

REVISTA *de*  
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*Review*

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*THE RIGHT OF ACCESS TO THE INTERNET AS FUNDAMENTAL HUMAN RIGHT GIVEN THE  
DEVELOPMENT OF GLOBAL INFORMATION SOCIETY*

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*PROTECTING MINORS IN RELATION TO INTERACTIVE SOFTWARE*

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*SISTEMAS DE IA EN LA EXPERIENCIA DEL SUPREMO TRIBUNAL FEDERAL BRASILEÑO Y LA CORTE  
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# THE RIGHT OF ACCESS TO THE INTERNET AS FUNDAMENTAL HUMAN RIGHT GIVEN THE DEVELOPMENT OF GLOBAL INFORMATION SOCIETY

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## Abstract

**Purpose** – This article examines the pressing problem of ensuring the right to Internet access as a basic human right that is fundamental for the formation and the development of the modern information society. The purpose of the study is to promote the idea of adhering to such right, clarifying conceptual approaches, to understand its content as reflected in the decisions of the United Nations, the Council of Europe, and the European Court of Human Rights, as well as determining both the place and the role of this right in the European mechanism for the provision of human rights at the current stage of the information society.

**Methodology/Approach/Design** – In order to reach a comprehensive understanding of the human right to Internet access and to reduce the level of digital inequality both in the European countries and globally, several authors have given their suggestions, which are considered appropriate for their implementation by international organizations, governments, telecommunication companies, and Internet service providers.

**Findings** – By propelling this analysis, the authors advocate the need to recognize the right to Internet access as one of the inalienable human rights that are necessary for decent living and development in the information society. Special attention is given to the fact that the right to Internet access, due to its unique kind allows individuals to exercise other rights, namely the right to information, the right to freedom of opinion and the dissemination

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thereof, the right to freedom of assembly and association, the right to education, among others. This imposes positive obligations on states to ensure the human right to Internet access and to create a safe and favorable Internet environment for all.

**Keywords:** Right to Internet Access. Information Society. Internet Users. Fundamental Human Right.

## INTRODUCTION

Against the backdrop of the development of modern society, information and communication technologies penetrate deeply into people's lives. These technologies are one of the most important factors influencing the formation of society in the 21st Century. They quickly turned into a vital stimulus for the development of not only the world economy but also other spheres of human activity.

In a society claiming the status of information-oriented, the information should play a leading role, as well as technologies that facilitate continuous access to it, in particular, the World Wide Web. The Internet has become a socially important resource, which is commonly used in the everyday language in the meaning of the World Wide Web and the information available in it, and not in the sense of the network itself.

The issue concerning the right to access the Internet is topical nowadays. The gap between those who have access and those who do not is called the digital divide. The degree of Internet accessibility varies across the globe. Thus, according to Internet World Stats, as of June 2019, the penetration rate of the Internet in different regions of the world is as follows: North America – 89.4%, Europe – 86.8%, Oceania/Australia – 68.4%, Latin America/Caribbean – 68.0%, Central Asia – 67.2%, Asia – 51.9%, Africa – 39.8%, with an average of 57.3% worldwide<sup>1</sup>.

According to the 2019 Global Digital industry status reports by We Are Social and Hootsuite, the number of people accessing the Internet is growing at a rate of 1 million new users per day. In 2019, the Internet audience is 4.39 billion people, which is 366 million (9%) more than in January 2018. There are 3.48 billion users registered on social networks. Compared to the data at the beginning of last year, this indicator increased by 288 million (9%). Today, 3.26 billion people access social networks from mobile devices. This is 10% more than last year when there were 297 million less<sup>2</sup>.

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<sup>1</sup> INTERNET USAGE STATISTICS. The Internet Big Picture. World Internet Users and 2019 Population Stats Available at: <https://www.internetworldstats.com/stats.htm>

<sup>2</sup> DIGITAL 2019: GLOBAL INTERNET USE ACCELERATES. Available at: <https://wearesocial.com/blog/2019/01/digital-2019-global-internet-use-accelerates>



Even though billions of people in the world have access to the Internet, there are countries in which the authorities are trying to restrict or control the access of its citizens, for example, North Korea, Iran, Syria, China, Vietnam, Saudi Arabia, Pakistan, Tunisia, Turkmenistan, and Burma<sup>34</sup>. A combination of political, social, religious, and cultural factors in these countries is the reason for such a restriction or control over the access of citizens to the Internet.

Nowadays, the Internet allows a person to exercise his right to freedom of expression or the right to seek, receive and transmit any kind of information and ideas guaranteed by Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Article 11 of the Charter of Fundamental Rights of the European Union of 2000, Article 13 of the Convention on the Rights of the Child of 1989, and other international legal instruments.

