**Contribution to the October 2016 Open Consultation of the ITU CWG-Internet**
Swiss Chapter of the Internet Society (ISOC CH)[1]

**Abstract**

Fundamental rights, including freedom of speech and privacy must be respected. Any restrictions on those rights must be limited to what is necessary and proportionate. Copyright must be adapted to the digital era by modifying the current excessively strict regime. Network neutrality is a fundamental principle that must be upheld. Blocking of web sites must not be allowed. States must not attempt to degrade or to weaken encryption.

## 1. Background

On 18 February 2016 the Council Working Group decided that Open Consultations would be convened on the following topic:

Building an enabling environment for access to the Internet

> 1. What are the elements of an enabling environment to promote Internet connectivity?
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> 2. What are the elements of an enabling environment to promote an affordable Internet?
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> 3. What are the elements of an enabling environment to promote the quality of access to the Internet?
>
> 4. What are the elements of an enabling environment to build confidence and security in the use of the Internet?
>
> 5. What is the role of Governments in building an enabling environment?

We comment here on those issues, and we refer to our previous contribution to CWG-Internet, available at:

http://www.itu.int/en/council/cwg-internet/Pages/display-mar2014.aspx?ListItemID=45

## 2. What are the elements of an enabling environment to promote Internet connectivity?

Freedom of speech

Freedom of speech is at present protected in general by customary international law as enunciated in the Universal Declaration of Human Rights, and by Article 19 of the International Covenant on Civil and Political Rights. Paragraph 2 of that Article 19 outlines the restrictions that can be imposed on free speech.

The formulation of the permissible restrictions is very broad and has been interpreted in some countries in ways that have excessively restricted online free speech. Such excessive restrictions should be avoided.

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[1] http://www.isoc.ch

Furthermore, governments should recognize that it may be appropriate to allow greater freedom of speech online than offline, and should consider revising relevant international instruments accordingly.

States must not mandate blocking of web sites, see our press release at:

http://www.isoc.ch/archives/2202

Our detailed position regarding proposed changes to the Swiss telecommunications act is available at (in German only):

http://www.isoc.ch/wp-content/uploads/2016/04/Vernehmlassungsantwort_FMG-Teilrevision_ISOC-CH-20160331.pdf

Copyright

It is not tenable to continue to attempt to impose the traditional copyright regime on the new media such as the Internet. Various attempts to criminalize private copying and downloading must be abandoned.

The time has come to recognize that a new online copyright regime is an urgent necessity.

Our comments on early proposals to revise Swiss copyright law are available at:

http://www.isoc.ch/archives/1682

Our detailed position regarding actual proposed changes is published at (in German only):

http://www.isoc.ch/wp-content/uploads/2016/04/Vernehmlassungsantwort_Revision-URG_ISOC-CH-20160331.pdf

**2. What are the elements of an enabling environment to promote an affordable Internet and 3. What are the elements of an enabling environment to promote the quality of access to the Internet?**

Network neutrality is a fundamental requirement. This can be achieved by implementing network neutrality regulation at the national level. There should be international agreements enshrining network neutrality.

Further, in many cases, infrastructure is a natural monopoly and its provision cannot be a competitive market. In such cases, infrastructure should be provided as a public good, preferably by functional separation of incumbent providers, see:

http://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/195-berec-guidance-on-functional-separation-under-articles-13a-and-13b-of-the-revised-access-directive-and-national-experiences
and in particular the annex that details the favourable experiences in some countries:
http://berec.europa.eu/doc/berec/bor_10_44_b.pdf

**4. What are the elements of an enabling environment to build confidence and security in the use of the Internet? And** 5. What is the role of Governments in building an enabling environment?


Privacy is a fundamental human right. Violations of online privacy rights are widespread and have negative effects, including on freedom of speech. It is

imperative to strengthen protection against violations of online privacy, in particular by ensuring compliance with the necessary and proportionate principles outlined at:

https://en.necessaryandproportionate.org/text

National laws must be modified to ensure the protection of privacy of Internet communications and to limit government surveillance.  No such surveillance should be conducted without specific authorization from an independent and impartial court and it must be necessary and proportionate.

States must respect the privacy rights of citizens of other states.

Furthermore, states must not take steps to prohibit, degrade or compromise encryption, and they must not mandate backdoors that defeat encryption.  We endorse the open letter published at:

https://www.securetheinternet.org/

We support the call for national referendums in Switzerland regarding proposed new surveillance laws, see:

http://www.isoc.ch/archives/2243

and

http://www.isoc.ch/archives/2154

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