedom of opinion and freedom to receive or communicate information irrespective of national borders.



### **European Convention on Human Rights (ECHR)**

#### **Article 10. Freedom of Expression**

1. “*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*” [...]

Given the lack of any frontiers on the Internet, it is rightfully the best facilitator of freedom of expression. Therefore, access to Internet can be viewed as a prerequisite for exercising freedom of expression, and any restriction of such access, a violation of this freedom.[\[3\]](#)

### ***A curious case in the ECtHR’s practice concerning the right of access to the Internet***

The European Court of Human Rights (ECtHR) partially addressed the issue of access to Internet as a separate right only in 2016 in *Kalda v. Estonia*. That case concerned a prisoner’s complaint about the refusal of the penitentiary’s administration to allow him access to certain websites that contained legal information. The plaintiff especially complained that the denial of access to these websites had violated his right to receive information through the Internet and precluded him from conducting legal research concerning the legal proceedings that involved him.

The ECtHR held that there was a violation of Article 10 (Freedom of Expression) of the Convention and found that the authorities’ refusal to grant the plaintiff access to the websites that contained legal information had violated his right to receive information. The Court noted in that case that the contracting states **were NOT obliged to ensure access to Internet**. That said, if a state decided to offer this access, it must give a thorough reasoning for the denial of access to certain websites to any users.

### ***Can and will states regulate the Internet?***

Neither a state nor an international institution is officially responsible for regulating the Internet. The governing of the Internet is based on states’ joint efforts to ensure the principle of the neutrality of the Internet (*net neutrality*).[\[4\]](#) The neutrality of the Internet or net neutrality is the principle by which internet providers and state governments should treat all data available on the web equally, to ensure access for all users, without assuming exclusive regulatory and/or supervisory powers.[\[5\]](#)

Internationally, in 2012, the United Nations’ Council unanimously adopted a resolution that provided for the promotion, protection, and observance of human rights on the Internet.[\[6\]](#) The resolution stated that any person should benefit of the protection of their rights equally and developed the principle “*what applies offline, applies online.*” At the European level, the Council of Europe (CoE) developed several guidelines concerning the regulation of the Internet. According to the Internet Governance Strategy,[\[7\]](#) the member states of the Council of Europe should ensure the following, among other things:

- The protection of all fundamental rights and freedoms and the assertion of their universality, indivisibility, and interdependence in accordance with the international standards on the virtual environment;

- The recognition of, and support for, human rights and fundamental freedoms in their operations and activities when designing new technologies, services, and apps; and
- The assumption of certain rights and responsibilities related to the regulation of the Internet in public policy matters. That said, subject to the international law, states should refrain from any action that affects, directly or indirectly, persons or entities outside their territorial jurisdiction.

### ***The phenomenon of Internet shutdowns or power Internet outages***



Although states committed themselves to ensuring access for all users, without assuming exclusive regulatory and/or supervisory powers over the Internet, there is a growing number of instances, especially in fragile democracies, where authorities attempt to restrict or even block access to Internet.

The *Internet shutdowns* phenomenon happens when certain entities—usually the government—deliberately weaken or cut off access to Internet and/or some mobile apps (for instance, WhatsApp, Facebook, or Telegram) to control the flow of information.<sup>[8]</sup>

According to the global coalition **#KeepItOn**, in 2019, there were at least 213 documented attempts to suspend or shut down the Internet in over 35 states. These states included India, Venezuela, Russia, and even the United Kingdom. In 2020, partial or total Internet shutdowns **also occurred in Belarus** in the wake of the presidential election.

In Moldova, the latest major incident of cutting off the mobile web occurred during the events of **April 2009**, when authorities cut off the cell phone coverage within the perimeter of Pia?ia Marii Adun?ri Na?ionale (the central square of the city). Access was shut down because over 10,000 protesters rallied on Twitter (some via GPRS technology on their mobile phones) to share their opinions and spread the news about the political protests in Chi?in?u. Authorities went as far as to attempt shutting several websites for a few days.<sup>[9]</sup>

### ***The number of Internet shutdowns and the countries where they happened in 2019***



*Source: KeepItOn report from 2019 on internet shutdowns available at:*

<https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf>

The number and duration of Internet shutdowns varies and may reach quite long periods. For instance, while in Syria, Tajikistan, or Turkey Internet shutdowns lasted a little longer than seven days, Chad experienced an Internet shutdown that lasted 472 days.<sup>[10]</sup>



In 2018 and 2019, **Chad** shut down access to social platforms, including WhatsApp, Twitter, Facebook, Instagram, and YouTube for a period of 472 days. The government tried to justify the

shutdown by reasons of national security. Still, the authorities blocked access right when President Idriss Déby of Chad declared his intention to remain in office until 2033. He had been president since 1990.

