



**International
standards & the
nation state:
the whole and
the sum of the
parts**

**Guy Berger, Director, Freedom of Expression
& Media Development, UNESCO**

Coming up:

1. The stakes
2. Norms, principles, standards, law
3. UNESCO and free expression
4. Expression online
5. Internet research
6. Internet Universality

Fragmentation stakes

1. Network effects – at *all* levels of the Net
2. Disconnection / restricted connection = a net loss for everyone.
3. *Challenge: keep the connections for peace*
4. Jurisdiction = law to deal with disputes and disagreements , power to rule
5. *Focus on: alternative dispute resolution beyond / besides / within law & jurisdiction*
6. Intermediaries, especially transnational, key to alternative resolution mechanisms. Law as context, yet also as last resort.

Norms and principles

1. The value basis that informs laws plus their interpretation/application...
2. *The value basis that determines whether laws are resisted, contested or rejected*
3. The value basis for decisions by actors vis-à-vis the law - eg. By intermediaries (cf GNI, Telecoms Dialogue)
4. Note the differential situation of access providers, and service providers like search engines and social networks.
5. *Shared norms can obviate frictions.*

UNESCO & jurisdiction issues

1. Within the UN system, UNESCO is the agency constitutionally mandated to *promote “free flow” and “free exchange”*
2. 195 governments – sovereignty based
3. Norms & instruments (conventions, guidelines, declarations) impact across jurisdictions
4. *UDHR applies: freedom of expression regardless of frontiers – a principle endorsed as a standard*

Expression issues in general

1. Free expression is the norm (curbs should be the exception)
2. To be legitimate, limitations must be in law, proportionate, necessary, for legitimate purpose – otherwise, rights are violated
3. *Due purpose: rights of others, national security, public health and morals*
4. UN Human Rights Committee (of HR Council): morality is not singular
5. States to protect, private sector to respect.

Permissionless expression

1. Rights offline apply online (HRC, UNGA)
2. Restrictions through exclusions, blocking, filtering and post-publication punishment.
3. Many regimes offline that are already below international standards also serve to violate expression online
4. Many dedicated online regimes constitute prima facie violations of free expression
5. No basis for *licensing* use of the medium
6. Net is *not intrusive* in terms of speech (it can be with cyber-attacks & surveillance)

Examples of Baskets

	Country X, rule Y	Country A, rule B
<u>UTTERANCE</u>		
Political speech	Legitimate limits	Legitimate limit
Religious speech	Legitimate limits	Legitimate limits
Hate speech	Below internat stds. (i.e. non-legitimate)	Below internat stds.
Denial of history	Below internat stds.	Legitimate limits
Defamation	Below internat stds.	Below internat stds.
<u>RTI (seek & receive)</u>		
Right to be forgotten	Legitimate limits	Below internat stds

Distinctions can be made

1. Some legitimate limitations exist in some jurisdictions (often with non-legitimate)
2. In many jurisdictions, limits are not legitimate in various cases – *arbitrary / unnecessary / disproportionate / improper purpose...*
3. Question: is most cross-jurisdictional friction in terrain of the non-legitimate?
4. *Question: can international standards be used by transnational intermediaries?*

Universal standards

1. UDHR should inform all jurisdictions and all regimes within each jurisdiction
2. International standards apply to **all** actors – even private intermediaries’ Terms of Service (allowing – however - for “editorial independence” in expression)
3. There may still be jurisdictional differences in *interpretations* of legitimate limitations (eg. “hate speech” – US / Europe)
4. = a smaller % of jurisdictional frictions?
5. *What cases can be resolved sans legal steps?*

Internet research

Background: Brazil draft resolution

Decision: Internet study must cover:

1. Access to Information and Knowledge
2. Freedom of Expression
3. Privacy
4. Ethical dimensions
5. Options for future actions in these fields.
 - 30 questions compiled through a 4 month consultation process.

Broader issues

1. **Intersections:** eg. Free expression & privacy, Access & ethics.
2. How do **cross jurisdictional** issues impact on free expression & privacy?
3. What role for UNESCO within the **wider UN** system on the 4 issues?
4. UNESCO in relation to **stakeholders outside** the UN system?

“Internet Universality” norms?

The Internet ecosystem is shaped by our *values* and *actions*.
Four fundamental principles underpin
the best of the Internet.

**HUMAN
RIGHTS-BASED**



**OPEN TECH &
OPPORTUNITIES**



**THE FOUR
ROAM
PRINCIPLES
OF THE NET**



**ACCESSIBLE
TO ALL**



**MULTI-STAKE-
HOLDERS ENGAGED**

Interdependencies

- Rights sans access = limited universality
- *Access sans rights = limited universality*
- Monopolies = not universal
- *Openness sans participation = ?#\$*&%*
- Openness is fundamental to access
- *Balancing rights = pay heed to multi-stakeholder principles*

Timetable for UNESCO study

- **July-Nov:** Multiple events, plus online consultation
- **3-4 March 2015: “CONNECT the dots” - conference at UNESCO on zero-draft**
- **June-Sept 2015:** Study finalised & published
- **Nov 2015:** Member States’ general conference takes decisions

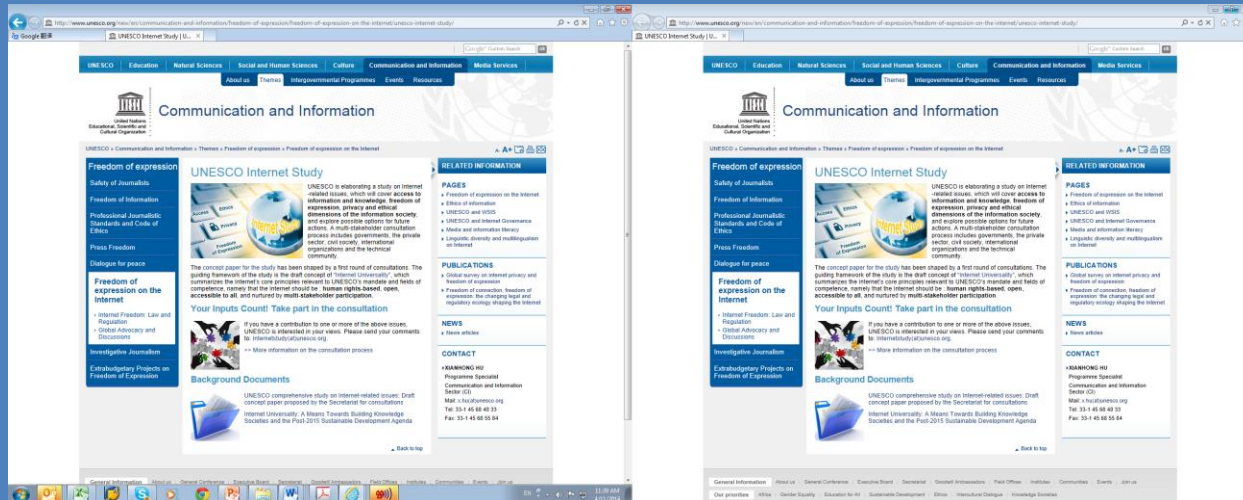
Summing up:

1. Stakes for one Internet...
2. Norms: law sets context, yet last resort
3. International stds for online expression
4. Legitimacy trumps jurisdiction?
5. Internet research will explore what options for dispute resolution within and between jurisdictions
6. Internet Universality as a normative framework?

Use the opportunity...

www.unesco.org/new/internetstudy

Your responses sought
Deadline: 31 November



Thank you

