

Human Rights Commission and InternetNZ

Report on Human Rights and the Internet Roundtable 21 July 2010

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Human Rights
Commission
Te Kāhui Tika Tangata



Introduction

The Human Rights Commission and InternetNZ brought together human rights leaders and Internet industry leaders to talk about the Internet and Human Rights. The objectives were to build relationships, discover areas of mutual interest, ask questions, and consider whether there are opportunities for further dialogue, activities or policy advocacy. The roundtable provided an opportunity for the Commission to receive preliminary feedback on a forthcoming draft Chapter in the Commission's Review of Human Rights in New Zealand on Human Rights and the Freedom of Expression, which will include a section on the Internet. A list of those who attended is attached as an appendix, together with background material provided by a number of participants and some who were unable to attend.

Opening Remarks

The Minister of Justice (with responsibility for the Human Rights Commission) and Minister of Commerce, the Hon Simon Power, opened the roundtable and welcomed the initiative. The Minister noted briefly some of the opportunities, challenges and risks in relation the human rights and the Internet and observed that government and parliamentary processes need to be able to cope with these.

Frank March, President of InternetNZ provided an overview of the technical operation of the Internet, a brief history of the development of the Internet, the system of international co-operation on which it operates, Internet administration in New Zealand and outlined some of the opportunities and challenges it presents. Commissioner Joy Liddicoat, from the Human Rights Commission outlined the three elements of the international human rights framework (relationships between the State and citizens; agreed human rights standards; and accountability), its application in New Zealand and outlined some implications for the roundtable discussion.

Discussion Themes

InternetNZ provided a brief discussion starter, posing the question: Do the existing set of human rights apply in a world that has the Internet? Participants answered this affirmatively and six broad themes emerged from discussion.

1. Human rights are inherent to humans

Two broad perspectives emerged from the discussion. The first was that human rights are inherent in human beings including those using, creating, and administering the Internet. The daily application of those human rights is legitimated by the international human rights framework, including State obligations. The second perspective was that the Internet was technically designed to avoid State intervention in communications and at the same time provide unparalleled opportunities for all people. In infrastructure terms it can therefore be seen as a morally neutral space. More broadly, it could be said that the Internet is the right to freedom of expression writ large. There were

some inherent tensions in these two perspectives with different claims made for and about them. One of these was about power, for example, who wields powers of decision-making and the way in which the Internet challenges the traditional thinking about individual versus State power. At the same time, the operation of the Internet is not a moral vacuum, with decisions about technical issues often also raising broader implications.

2. The Internet is a quantum leap in how we live.

Some questioned why is there a need to talk about human rights and the Internet at all. Participants emphasised that the Internet is a new space in which humans increasingly exist, connect, communicate, interact and impart, receive and seek information. At the same time, increasingly there is no distinction between the Internet as a space separate from day to day life, rather it is seen as one of the places where we live: the Internet *is* us. There were implications for the public / private distinction of both traditional human rights thinking and legal structures which need to be constantly assessed.

3. States, corporate bodies and individuals continue to have a responsibility to protect human rights including in relation to the Internet

Participants emphasised that the existing human rights framework endures, particularly Article 19 of the ICCPR, and is constantly evolving. There was an emphasis on being more confident about the application of the human rights framework. While some new laws may be needed around specific issues no paradigm shift in human rights is required.

4. Universal connectivity is highlighting particular issues.

Issues brought into focus by the trend to universal connectedness include: freedom of expression, privacy, access to justice, children, safety, racial vilification, rights of women and sexual minorities, access, accessibility, shifts in power relations, democracy, and jurisdiction. Participants noted the increasing recognition that access to the Internet is an economic and social right and that access to the Internet (including accessibility) needs to be promoted.

5. New challenges for promotion and protection of human rights

Participants noted that promotion and protection of human rights includes positive promotion of digital literacy, digital citizenship, access, accessibility, and accountability.

6. Issues should be approached in a realistic and pragmatic manner

Participants canvassed the various responses to human rights issues and the technical development of the Internet and favoured a realistic approach about specific issues as these arise.