The significance of the information society, and, in particular, the Internet, in the realization of human rights, is so high that many scholars consider access to the Internet to be an inalienable human right in the modern world. For most countries, an information society is one of the most important national priorities. This has become the basis for research on recognition of everyone's right to access the Internet, which, given its link with technical progress. The right to access the Internet can be attributed to the fourth generation of human rights. That is why such countries consider it urgent and necessary to study the issue of recognition of the right of access to the Internet as a basic human right in the scenario of the formation and development of the information society.

## THE ROLE OF THE INTERNET IN THE SYSTEM OF LEGAL RELATIONS

The modern informational virtual space of local and global communications requires the provision of certain standards of access for as many citizens as possible to the latest information and communication technologies. Some information-rich societies and states form (with certain distinctive differences of national models) a fundamentally new legal mechanism to implement basic information rights and freedoms. Often, the elements of this mechanism are presented in the form of “access rights to information.” An

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<sup>3</sup> Lavanya Rathnam. Internet Censorship: Five Countries That Block The Web // Cloudwards: site. 28.11.2017. Available at: <https://www.cloudwards.net/internet-censorship/>.

<sup>4</sup> Top 10 censors of the internet and how to avoid internet censorship // Le VPN: site. 01/06/2017. Available at: <https://www.le-vpn.com/top-10-censors-internet-avoid-internet-censorship/>.

important element of this mechanism is the right of access to the Internet as a global information computer network, representing the union of many regional computer networks and computers, which exchange different information through communication channels.

Professor I. M. Rassolov determines that, in the sphere of the Internet, the subjective right comprehends the form and extent of the possible or permitted behavior of subjects of Internet relation, guaranteed by the rules of law<sup>5</sup>. Thus, the right of access to the Internet is to ensure the actions of Internet users within the framework of Internet relations, governed by relevant rules. If we analyze international documents, we can conclude that the essence of this right lies, first of all, in free access to the Internet, in other words, the possibility of a person to connect to the Internet through Internet providers. At the same time, you should not accept the freedom to connect to the Internet as a guarantee of free access to the network. In our opinion, it is necessary to separate the right of access to the Internet from freedom of expression of views on the Internet and the right of free access to information, since these rights, although being closely connected, should exist separately.

Today one can note that due to the proliferation and development of the global computer network of the Internet, more and more countries focus their attention on the necessity to legal regulation the identified sphere.

V. S. Tatarova defends that this necessity is predetermined by the fact that, due to the rapid development, the Internet contributes to revolutionary transformations in all spheres of public life. The Internet has already become a powerful factor in social, educational, and cultural development, and provides new opportunities for both public authorities, ordinary citizens, and educators, eliminating barriers to the creation and dissemination of materials by offering universal access to the number of digital information sources, which are constantly increasing. However, the Internet also contains a part of potentially inappropriate, obscene, abusive, or even illegal information and can sometimes be used as a means of criminal activity. Although the benefits of the Internet greatly outweigh its potential disadvantages, these problems cannot be ignored<sup>6</sup>.

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<sup>5</sup> Y.M. Rassolov. *Pravo y Yinternet: pidruchnyk. 2-he vyd.* Moskva: Norma, 2009. 210 s.

<sup>6</sup> Tatarova V.S. *Osoblyvosti pravovoho rehuliuвання merezhi Internet. Upravlinnia rozvytkom.* 2014. № 6 (169). S. 105-108.

## INTERNATIONAL LEGAL FRAMEWORK TO REGULATE THE INTERNET ACCESS RIGHT

In order to promote the idea of observance and protection of human rights and freedoms on the Internet, including the right of access to the network, international organizations have developed and implemented several recommendations, conventions, guidelines, etc. The first important international instrument was the Charter of the Global Information Society, adopted on July 22, 2000 (Okinawa, Japan). The document consolidated the provision that the state shall guarantee such conditions for the development of the society that would ensure the global information society<sup>7</sup>.

The Council of Europe Declaration on Freedom of Communication on the Internet has contributed significantly to the development of Internet law, adopted on May 28, 2003 (Strasbourg, France). The document expresses concern about attempts to restrict universal access to communications on the Internet for political or other reasons, which is not in line with democratic principles. It emphasizes that the Member States should promote and encourage access to the Internet on a non-discriminatory basis at an affordable price.

The declaration provides for the prohibition to restrict access to the Internet information, as well as the refusal of state control (not to use blocking, filters), and the guarantee of the right to anonymity<sup>8</sup>.

The idea of understanding and recognizing human rights of access to the Internet was supported during the World Summit on the Information Society in 2003 (Geneva, Switzerland) and was widely endorsed by the World Summit on the Information Society (Tunis, 2005). After long negotiations between the governments, representatives of civil society, and business, the Summit adopted the Declaration of Principles of the World Summit on the Information Society. This confirms the importance of the information society to support human rights, as well as the aspiration of the involved countries to build a people-centered, open to everyone and development-oriented information society, where everyone can access, use and share information and knowledge<sup>9</sup>.

