31 October 2017

EDRi's response to the UNESCO Consultation on Internet Universality Indicators

https://en.unesco.org/internetuniversality

1. What are your priorities for issues that should be addressed through the Internet Universality framework in each of these five categories?

- **Rights:**

Internet universality contributes to the exercise and respect of human rights. The priorities we would recommend UNESCO's framework to address are the protection of the rights to privacy and personal data protection, freedom of expression and the right to access information. In particular, our priorities look at the actions taken primarily by private companies and governments.

- **Openness:**

The promotion of Net Neutrality should be the priority in this category, as everybody needs access to the whole internet (not parts of it), all the time. This principle implies that every point on the network can connect to any other point on the network, without discrimination on the basis of origin, destination or type of data. It is crucial for the exercise of civil rights, innovation, competition and the free flow of information. Being connected to "a network" has no inherent value – the value derives from openness, competitiveness, neutrality, etc. In other words, being connected to a telecoms network isn't a value in itself. It needs to connect to a neutral network that facilitates freedom of expression, competition and innovation.

You can read EDRi's paper on Net Neutrality (https://edri.org/wp-content/uploads/2013/10/paper08_20131023_web.pdf) for further information.

- **Accessibility:**

EDRi's priority in the field of accessibility is the need to bridge the digital divide. The Internet Universality framework needs to address the issues related to communications infrastructures, as they contribute to the technological aspect of the digital divide. It should also address its social components, as people with disabilities, rural communities, children and other vulnerable groups are affected by any such divide. Consumers rights need to be taken into account.

- **Multi-stakeholder participation:**

The Internet Universality framework could be useful to ensure a more inclusive Internet governance. Governments need to take into account not only the views of the private sector, but also the input from civil society, independent academia and the technical community. In order to defend a democratic participation in subjects related to Internet governance, a wide range of views needs to be properly considered. Civil society is able to provide valuable input and expert opinions in matters that concern the general public, with a longer-term perspective.

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- Cross-cutting indicators

2. Are there are any existing indicators with which you are familiar that you think it would be useful to include in the ROAM indicators framework?

We will focus on the first two principles, Rights and Openness:

Indicators could usefully assess cornerstones of the exercise of fundamental rights online, as established *inter alia* by international human rights law:

Privacy and data protection:

- Existence of laws on protection of personal data and laws on the protection and defence of the right to privacy
- comprehensiveness of those laws
- enforcement of those laws
- Existence , independence and sufficient resources of data protection authorities
- Accessibility and enforceability of remedies
- Adherence to Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108)
- Clarity and proportionately of exceptions for security purposes
- Transparency and oversight of security exceptions
- Are companies allowed to or required to provide transparency reports regarding state access to data?
- Are people aware of their online rights?
- Are strategies in place to inform people of security and privacy threats online and how to mitigate them?

Net neutrality and openness

- Is there an effective law on net neutrality?
- Is zero rating allowed?
- Are there effective competition rules for online and network services?
- Is there an independent national telecommunications regulatory authority?
- Does the national regulatory authority have enough resources to enforce net neutrality?

Freedom of expression

- Is there a law protecting freedom of expression?
- Are restrictions on freedom of expression provided for by law, necessary and proportionate?
- Are effective redress mechanisms available?
- Is there evidence of government pressure on internet companies to restrict content?
- Are restrictions regularly reviewed?

3. What do you think are the most important gaps in data/evidence required for monitoring Internet Universality and the ROAM principles? What approaches do you think could help to address these in your country, region or area of work?

- **Rights**

- Monitoring and control of how service providers use users (and non-users)' data and for what purpose.
- Lack of transparency regarding use of user data by law enforcement authorities. See http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2017-001772&language=EN and https://edri.org/faq-code-conduct-illegal-hate-speech/

- **Openness**

- Inadequate network testing to identify violations of net neutrality

- **Accessibility**

- We recommend talking to the European Disability Forum: http://www.edf-feph.org/

- **Multi-stakeholder participation**

Governments are not always consistent with multistakeholder participation. The European Union itself is not a good example of this. See, for example: https://edri.org/new-documents-reveal-truth-behind-hate-speech-code/

Multistakeholder participation needs expertise, representativeness and, of course, appropriate attention being given to the views of all stakeholders.

On the other hand, authorities do not always disclose information regarding decision-making processes regarding policy that might affect Internet Universality. The general public should be able to monitor what changes are being put in place and how, as well as have the opportunity to participate in that process.

- **Cross-cutting indicators**

4. What experience or views do you have of indicators relating to the Internet which are concerned with gender and with children and young people? *Please mention any indicators you consider useful here and provide references.*

We consider that young people and children should be aware of their rights. We see that education programmes lack the perspective of how they can protect their rights and defend an open internet. EDRi has developed a "Privacy for Kids" booklet. It has been translated into several languages and we have entered into very fruitful cooperation with other NGOs across the globe: https://edri.org/papers/privacy-for-kids/

5. How do you think you might use the indicator framework for Internet Universality once it has been developed?

EDRi promotes the respect of fundamental rights in the digital environment at the EU level. A varied and comprehensive indicator framework for Internet Universality could help us and other organisations working in this field to integrate such indicators in our research projects and policy advice. UNESCO's support in this sense would also help us in promoting the importance of Internet

Universality. It will be important to address any practical shortcoming the indicators may have and their importance. For example, the fact that a country has a law on net neutrality does not necessarily mean that that net neutrality is guaranteed in practice in that country. However, NGOs like EDRi could use this indicator to push for a better protection of people's rights and freedoms on the internet. E.g. see https://www.thisisnetneutrality.org/

6. How do you think that other stakeholders might use the framework?

Other civil society organisations could use the framework in the same sense as EDRi, to develop research and policy analysis and advocacy activities with a new set of indicators of Internet Universality in mind.

Private companies could use UNESCO's framework to undertake self-assessment of their respect of Internet Universality and use it to make necessary improvements. Also, companies that comply with the indicators could promote their activities' respect of Internet Universality.

Governments would have a tool to also conduct self-assessment and allow monitoring of companies' respect of human rights and the applicable laws in place.

7. Please add any other comments that you think will be helpful to UNESCO in developing the indicators framework.

Only if human rights and fundamental freedoms are guaranteed, cultural diversity and other related rights can be protected and promoted. This position was adopted by UNESCO in 2005, through its Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which gives a strong argument to the organisation to promote their work in the context of Internet Universality.

We welcome this initiative from UNESCO as it can help promote Internet Universality. However, it should also ensure that:

- the indicators are not used as "absolutes", i.e. their value and use need to be contextualised;
- there are not indicators whose value is not proven. For example, being connected to a social network isn't a value in itself. For it to have a value, it would need to facilitate communication and exercise of fundamental rights – a situation that platforms do not necessarily offer;
- the indicators are not taken as an excuse not to further protect human rights and fundamental freedoms online.

UNESCO could take this opportunity to address the issue of privatised law enforcement. Private companies are often encouraged by governments to police our online activity, and to even impose sanctions (e.g. the unilateral suspension of services). The imposition of sanctions by intermediaries outside the rule of law undermines the presumption of innocence and the right to due process of law, and some of the methods used also violate the right to privacy, personal data protection and freedom of expression. Such practices undermine Internet Universality. For more information you can read EDRi's paper on privatised law enforcement (http://edri.org/wp-content/uploads/2014/02/EDRi_HumanRights_and_PrivLaw_web.pdf).

8. Please upload any documents that you think will be helpful here.

We attach our response to the consultation in pdf version.