

Human Rights and Internet Governance

The views that I express here today are mine and mine alone and do not represent the position of HMG.

At events like this or whenever you are asked to speak publicly it is usual to start off by saying what a privilege it is to address such an audience or speak at such a prestigious forum or words to that effect.

Well, I am not going to say that. Let me be frank, over the last couple of days I have been questioning my sanity in agreeing to speak. Not because I am not qualified - I was called to the Nigerian Bar in 1988, admitted as a solicitor of the Supreme Court of England and Wales in 1997 and have been a Prosecutor since 2002 so I don't question my right to be here out of any false sense of modesty. In fact you might say that I am very well qualified. No, I question the wisdom of agreeing to speak because although I have the right to think what I like, I don't necessarily have the right to say what I am thinking. A discussion about human rights and the internet will inevitably touch upon privacy and freedom of expression and I harbour some very extreme views about a variety of things. I have shocking views about Brexit, alarming views about the England football team and don't get me started about Nigerian politics. But you don't know what my views are. The poet Langston Hughes said **"I could tell you if I wanted to what makes me what I am, but I don't really want to and you don't give a damn"**.

I think it's fair to say that no one in this room cares about my views- I am not important enough. The point is that I have limited my own freedom of expression because I don't want to shock or offend you. I have chosen to keep my views private. Maybe I don't want to break the law. Or maybe I just want you to like me. For what it's worth, none of my views *are* against the law but even if they were, until I make them public I have committed no crime and even then it depends on the circumstances. I have no problem accepting that the State has placed limitations on my freedom to express those views – on the grounds of public order, public morality or in the interests of national security.

I sometimes wish there was a place I could go where there were no rules, a space where I could let it all hang out and I could say whatever I want to whomsoever I want about whatever I like. Well, there is

such a place and it's called the internet. In cyberspace no one can hear you scream and you can spend all day- and sometimes all night- posting below the line on various media websites or blogging or in chat rooms that cater to every possible interest.

If you don't like it, log off! But the fact is that more and more people are logging on. According to the International Telecommunications Union by the end of 2015 3.2 billion people on the planet were using the Internet. That is 43% of the world's population. All those humans staring at screens. Anyone would think that it's a human right. Well, in 2011, some of you may remember, there were numerous media reports asserting that the United Nations had made a declaration saying just that.

I remember this because in 2011 my son was 10 and was like many 10 year olds, he was desperate to get his sticky hands on a smart phone- you know, a cell phone that could get him on the internet. He was in year 5 at this time and his class was learning about the United Nations. If you read the bible you may be familiar with **Proverbs 22:15: folly is bound up in the heart of a child, but the rod of discipline will drive it far away.** In an attempt to advance his case my son brought to my attention this information about internet access being a human right- he might have seen something on the BBC. You know that this story can only end one way. I do not believe that violence solves anything so I did not infringe my son's human rights by slapping him upside the head. Also I was afraid of my wife's reaction to such an assault on our only child. Suffice it to say that he did not get the cell phone. Please note that the bit about wanting to hit him was a joke. I do not condone domestic violence or violence against children in any form. Do not remember me as the Nigerian father who wanted to beat his child for talking about human rights.

But I digress. In 2011, Frank La Rue was the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. He made a report to the UN Human Rights Council in which he said that given the fact that the Internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all states. He did not say that internet access should be a human right although this did not prevent a number of media outlets

reporting that he did. He also said “the Internet has become a key means by which individuals can exercise their right to freedom and expression” and he stressed that “There should be as little restriction as possible to the flow of information via the Internet, except in a few, very exceptional, and limited circumstances prescribed by international human rights law”.

Fine sentiments which we all agree with, I am sure. Mr La Rue reminded all States of their positive obligation to promote or to facilitate the enjoyment of the right to freedom of expression and the means necessary to exercise this right, *including the Internet*. He urged States to adopt effective and concrete policies and strategies - developed in consultation with individuals from all segments of society, including the private sector as well as relevant Government ministries - to make the Internet widely available, accessible and affordable to all.

Fast forward 5 years. During its thirty-second session earlier this year, the United Nations Human Rights Council made a declaration on the promotion, protection and enjoyment of human rights on the Internet. The Council reaffirmed the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and relevant treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Council recognised the need for human rights to underpin Internet governance so that the rights that people have offline are also protected online, noting that the exercise of human rights, in particular the right to freedom of expression on the Internet is an issue of increasing importance.

