

AMNESTY INTERNATIONAL



Business and Freedom of Expression on the Internet

Amnesty International written statement to the 19th session of the UN Human Rights Council (27 February – 23 March 2012)

Index: IOR 41/004/2012 PUBLIC
17 February 2012

Amnesty International welcomes the Panel on Freedom of Expression on the Internet as a valuable opportunity to discuss measures to ensure that better protections are in place to prevent violations and abuses by states and businesses of the right to freedom of expression and related rights.

Modern communications technologies, such as the Internet, social media and mobile phone technology (“digital media”), can play a crucial role in the exercise of the right to freedom of expression – including the right to seek and receive information – and in enabling individuals to realise a range of other human rights. At the same time, the use of these media can be restricted in ways inconsistent with human rights, and these technologies can also be used to violate or abuse human rights. It is important that the Panel discussion contribute to identifying relevant issues and providing clear guidance on the steps to be taken by states and businesses to protect and respect freedom of expression and related rights such as privacy, the right to seek and exchange information, and freedom of assembly and association on the Internet.

Threats to freedom of expression and related rights on the Internet can take various forms including:

- The imposition of restrictions on Internet content that do not comply with the principles of predictability and transparency, legitimate purpose, and necessity and proportionality – the cumulative “three-part test” – set out in *Article 19* of the *International Covenant on Civil and Political Rights (ICCPR)*;
- The closing down of Internet sites or imposing other restrictions on the receipt or expression of information or ideas over the Internet; and
- The collection of personal data that is used by state authorities to commit violations of human rights.

Measures to control expression on the Internet and other digital media raise a variety of issues. Some concern the practices of governments in monitoring, policing and restricting use of the Internet and other digital media; others concern the role of business, either in collaborating with governments in those practices or in supplying the technology that enables governments to carry them out. This statement will focus on the role of business and the requirement for states to do more *in practice* to fulfil their duty to protect against corporations committing human rights abuses or facilitating human rights violations by governments.

Threats to freedom of expression on the Internet have been highlighted in the context of the “Arab Spring” but are not new. Amnesty International has long documented the failures of governments, such as those of China, Cuba, Iran and Yemen to respect freedom of expression and related rights on the Internet. The organisation has also highlighted the collaboration of businesses, including Google, Yahoo and Microsoft, in some of these violations.¹ Recent actions and public statements by companies, such as Twitter which accepted to censor use of its service in response to government requests, are a matter of concern and require attention.

Credible allegations also exist that businesses are supplying telecommunications technology (that is, equipment, software, and know-how) to the authorities in some countries despite convincing reports by human rights organisations that it is being used by those authorities to violate freedom of expression on the Internet or to further the commission of other human rights violations. Recent events have revealed instances of companies having sold technology to Colonel Mu'ammar al-Gaddafi's Libya, to Iran, to China and other governments which was then used to restrict the use of the Internet or to track down Internet users in connection with their involvement in peaceful protests and other activities in violation of their human rights.

The obligation on states to protect human rights and the need for effective measures, including state regulation in regard to companies

Current international standards make it clear that states have a duty to protect individuals from human rights abuses committed by third parties, including businesses (“state duty to protect”). However, clear gaps exist – particularly

¹ In 2006, Amnesty International expressed concern when Yahoo!, via its Chinese partner company, Alibaba, provided the Chinese authorities with private and confidential information about its users, which was then used to convict and imprison journalists. The company also agreed to censor and deny access to information. In 2005 Microsoft shut down the blog of New York Times researcher Zhao Jing on the basis of a Chinese government request. That company also admitted that it responded to directions from the Chinese government in restricting users of MSN Spaces from using certain terms. In 2006, Google launched a censored version of its international search engine in China. In March 2010, following Google's decision to stop censoring Internet search results in China and direct all traffic from its servers there to Hong Kong, Amnesty International urged the Chinese government to remove restrictions on the Internet.

when it comes to multinational companies operating internationally. There is an emerging recognition that states need to ensure that companies domiciled in their jurisdictions are not causing or contributing to human rights violations in other countries. Home states need to enact measures to strengthen the regulation of companies *in practice*, notably with regard to their operations abroad or their export of telecommunications technology to other states where it may be used in ways which violate human rights.

Governments must take measures, including regulation, that require that their domiciled Internet service providers and telecommunications companies to establish proactive measures for carrying out mandatory human rights due diligence throughout their global operations.

There are currently no national laws or regional arrangements that restrict the export of telecommunications technology on the basis of foreseeable end use in human rights violations. This is despite the ability to identify 'danger zones' or when exports are going to governments known to monitor information disclosed over the Internet and other digital media that they then use in committing human rights violations. This reality must be acknowledged and effective measures taken to address it. In particular, states must address the issue of companies exporting telecommunications technology to governments known to use it to monitor and track down individuals expressing dissent. They should put measures in place to control the export of technology that can be used to monitor and control the Internet and other modern media.

Measures are also required that ensure that state support for companies exporting telecommunications technology does not cause or contribute to violations of the right to freedom of expression or other human rights. Where states provide public financial support, such as through credits from export credit agencies, to companies exporting telecommunication technologies, they should require as a pre-condition that those companies demonstrate that human rights due diligence has been carried out. States must ensure that they do not in effect facilitate human rights violations through the public support they provide to business.

In instances where Internet service providers, telecommunications companies and suppliers of telecommunications technology are alleged to contribute to the commission of serious human right violations or abuses, home states should ensure that the allegations are properly investigated and the companies held accountable, including by prosecution if appropriate.

Corporate responsibility to respect the right to freedom of expression on the Internet

Current UN standards on business and human rights make it clear that businesses must, at a minimum, comply with their responsibility to respect

international human rights standards throughout their operations.² This responsibility exists independently of the state duty to protect. All businesses, including Internet service providers, telecommunication companies and suppliers of telecommunications technology must take account of human rights when conducting business in countries where local laws appear to require restrictions in conflict with international human rights standards.

The commentary to principle 11 of the UN *Guiding Principles* affirms that:

“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”

Companies must endeavour to ensure that they do not contribute to the Internet being used as a tool of repression, such as by monitoring communications, censoring and filtering information, or the creation of databases or storing information for use by governments in ways that violate the human rights of persons within their jurisdiction. Companies must put in place practices and procedures and be able to demonstrate compliance with international human rights standards throughout their operations. Where governments impose restrictions on content that require self-censorship, companies subject to those restrictions should challenge them to respect the principle of freedom of expression.

Companies must do more *in practice* to meet their responsibility to respect human rights. They should not voluntarily and uncritically provide technology or disclose private information. Businesses must “do no harm”, and this may require proactive measures.

While companies should comply with legitimate restrictions on freedom of expression consistent with international human rights standards in jurisdictions where they operate, they must take deliberate measures to ensure that their compliance with domestic law is not inconsistent with international law.

Freedom of expression is a right, not a privilege. It is a right that must be defended, irrespective of the medium, whether at the proverbial speakers’ corner or on the Internet. Internet service providers, telecommunication companies, telecommunications suppliers and governments need to recognise that adherence to international human rights standards is not optional, but a clear minimum requirement to carrying out business anywhere.

² Guiding Principle 11 of the UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31.