Pathways Forward

InternetNZ and the Human Rights Commission, together with other stakeholders, will work to:

1. Maximise the human rights potential of the Internet and minimise the harms (the Internet provides a major opportunity to extend human rights and democratic participation)
2. Articulate/generate community dialogue about the human rights elements of the Internet and distil some basic principles and standards
3. Promote digital citizenship
4. Advocate for equal opportunity and high quality access to the Internet as a human right (especially for those in rural areas)
5. Minimise intrusion into individual freedoms/privacy
6. Discuss with the Minister of Justice a possible reference to the Law Commission on New Zealand law in relation to the Internet (in light of 2.)
7. Engage in international discussion on a charter of human rights and the Internet.

Further Work

A number of suggestions were made for more research or discussion including:

1. InternetNZ and the Commission host a discussion on research related to the “digital divide” and demographics related to Internet use. Possible participants might include identified university researchers such as Barbara Craig (Cannons Creek), Massey University research on the digital divide, IRGO in the University of Otago, the Auckland University of Technology World Internet Project, and Rural Women New Zealand.
2. The Human Rights Commission use its advocacy role for engagement with government departments and focus on a human rights approach to minimise intrusion into individual freedoms and maximise human rights.
3. The Special Rapporteur on the promotion and protection of the Right to Freedom of Opinion and Expression, Frank La Rue is focussing his 2011 report to the United Nations on Internet issues. The Human Rights Commission will write to the Special Rapporteur about this roundtable.
4. Participants noted the draft Freedom of Expression Chapter and the suggested priorities for action. It was agreed that the Charter idea would be further explored by those attending the next meeting of the Internet Governance Forum in Lithuania in September 2010. Attendees agreed to considering the work on this topic in other jurisdictions and bring back material that would inform further discussion in New Zealand.
5. The Commission could work with young people to develop an initiative about the Internet, rights and responsibilities. In the meantime, the Commission will be hosting the annual New Zealand Diversity Forum at the Christchurch Convention Centre on 23 August. The preceding national youth forum will be asked to develop a presentation to the plenary on “Living in a Digital World” which will be received by the Children’s Commissioner John Angus. Keynote speaker Mia Northrope from Melbourne (who organised the social media campaign Human Rights

Commission write to *Vindaloo Against Violence*) will also be conducting a workshop on achieving social change through social media.

6. The Commission and InternetNZ should work to distil the human rights principles related to the Internet with the aim of wider promotion (theme 2 above).

Suggested Next Steps

The roundtable agreed that InternetNZ (Jordan Carter) and the Human Rights Commission (Joy Liddicoat) should be the reference points for further work. It was agreed that they would work together to decide how best to advance a short paper on the discussion themes, keep the Minister informed, ensure wider distribution of ideas, and seek ideas for further dialogue.

**Human Rights and the Internet Roundtable
21 July 2010
Appendix1**

Attendees

Name	Org/Position
David Farrar	Kiwi Blogger
Debbie Monahan	Domain Name Commissioner
Dr Petra Butler	Victoria University of Wellington, Centre for Public Law
Frank March	Internet NZ
Hamish MacEwan	Open ICT Consultant
Jackie Edkins	Rural Women New Zealand
John Fenaughty	Netsafe
Jordan Carter	InternetNZ
Martin Cocker	Netsafe
Miraz Jordan	ICT Consultant
Vikram Kumar	InternetNZ Chief Executive
Joy Liddicoat	Human Rights Commission
Judy McGregor	Human Rights Commission
Joris de Bres	Human Rights Commission
Jeremy Pope	Human Rights Commission
Rosslyn Noonan	Human Rights Commission
Susan Freeman-Greene	Human Rights Commission
Robert Hallowell	Human Rights Commission

Apologies

Steven Price	Barrister and media commentator
Rick Shera	Lawyer
Ruth DeSouza	Auckland University of Technology
Liz Butterfield	Hector's World
Karlo Mila Schaaf	Media commentator
Professor Susy Frankel	Victoria University of Wellington
Barry Coates	Oxfam
Alistair Kwun	NZ Chinese Association
Dev Nadkarni	Indian Weekender
Peter Dengate Thrush	Lawyer and ICANN Chair
Nathan Torkington	Open Source Consultant
Graham Walmsley	Telecommunications Forum
Brett O'Riley	Chief Executive NZICT group
Potaua Biasiny-Tule	Tangatawhenua.com: Maori news and indigenous views
Jonathon Penney	Cyber law fellow, Victoria University of Wellington