So again, they did not say that internet access is a human right. What they did say is that human rights principles should underpin internet governance.

The idea of translating human rights for governance of the internet emerged in 2005 during the World Summit on the Information Society held in Tunisia. By governance I mean” the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet.” (Tunis Agenda for the Information Society, Article 34)

Human rights and principles for the governance of the internet are closely linked. In fact, to help realise this vision of a rights-based Internet, the Internet Rights Program Coalition, a network of individuals and organisations based at the UN Internet Governance Forum¹ formulated 10 rights and principles that it suggests that we take as a starting point. I won't list them – you can check them out yourself at internetrightsandprinciples.org/site/campaign.

Applying human rights principles to the governance of the internet is a good thing. But this is a different proposition from asserting that the right to internet access is or should be a human right.

I believe that the internet is simply an enabler of human rights that already exist-the same rights that you have offline, recognised and respected online. But you don't have to agree with me. In order to decide let's ask ourselves the fundamental question of how we acquire human rights. Do we simply get them when we are born i.e. because we are human? Or are they something that we must fight for, to acquire from those who would seek to deny us? Some say that they are simply principles that exist because we have agreed that they should- as part of the social contract between states and individuals or part of a social construct that allows for basic principles recognising our shared humanity.

Wikipedia, the source of all knowledge and first resort of lazy students says that human rights are moral principles or norms, which describe certain standards of human behaviour, and are regularly protected as legal rights in domestic and international law. They are commonly understood as fundamental rights to which a person is inherently entitled simply because she or he is a human being, and which are inherent in all human beings regardless of their nation, location, language, religion, ethnic origin or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of being the same for everyone. They require empathy and the rule of law and

¹ The Internet Governance Forum (IGF) serves to bring people together from various stakeholder groups as equals, in discussions on public policy issues relating to the Internet. While there is no negotiated outcome, the IGF informs and inspires those with policy-making power in both the public and private sectors. At their annual meeting delegates discuss, exchange information and share good practices with each other. The IGF facilitates a common understanding of how to maximize Internet opportunities and address risks and challenges that arise.

impose an obligation on persons to respect the human rights of others. They should not be taken away except as a result of due process based on specific circumstances.

This is just one of many definitions. Human rights are intrinsic to who we are as human beings, and speak to our most basic needs. Healthcare, food, housing and water are human rights. They are all critical things that we need to stay alive. The ability to participate freely in society regardless of race, religion, ethnicity, gender, sexuality, or disability status is also a human right. These are things society is supposed to guarantee to us because we are part of society. Whilst the internet can promote or enable the enjoyment of such rights it is not clear that access to the internet is a human right in itself. What *is* clear is that the internet is a space for the promotion, protection and fulfilment of human rights and the advancement of social justice. At the moment, we cannot, looking at the world as it is as opposed to how we might like it to be, assert that everyone has an equal ability to access and use a secure and open Internet even if we agree, as an abstract concept, that everyone should. For all these reasons, the international community has recognised the global and open nature of the Internet as a driving force in accelerating development, including in achieving the Sustainable Development Goals.²

The internet is an enabler of rights, not a right itself. Let me paraphrase Vint Cerf, one of the fathers of the internet. He said that there is a high bar for something to be considered a human right. It must be among the things we as humans require in order to have healthy, meaningful lives. It is a mistake to place any particular technology in this exalted category, since over time we will end up valuing the wrong things.

I agree with Vint. The technology we use today is constantly evolving and as soon as the next big thing hits the shops it's already out of date. We have the so called internet of things whereby technology

² The overarching theme of Sustainable Development Goal 9 is to build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation. One of the targets is to significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020.

companies are increasingly integrating the internet with other devices, such as household appliances and driverless cars. Then there is virtual reality technology to provide that immersive realistic environment beloved of gamers. But gaming is the tip of the iceberg- the technology can be used by the military, in education, healthcare and sports- the applications are endless.