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<sup>7</sup> Okinavska khartiia hlobalnoho informatsiinoho suspilstva vid 22.07.2000 // Baza danykh «Zakonodavstvo Ukrainy» / Verkhovna Rada Ukrainy. Available at: [http://zakon2.rada.gov.ua/laws/show/998\\_163](http://zakon2.rada.gov.ua/laws/show/998_163).

<sup>8</sup> Declaration on freedom of communication on the Internet. (Adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies) Council of Europe. Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805dfbd5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805dfbd5).

<sup>9</sup> Declaration of Principles Building the Information Society: a global challenge in the new Millennium, WSIS-03/GENEVA/DOC/4-E, World Summit on the Information Society, Geneva 2003 – Tunis 2005 // International Telecommunication Union. Available at: <http://www.itu.int/net/wsis/docs/geneva/official/dop.html>.

The value of providing access to the Internet has been widely recognized by international institutions and experts. For example, on May 16, 2011, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue presented to the United Nations Human Rights Council a report on the main trends and issues concerning the right of all individuals to seek, receive and disseminate information and ideas of any kind via the Internet. He stressed that, since the foundation of the Internet, mankind has received an instrument used by people around the world regardless of their age. The unprecedented phenomenon of the Internet is also explained by the fact that modern life has been enriched with its important virtual component. Nowadays, it is necessary to consider the Internet as one of the most effective tools of the 21st Century to increase the level of openness, transparency, access to information, as well as to facilitate the process of active civil support in the development of democratic societies. In addition, a growing wave of protests within the Middle East and North Africa regions has made it possible to understand the role of the Internet in mobilizing the population in the fight for justice, equality, accountability of authorities, and respect for human rights. Thus, improving access to the Internet for all groups with a minimum of restrictions should be a priority for any state. Any restriction should be clearly defined by law and justified as the necessary and least burdensome means available for the protection of the rights of others<sup>10</sup>. Due to this report, the United Nations is believed to have taken the first steps towards recognizing everyone's right to access the Internet as an inalienable human right. Unjustified deprivation of the right of the person to seek, receive and disseminate information through the network is a violation of this right.

Scientists Wolfgang Benedek and Matthias Kettelman in their article *Freedom of Expression and Internet* note that “although someone considered Frank La Rue's report as the United Nations' proclamation of the new right of access to the Internet, however, if we read carefully, it was rather a recognition of the importance of providing access to the Internet as a priority of the policy of the states”. The speaker considers the role of access to the Internet more like a catalyst for other human rights and facilitating change<sup>11</sup>.

The principles, similar to the position of the United Nations, have been included in a new cyber-strategy of the United States. The document, adopted by

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<sup>10</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Human Rights Council. Seventeenth session. Agenda item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development // United Nations. Available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf).

<sup>11</sup> Volfhanh Benedek, Mattias Kettelman. *Svoboda vyrazhennia pohliadiv ta Internet*. Strasburh: Rada Yevropy, 2013. 204 s. Available at: <https://rm.coe.int/168059936a>.

the State Department, declares that, for the world as a whole, the Internet has become a platform for new ideas. It is a mechanism of free dissemination of information that predetermines the degree of society's strength. The strategy, in particular, contains provisions as ensuring wide access to the Internet and cooperation with resources and organizations, which promote the expression of opinion through the Internet<sup>12</sup>.

At its 32nd session, on June 27, 2016, the United Nations Human Rights Council adopted the Resolution "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development", which confirms "that the same rights a person has in the offline space should also be protected in the online space"<sup>13</sup>. In particular, it concerns the right to freedom of expression. According to the position of the United Nations Human Rights Council, the right to freely express views shall be protected without interference in any way. Thus, any media and technical method may be used. This guarantee can be found in Article 19 of the Universal Declaration of Human Rights of 1948, Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and other instruments. At the same time, the resolution calls on all countries to promote and improve access to the Internet, as well as to establish special procedures for monitoring the observance of the rights and freedoms of Internet users.

Unfortunately, this Resolution has not received universal support since several countries have abandoned it, in particular, Russia, China and South Africa<sup>14</sup>.

The United Nations Science and Technology Commission for Development has expanded some of the economic, social, and political advantages and benefits which may arise due to the provision of access to the Internet to people:

- It creates opportunities for economic development through online services, enterprises and programs that simultaneously create jobs. A

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<sup>12</sup> International strategy for cyberspace. Prosperity, Security, and Openness in a Networked World. May 2011 // The White House President USA. Available at: [https://obamawhitehouse.archives.gov/sites/default/files/rss\\_viewer/international\\_strategy\\_for\\_cyberspace.pdf](https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/international_strategy_for_cyberspace.pdf).

<sup>13</sup> Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Resolution Human Rights Council General Assembly dated 27 June 2016 A/HRC/32/L.20 / United Nation. Available at: [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/32/L.20](https://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/32/L.20).

<sup>14</sup> Tim Sandle. UN thinks internet access is a human right / BUSINESS INSIDER. Jul. 22, 2016, Available at: <http://www.businessinsider.com/un-says-internet-access-is-a-human-right-2016-7>.

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