Human Rights and the Internet

Joy Liddicoat¹

What are human rights? Appendix 2

Human rights have their modern origins in the Universal Declaration of Human Rights. Driven by the horrors of World War II, a new system of international co-operation and standard setting was devised with the Declaration based on the [Charter of the United Nations](#). The preamble to the Charter reads:²

"We the peoples of the United Nations determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ..."

The Declaration marked the beginning of the transformation of human rights from moral or philosophical imperatives into rights that are legally recognised internationally and, increasingly, across nations. It established a framework for human rights that broadly has three elements: the relationship between the State and its citizens; the agreed human rights standards by which these relationships are recognised and negotiated; and accountability for performance against those agreed human rights standards.

Relations between the State and citizens

The human rights framework recognises the right of States to govern and the duties of the State to respect, protect and promote the human rights of its people. The framework recognises that people are the holders of rights and that rights holders also have duties. Article 29 of the Declaration, for example, states that 'everyone has duties to the community in which the free and full development of his personality is possible.'³

Agreed human rights standards

The Declaration has been described as a statement of principles which provides 'a common standard of achievement for all peoples and all nations'.⁴ To give the standards in the Declaration legal force, two major covenants were developed. The International Covenant on Civil and Political Rights (ICCPR) deals with civil and political rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) with economic, social and cultural rights.

¹ Commissioner, New Zealand Human Rights Commission.

² The Charter was unanimously adopted on June 25 and signed on June 26. Poland was not represented at the conference. The United Nations officially became an institution with the ratification of the Charter on October 24, 1945.

³ International Council on Human Rights Policy, *Taking Duties Seriously: Individual Duties in International Human Rights Law* (1999) at 16

⁴ Eleanor Roosevelt on the adoption of the Declaration of Human Rights in 1948

Within the human rights framework all rights are universal (they apply to all people without discrimination), interdependent, and indivisible⁵. For example, the right to vote is closely linked to the right to education. There is no hierarchy of rights. Limitations on rights are few and permitted only 'to the extent strictly required by the exigencies of the situation'⁶. Some of the rights and freedoms in the ICCPR do contain limitation clauses. For example the right to freedom of expression in Article 19 can be restricted to protect the rights or reputations of others, in situations of public emergency, and if prescribed by law.

Governments of the world and member States of the United Nations have agreed on other minimum human rights standards relating to thematic issues, for example, racial discrimination and discrimination against women. These standards include the International Convention on the Elimination of All Forms of Racism (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (UNCROC), the Convention on the Rights of Migrant Workers and their Families (CMW) and the Convention on the Rights of Persons with Disabilities (CRPD).

There are also a large number of United Nations resolutions or declarations that are not binding in the same way as these treaties but which establish standards of practice and can acquire significant status as a result of their moral force and specific application. The most recent of these is the Declaration on the Rights of Indigenous Peoples.

Accountability

The human rights framework has a range of accountability mechanisms. As members of the community of nations, States agree to submit themselves to the scrutiny of other States and special United Nations mechanisms and to be publicly accountable in a wide range of ways for their human rights performance. Very briefly, some of those accountability mechanisms include:

- Reporting standards
- Complaints to United Nations bodies
- Special Procedures of the United Nations
- New procedures such as the Universal Periodic Review
- Civil society
- National human rights institutions

⁵ The 1993 Vienna World Conference reaffirmed that human rights are indivisible and interrelated and that no right is superior to another: Article 5, Vienna Declaration and Programme of Action (1993). For a discussion on the concept of interdependence in the context of human rights see C. Scott, "The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights". Osgoode Hall LJ, Vol.27(1989), 769.

⁶Article 4 ICCPR

Governments may also be accountable domestically under constitutional or other laws which give effect to agreed human rights standards. In the New Zealand context, specific human rights laws include the Human Rights Act and the Bill of Rights Act. Some, but not all, human rights can be protected through litigation and decisions of the Courts.

