A (future) clash of rights: Copyright and right to Internet access

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Abstract
Internet has gained an increasingly irreplaceable and fundamental role in how people lead their lives, as well as how societies are becoming structured. On the other hand, or as a consequence, Internet has become the leading medium also for copyright infringements. Copyright in the digital era is increasingly becoming enforced as a response to this online mass-infringement (for a European approach, see Larsson, 2011). P2P file sharing is the most important form of online copyright infringements, which has triggered a "Copyright War" between members of the society and the rights holders and their representatives (i.e. Patry, 2009). As a result, so called graduated response laws (or they are usually mocked as three-strikes laws) for copyright violators are discussed widely across Europe, and issued in France with HADOPI 1 and 2 and the UK with the Digital Economy Act. In the middle of this war the term "right to Internet" has appeared, and acts as a legal response to the extreme impact of a relatively new medium.

After the HADOPI 1 statute was passed by the French parliament in 2009, the statute was sent to the French Constitutional Court for constitutional norm control. The Conseil constitutionelle used the phrase in its decision "right to Internet". Even if the Conseil constitutionelle missed to discuss the real meaning of the above term in detail, the phrasing has led to an ever increasing discussion, whether in the current "digital age" the access to Internet should be accepted as a separate (constitutional) right or not. The emergence of the same issue is visible in several other jurisdictions, such as Finland, Greece and Spain.

Bearing in mind the role of bloggers, twitter-users and facebooking rebels and revolutionaries in recent subversive events in "the African spring" in Tunisia, Egypt and Libya (and later Syria) and the attempts of removing Internet access and communication infrastructure the tech activist slogan "information wants to be free" can be seen in a new light. As a response to the regimes' attempts to deconstruct the Internet infrastructure, activists in several other countries collaborated in order to fight this deconstruction. In line with this, the Swedish Development Minister issued a call in February 2011 for ideas and ways of how the new communication and information tools can be used in development assistance, to strengthen freedom and democracy in developing countries, and experts were gathered for an initial meeting. Internet access, either explicitly, or implicitly in terms of right to information, is increasingly becoming referred to in terms of a human right (and a tool for democracy).

This means that these two rights, the protectionist copyright including graduated response, and the right to Internet access, acknowledging the vast impact and importance of Internet in society risk of ending up in an incompatible clash. The article introduces the evolution of the term "right to Internet" through the discussion of the logical chain of events from the former decade that are mainly connected to the phenomenon of P2P file sharing. The article focuses on the idea of regulating Internet (access), on the regulatory initiatives regarding "right to internet", including the three strikes initiatives as well.

In the light of the legal and historical development analysis the paper aims to reach a firm conclusion regarding the future possibilities of the right to Internet: should it be recognized as a separate constitutional or human right, or will it remain a segment of the freedom of

communication, freedom of religion, right to private sphere etc. The article finally raises the question, what do we gain/lose form this formalisation, juridification, or codification? What happens when we declare Internet access “a right”?

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