



Internet access: Where law, economy, culture and technology meet

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ABSTRACT

Internet growth has allowed unprecedented widespread access to cultural creation including music and films, to knowledge, and to a wide range of consumer information. At the same time, it has become a huge source of business opportunities. Along with great benefits that this access to the Internet provides, the open and free access to the Internet has encountered large opposition based on political, economical and ethical reasons. An ongoing battle over the control on Internet access has been escalating on all these fronts. In this paper we describe first some of the ideological roots of free access to the Internet along with its main opponents. We then focus on the problem of “Internet piracy” and analyze the efficiency of efforts to reduce the availability of copyrighted creations that are available for non-authorized free download.

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1. Introduction

As technology allows very high speed access to the Internet for hundreds of millions of people around the world, the pervasive nature of the Internet draws growing opposition. Those who try to restrict, to control or to filter access to the Internet include a wide variety of actors motivated by quite different reasons ranging from security to political and ideological ones, as well as economic interests.

This work has been triggered by an ongoing legislation battle in France between two opposed approaches for dealing with copyright infringements over the Internet and with non-authorized download of copyrighted content. One approach proposes to ban such downloads and to establish a heavy control on downloads, while the other proposes to establish a general tax on internet users that wish to pursue downloading. The revenues of the tax would be redistributed among the copyright owners.

The HADOPI law can be associated with two basic types of restrictions of the access to the Internet. First, there is a legal limit, that in absence of this law would not be clearly defined, over the content that can be accessed and downloaded through the Internet. Second, there is also the suspension of the Internet access service that the law imposes as part of the sanctions against unauthorized file sharing by an Internet subscriber. Other countries have implemented different types of access restrictions like, for example, blocking access to P2P sites, throttling the traffic of P2P users and blocking the use of P2P file sharing protocols.

The French constitutional Court has rejected some aspects of the original HADOPI Act citing the Declaration of the Rights of Man and the Citizen 1789, which dates back to more than two centuries before the Internet. This link may have come as a surprise to many of those involved in developing and deploying the Internet, who may not be aware of what the Internet represents for society beyond its technological revolutionary features and characteristics.

The first part of this paper examines the ideological and legal role of Internet access. We begin by recalling in the next section several historical human rights declarations that had later an impact on legislation concerning Internet access. We then present, in the following section,

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an overview of legislation and rulings concerning Internet access which refer to these declarations. In the second part of the paper we present a socio-economic vision of the role of the Internet. In Section 4, we examine its identification as a “public good”, and address the classical issues related to public goods: that of free riders and of provisioning. We then present an overview of work on the role of the Internet access as a “commons” and address, in particular, the role of wireless access to the Internet. We end the paper with a section that proposes some recommendations on the future of the Internet.

2. Human right declarations

There are three important documents in the history of human rights: the Virginia Declaration of Rights of 1776,¹ the United States Declaration of Independence of 1776, and the Declaration of the Rights of Man and of the Citizen of 1789.² Whether these texts originated independently, or, on the other hand, were mutually influenced by each other, is a doctrinal discussion in the field of law [35]. What is indisputable is that the ideas of the rational natural school³ are present in these declarations:

“That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety” is found in the Virginia Declaration of Rights.

“That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness” states the United States Declaration of Independence.

“Men are born and remain free and equal in rights” said thirteen years later the Declaration of the Rights of Man and of the Citizen.

Since then, life, liberty and equality were recognized in successive western constitutional texts as fundamental rights of every human being. Both, French and American constitutional texts consecrate the principles considered in the declarations, albeit in different ways.⁴ Worldwide recognition of these principles was achieved with the first article of the Universal Declaration of Human Rights of 1948:

“All human beings are born free and equal in dignity and rights.”

¹ The Virginia Declaration of Rights (1776) was the model used for the *Bill of Rights* by other states of the American Union.

² The Declaration of the Rights of Man and of the Citizen 1789 is considered the first form of recognition of individual rights and liberties in a legal instrument of any European country [46, p. 121].

³ Grocio, Hobbes, Spinoza, Locke, Pufendorf, Leibniz, Tomasio, Rousseau and Kant are considered the most representative philosophers of the XVII, XVIII and XIX centuries, who developed the natural law theory based on reason [7].

⁴ The French throughout in the preamble, while the Americans, on the other hand, through amendments.

3. Recognition of Internet access as a fundamental right

Freedom has many manifestations, e.g., freedom of expression and opinion, freedom of press, freedom of thought, conscience and religion, freedom of communication. All these forms in which freedom is manifested, in turn require guarantees to assure its exercise in all areas, regardless of frontiers and by any means of expression.⁵

Several explicit links between human rights and Internet access have appeared in the last years. The European Parliament [22] believes that the Internet is a universal space that now allows the pursuit of all these manifestations of freedom as enshrined in the Universal Declaration of Human Rights, and the International Covenant on the Rights Civil and Political Rights, becoming the most versatile tool for the exercise of freedom of expression globally. To that extent, the Internet should not be subjected to “interference by public authority”,⁶ or limitation of access or control of content. The Spanish Senate recognized that all people have a fundamental right to access the Internet, without any discrimination. As freedom is an inherent condition to the Internet, it admitted the principle that no power can restrict this freedom and that its limits can only come from the Declaration of Human Rights.⁷

Internet access in the European Union is seen as a “universal service”, i.e., one that must be provided by Member States “at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price” [26, Art. 3]. Fixed location services have to be capable of “data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility” ([26, Art. 4] replaced by [28, Art. 1.3]). Expanding on this same line, the Ministry of Transport and Communication of Finland has passed a Decree in October 2009 on the characteristics that the access to Internet, as a universal service, should have [40]. In it, the Ministry demands from providers that fixed broadband connections should be ensured with an average rate of at least one Mbps and that by 2015 a 100 Mbps backbone is within 2 km of every permanent connection.

Internet’s administrative intervention in the European Union was one of the most controversial issues in discussions on the reform of the so called Telecom⁸ package. It was expected that the European Parliament would promote legislative measures aimed at strengthening Internet

⁵ Article 19 of the Universal Declaration of Human Rights reminds all States that freedom of speech “includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” In the same line, Article 19.2 of the International Covenant on Civil and Political Rights declares that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

⁶ See Art. 10.1 [29].

⁷ See Spanish Senate diary of sessions of 9 December, 1999 at <http://www.senado.es/comredinf/ds/index.html>.

⁸ The set of directives governing telecommunications in the European Union, whose recent amendments have been incorporated in the Directive 2009/136/CE.

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