Some implications

First, the human rights framework is not perfect. Agreed human rights standards are, generally, the product of the best possible political consensus at any given point in time. The participation and international engagement of successive New Zealand governments has been in part premised on our reliance as a small nation on a secure and functioning international order. This principled approach needs to be sustained through any discussions about human rights and the Internet.

Second, we must understand the limitations of the international human rights system: it is still evolving, with the United Nations mandate is under constant scrutiny and its utility questioned in the face of the modern horrors of human rights violations. In addition, the framework itself is not static. The United Nations system is evolving with new processes such as the Universal Periodic Review providing new opportunities for scrutiny and leadership. At the same time, the system does work and New Zealand's participation in it is generally of a high standard.

Thirdly, we need to understand and be aware of the language in our respective areas of interest. For example, just as Internet Service Providers do not "run the Internet" neither is every "issue" necessarily a "right". We might be concerned about the issue of the cost of technology, for example, but that does not mean we all have a right to free computers.

Finally, human rights are a human creation and are only as meaningful as we each make them in everyday life. Given the ubiquity of the Internet it is timely and necessary to consider what, if any, intersections there may be between the human rights and the Internet.

Human Rights and the Internet: a Discussion Starter

Jordan Carter⁷

July 2010

Appendix 3

This short paper does not deal with the “Is access to the Internet a human right, or should it be?” question. A forthcoming paper by Jonathon Penney, the outgoing Cyberlaw Fellow at VUW, canvasses that issue in depth. Instead, this asks you to consider the effects of the Internet’s existence on the existing framework of human rights.

Throughout the history of human societies, there has been a slow progression towards the universalisation of human rights. This gradual change has led to a situation in 2010 where in many places a wide range of rights for individuals are protected and promoted in law and society.

This framework of rights, and its method of operation, evolved before the advent of the Internet. Among the questions for discussion today is whether the Internet changes any of the fundamental bases of the extant human rights framework, and if it does, in what manner.

Communication is a key ability that allows the exercise of many important human rights (among them freedom of speech, and thought, and conscience). The first human societies communicated by voice, with oral traditions being the main means of transmitting culture and information from one generation to the next.

Subsequent cultures developed writing, which was a high cost, resource-intensive process and required the (extremely limited) ability to read to access the information contained in such texts.

The development of the printing press made written material economically available to many more people, and the widening ability to read developed in tandem with the growing availability of texts. In the 19th and 20th centuries, the development of first radio and then television broadcasting made the propagation of information easier than the physical transmission of written texts had earlier allowed.

Known publishers

What each of these methods of communication had in common was, in broad terms, a “broadcast” approach to communication. Information came from a source, and was propagated outwards to an audience. The sources of this communication were known, and were (arguably) embedded in a social context. The implication of this is that should a communication have adverse effects on the rights of an individual or set of individuals, the “broadcaster” or

⁷ Policy Director, InternetNZ. This paper is not an InternetNZ policy statement or position, and is provided to stimulate discussion and debate. Contacts: jordan@internetnz.net.nz, +64-4-495-2118.

publisher could be held accountable by the society and the institutions it contained, to protect people's rights.

Whether by means of retaliation against the inciter of a riot in a small village, or a case by the Crown against the printer of seditious texts, or a defamation case taken against a television station, redress was possible and accountability could be created. There were only ever a limited number of publishers, because the resources required to publish were considerable (a printing press, or a broadcasting network, or the knowledge of years of learning in an oral tradition each being examples).

Transience

A second feature of these traditional forms of communication is their relative temporal transience. "Today's news is tomorrow's fish and chip paper" is an aphorism of some use. A radio programme can only be listened to at the time it is broadcast, and a television programme enjoys the same characteristic (of course, either could be recorded and re-used at leisure, but before the creation of on-demand website replays, doing so required foreknowledge of the programme and the technology to record it). Conversations over a drink in the pub remain there, more or less, and the in-person interactions of friends occur in ways that are generally not publishable.

Implications

These two key characteristics – temporal transience and a known publisher – are integral to the environment within which the human rights framework we enjoy today has developed. Both, however, have fundamentally changed with the Internet's arrival.