*Source: Woodhams , S. (2019, March 28). Chad social media ban reaches one-year mark. Retrieved February 21, 2020, from <https://africanarguments.org/2019/03/28/chad-social-media-shutdown-has-now lasted-a-whole-year/> from the #KeepItOn report on internet shutdowns in 2019, p. 4.*

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When authorities cut off the Internet, they usually try to justify themselves. According to the global coalition #KeepItOn, the most common official justification for blocking the Internet is the fight against fake news, hate speech, or the content that promotes violence. However, the actual reasons why states cut off or restrict access to the Internet are often related to protests, military actions, outbreaks of violence, political instability, religious holidays, or elections.

### ***The “official” justifications versus actual causes of Internet shutdowns***



*Source: <https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf>*

### ***States’ attempts to create their own Internet networks***

Even though states should ensure access to Internet for all users, without assuming exclusive regulatory and/or supervisory powers, many states in the world try to build their own Internet to be able to control the flow of information and users’ access. Since 2014, Russia has been building **Runet**—an autonomous Internet infrastructure that is independent of the outside Internet. In late 2019, Russian authorities passed the so-called **Sovereign Internet Law**. It enabled the government to block “malicious” traffic activity, or websites.<sup>[11]</sup> Similar exercises exist elsewhere in the world. North Korea has its **Kwangmyong**—a centrally administered network accessible only via an internal Linux distribution. Cuba has RedCubana—an alternative to open network that hosts Cuban versions of popular websites, such as Wikipedia, along with local apps. And Iran has its internal information network (aka **Halal Internet**) too. This government-controlled network hosts Iranian sites and can survey all its users, all the while allowing moderate access to the outside world.<sup>[12]</sup>

### ***What can NGOs do to protect the access to Internet?***

Though one cannot speak yet of a human right of access to Internet , the Internet remains an essential tool for exercising one’s freedom of expression. While access to Internet can be restricted for justified reasons, it is important to keep the principle of net neutrality to ensure access for all users irrespective of their whereabouts.

Considering the widespread nature of Internet shutdowns, the coalition #KeepItOn supports and funds civil society organizations to protect human rights in the digital age and to identify and support communities affected by Internet shutdowns. Anyone can report incidents of Internet shutdown anonymously on the #KeepItOn platform by filling out the form at <https://cutt.ly/zjgrtdw>, and civil society organizations can become partners to facilitate information

gathering and documentation of Internet shutdown incidents.

More details are available at <https://www.accessnow.org/keepiton/#take-action>.

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[1] Johnson D.R., Post D., “*The Rise of Law in Cyberspace*,” *Stanford Law Review*, 1996, Vol. 48, p. 1367, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=535](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=535): Initially named ARPAnet (Advanced Research Projects Agency Network from the USA). According to the paper, the Internet came into existence as a network for the promotion and development of advanced military technology and served as a means of communication between military hubs of the US army. After the extension of the ARPA network and the connection of other local networks created by some US university campuses to facilitate remote information exchange between universities, the Internet became a collective creation and even got a different name.

[2] Particularly the UDHR, the International Covenant on Civil and Political Rights (ICCPR), or the European Convention on Human Rights.

[3] Benedej W., Ketterman M., *Freedom of Expression and the Internet*, Council of Europe Publishing, Strasbourg, 2013, p. 24.

[4] Benedej W., Ketterman M., *Freedom of Expression and the Internet*, Council of Europe Publishing, Strasbourg, 2013, p. 1375.

[5] Wu T., *Network Neutrality FAQ*, available at [http://www.timwu.org/network\\_neutrality.html](http://www.timwu.org/network_neutrality.html).

[6] United Nations, The Promotion, Protection and Enjoyment of Human Rights on the Internet, 2012.

[7] Council of Europe, Internet Governance Strategy 2012 – 2015, para. 2.

[8] The #KeepItOn report on internet shutdowns in 2019, p. 4, available at <https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf>.

[9] <https://opennet.net/research/profiles/moldova>.

[10] The #KeepItOn report on internet shutdowns in 2019, *op. cit.*, p. 4.

[11] Alena Epifanova, *Deciphering Russia’s “Sovereign Internet Law,”* 2019, available at <https://dgap.org/en/research/publications/deciphering-russias-sovereign-internet-law>.

[12] Danny Bradbury, (2021, 4 January) “*Welcome to the splinternet—where freedom of expression is suppressed and repressed, and Big Brother is watching,*” from: [https://www.theregister.com/2021/01/04/welcome\\_to\\_the\\_splinternet/](https://www.theregister.com/2021/01/04/welcome_to_the_splinternet/).

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