The rapid pace of technological development enables individuals all over the world to engage. There is a need for a voluntary framework to regulate this engagement. Human rights should be a part of- or at least underpin- such a framework. At national level, this will require cooperation between governments, civil society, the private sector, the technical community and academia in what has been described as multi-stakeholder participation. Multi-stakeholder cooperation would be easier if all the stakeholders had the same interests. But clearly they don't. For the private sector it may be profit through advertising or advances in technology whilst for government it is the protection of citizens and maintenance of law and order. Sometimes these interest converge but for different reasons. There is often a symbiotic relationship between government and the private sector as both often have a shared interest in collecting data to achieve their respective purposes. And the line between the private sector and government may become blurred as to where responsibility for protecting human rights lies.

50 years from now the technological landscape will have changed so much that the idea of internet access as a human right might be completely irrelevant. The whole concept of being on or offline might be of historical interest only. 24/7 high speed connectivity of everything – all our devices chattering away - might be something that we take for granted in the year 2066 at least in some parts of the world.

Maybe a better way of describing human rights is to identify the desired outcomes of the right. So for freedom of expression the outcome might be, for example, to hold government to account. We should not link that to a particular technology at any given time. And this confirms Vint Cerf's assertion that the Internet is valuable as a means to an end, not as an end in itself. I think that having a technology based human right will simply diminish the very basis of foundational rights such as freedom of expression.

What if we consider Internet access as a *civil* right?³ It does not change the fact that internet access is a tool for obtaining something more important. Civil rights or the lack of them derive from the application of law and as we know from history and continue to observe in various parts of the world even today, the people fighting for civil rights have to do just that- fight for them.

Ultimately human rights are about individuals. Individual lives matter. Our interests are as varied as we are. I am probably the only person in this room that supports Leyton Orient Football Club. Other people's interest could be anything- including criminal activity. And that is the problem. The internet is, in itself, neither good nor bad. It's the use to which we put it that information that we obtain that makes the difference. It's the biggest library in the world. The idea of an "open Internet" is the belief that the full resources of the Internet and means to operate on it should be easily accessible to all individuals, companies and organizations. The aspiration that there should be low barriers or no barriers to entry is not the same as equating access as a human right. And the openness carries a risk. We cannot ignore the fact that in an increasingly interconnected world, the threats to our safety are also equally "global" and the means to actualise such threats equally accessible. We must distinguish between access to the internet and access to particular content on the internet. Someone said that we are living in the ICE age- Internet Changes Everything. Most governments have turned to some form of intelligence-led security interventions to protect citizens from harm- including fraud and terrorism. And this is the crux of the matter- how do we balance the competing principles of freedom and security? Liberty versus control?

If we want the Internet to remain global and open, nations must address security concerns in accordance with their international human rights obligations, paying particular regard to freedom of expression and privacy. Most of the popular websites that we access regularly - Facebook, google, amazon, twitter and YouTube will, somewhere in their terms and conditions which you willingly agree to in order to access the service, reserve the right to access, modify or delete your data and your emails or share same with

³ A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury.

law enforcement properly authorised. Some of these companies may share so called metadata about your browsing habits and internet usage without you even being aware of it. One way or another those who want information about you will get it. And it may be that there are arguments that human rights are infringed such as your right to privacy. I don't know about you but I value my right to privacy and to express myself much higher as human rights than any right to access the internet. The internet is not the only way that I can protect the former and enjoy the latter.

So let me conclude by acknowledging that I have raised more questions than I have answered. That was my intention. And to make the point that more often than not it is our own governments or agents of government that violate our rights to privacy or deprive us of it altogether- ostensibly for reasons of security- highlighting the obvious conflict security and liberty.

I think that we must all become activists. Not necessarily in the sense of carrying placards and marching through Montego Bay but in the sense that when we as prosecutors or members of law enforcement agencies carry out our duties- including the investigation and prosecution of cybercrimes- we do so with the full knowledge and acceptance of human rights, even for the accused. Whatever we do, we do in accordance with the law so that we can demonstrate that it is proportionate, necessary and justified in a democratic society.

Where we witness rights being violated I say that we have an obligation to speak out- in our daily lives, in our places of employment, at events such as this where we are all gathered - because if we as lawyers and law enforcement professionals don't speak out, who will?

Martin Luther King said **“our lives begin to end the day we become silent about the things that matter”**.

This matters and that is why I have spoken about it. Why me? Because I am human and I have the right.

Thank you.