On the matter of temporal transience, the Internet changes the game completely. Text and audiovisual content on the Internet is not transient; it is durable – in theory for all time. The posting of a drunken photograph of a teenager on a social networking site can be copied by others and is unable to be withdrawn from circulation no matter that person's intention, with effects very different from the same teenager developing a photo and pinning it onto the wall of their bedroom. Posts on public newsgroups remain on the record and available in a way that letters to the editor do not. In both cases the main technology changes are that the communication is in a digital medium, that it tends to be durable and publicly accessible, and that people have developed successful search engines that allow obscure or historical comments to be quickly accessed by anyone who wishes to find them.

The second point, the known publisher, has also changed. With the profusion of social networking and blogging sites now available, as well as the continued availability of older technologies such as Usenet, the barriers to entry of publishing have effectively become nil. Anyone with access to the Internet can establish a presence where they can publish material. Furthermore, in establishing that presence, there is no need to provide true contact details for the publisher. While the providers of such hosted services

in theory can be held accountable for what is provided through their services, the abovementioned characteristic of the Internet means that even if material is swiftly deleted from its initial source if it is found infringing people's rights (either human rights or, for example, copyright), it can still be propagated through the Internet and remain unable to be removed from circulation. In summary, with the durability of Internet communications and the ubiquity of the ability to publish such communications, the framework of human communication has profoundly changed.

As a result, all those rights which form part of the human rights framework and depend on human communication need to be considered in light of the new situation:

- Does the existing set of human rights work in a world that contains the Internet?
- Do any of them need to change?
- Do any of them become impossible to maintain?
- Are new rights required in this new technological milieu?

ENDS

Business and human rights
by Dr Judy McGregor, EEO Commissioner, New Zealand Human Rights
Commission

Appendix 4

Business impacts on the promotion, protection and fulfilment of basic human rights every day and in a myriad of ways. Globalisation has increased concern about corporate-related human rights abuses. There has been a slow but steady rise in the business and human rights agenda. The Internet generally is named as one of the most significant issues. For example, the Institute for Human Rights and Business listed, “Ensuring freedom of expression, privacy and security on the Internet” as 8th in its top 10 list of emerging business and human rights challenges for 2010.

Since 2000 there has been increased activity internationally to map human rights and business-related issues.

The most significant of these are:

1. The development of the United Nations policy framework proposed for better managing business and human rights challenges. It is commonly known as the three pillars framework- “Protect, Respect, Remedy”
Those three pillars are:
 - The State duty at international law to protect citizens from the violation of human rights by transnational business
 - The corporate responsibility to respect all human rights: and
 - The need for access to effective remedies, including through appropriate judicial or non-judicial mechanisms.

The framework assumes that businesses will “do no harm” to the enjoyment of human rights and the framework anticipates that companies will undertake due diligence. The United Nations Special Representative on Business and Human Rights, Professor John Ruggie, is currently working on operating guidelines for implementation of the guidelines.

2. The OECD Guidelines for Multinational Enterprises provide voluntary principles and standards for responsible business conduct for multinational enterprises. They cover issues such as information disclosure, employment, industrial relations and environment, combating bribery, consumer interests, science and technology, competition and taxation. They require the 30 member governments of the OECD including New

Zealand to have a National Contact Point which is the Ministry of Economic Development.

3. The United Nations Global Compact is an open and voluntary corporate citizenship initiative launched in 2000 and led by former Irish politician and UN Luminary Mary Robinson- over 500 companies across 130 countries. Embraces a set of core UN principles in human rights, labour standards, the environment and anti-corruption.

In a background paper to a forthcoming international conference on human rights and business the following internet related issues are on the agenda.

Table 1. Examples to illustrate potential human rights abuses by business actors

Human right	Impact
Non-discrimination	Discriminatory practices in advertising / marketing / provision of services
Free association and assembly, freedom of expression	Company is complicit with censorship by public authorities in breach of free expression
Respect for privacy, family and the home	Improper sharing of consumer data with third parties
Property	Failure to respect prior intellectual property rights of e.g. indigenous people or traditional owners