Issue Comparison of Major Declarations on Internet Freedom

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Summer 2013

Context

Issue Comparison of Major Declarations on Internet Freedom is a work output of Jeonghyun Baak mentored and reviewed by Carolina Rossini, during the summer of 2013, as part of efforts within the Latin America Resource Center Project at New America Foundation. In a meeting held by various Latin America organizations in 2012, hosted by the Ford Foundation, the participants recognized a need to better understand declarations that influenced Internet governance debate and that have brought a diverse group of actors together. The results of this work – which include a large comparison chart (Annex 1) and the analysis that follows - can serve as a rich substrate for regional collaboration in setting locally relevant principles to guide advocacy and policy making in the region.

Introduction

To understand what issues are addressed by major Declarations and Statements (“Declarations”) on Internet freedom and digital rights, the researchers created a chart that compares the language used by Declarations in order to analyze which particular issues were favored by certain types of organizations, whether the type of sponsoring organizations affects the issue coverage of a particular Declaration, and whether issues have any kind of hierarchy.

To properly grasp the multi-stakeholderism of Internet governance, the researchers analyzed Declarations that represent important sectors in Internet governance: civil society, business organizations, government coalitions, and international organizations. In total, the researchers gathered 18 Declarations: 7 from civil society, 4 from business organizations, 4 from government coalitions, and 3 from international organizations.

The result of this work may be used to further one’s understanding in Internet governance or to persuade a public or private body to draft and/or implement Internet governance principles. It may be also used to provide an overview of positions and as a base for new declarations and statements that are original and relevant to the Global South.

Methodology

As the purpose of the project is to understand how Declarations on Internet freedom covers Internet governance issues, the project employed a two-step bottom-up approach to verbalize the concepts addressed in Declarations.

First, in the issue identification phase, the researchers built up the issue list from the language of Declarations. By “issue”, the researchers mean core topics of Internet governance discussed in Declarations. If a particular provision of a Declaration bears specific titles, e.g. “cultural and linguistic
diversity,” the researchers used the title as the “issue” of the provision. If a provision is not titled or is about an issue that is different from its title, then the researchers reclassified the provision under a proper issue. Admittedly, the distinction was subtle in many situations, so the language of the issues represents the best efforts of the researchers on extracting the language used by a certain stakeholder to express a certain need, right or request. The researchers often created labels most suitable to the language used in provisions.

To properly understand the drafters’ influence on Declarations, the researchers differentiated “drafting entity” from “supporting entity.” Mostly, organizations or individuals that are supportive to a Declaration (supporting entity) draft the Declaration. Yet, as in the case of international organizations, the organization that drafts a Declaration may have its own interests distinct or different from those of supporting entities. For example, the OECD or the UN has budgetary obligations to address certain topics for a pre-set number of times in a given period. 1

Second, in the issue grouping phase, the researchers developed “issue family” that consist of similar issues. “Issue family” refers to a group of issues that have similar meanings and goals. As more and more issues were identified throughout the issue identification phase, some issues turned out to be inclusive of, subordinate to, or similar to others. For example, almost all the Declarations mention privacy and data protection in one sentence or section. Since Declarations use “data protection” as means to enhance “privacy,” the researchers grouped “privacy” and “data protection” under the issue family of “privacy.” Also, in many cases, Declarations did not present issues in a consistent fashion. Grouping similar issues together enhances how to understand Declarations. In result, 59 issues under 22 issue families were identified (Table 1).

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1 The OECD’s deliverables are managed under its Work Programmes, and particular topics need to be addressed in events or published as reports for a designated number within its budgetary period.
Next, astonished and challenged by how random the issue families are, the researchers rearranged the issue families, to find discernible patterns, according to a classification system commonly found in Internet governance literature: Internet governance process and Internet governance subject matter. The subject matter is then classified as Hardware, Content, Software, and Due Process. As a result, Procedure has three sets of issue family; Subject-matter has 19 issue families. Subject-matter in turn has one issue family under Hardware, 14 under Content, two under Software, and one under Due Process. The result is shown as the issue tree in Figure 3.
Issue Tree

- Compliance with int'l standards
  - General Accordance with major declarations
- Governance structure
  - Multi-stakeholder governance
  - Rule of law
  - Decentralization
  - Transparency / Transparent governance
- Implementation
  - Code of Conduct/Best practices for a sector

H/W
- Internet accessibility
  - Access to the Internet
  - Universality of the Internet
  - Broadband development
  - Network reliability
  - Open Standards
  - Interoperability
  - Net Neutrality
  - Access to knowledge
  - Right to dignity
  - Family autonomy
  - Education
  - Duties and Responsibilities

- Fundamental rights
  - Freedom of expression
  - Freedom of (religious) belief
  - Censorship

- Participation
  - Right to participation
  - Right to association

- User empowerment
  - User awareness
  - Media/Digital literacy

- Freedom of expression
  - Privacy
  - Data Protection
  - Individual Control over specific personal data
  - Surveillance
  - Development
  - Development (social and economical)
  - Green ICT
  - Workplace access to the Internet

- Economic growth
  - Innovation
  - Competition
  - E-commerce
  - Consumer Protection

- Individual economic growth
  - Property right
  - Right to contract

- Diversity
  - Expression of Cultural and linguistic diversity
  - Non-discrimination (underrepresented people)
- Minorities
  - Disabled people

- Children
  - Security of means
  - Security of access
  - Security of persons

- Security
  - Government's non-interference
  - E-government
  - Social Services
  - Public Data / Transparency
  - Responsibility of companies
  - Internet Intermediary
  - Independence of Media companies

S/W
- Data
  - Data processing transparency

- Cross-border flow
  - Information Flow
  - Cross-border services

- Due Process
- Right to legal remedies

[Figure 3] Issue Tree
Finally, the researchers placed each provision of a Declaration under a proper issue. As the purpose of Declarations is to declare statements on a given topic, most provisions consist of one or two sentences. When a particular provision has more than one sentence to address several issues, the provision may be placed under multiple issues. For instance, in the Principles on Freedom of Expression and Privacy, drafted by Global Network Initiative, the provision titled as “Multi-stakeholder Collaboration” has five sentences, and the last addresses the issue of rule of law (“Individually and collectively, participants will engage governments and international institutions to promote the rule of law and the adoption of laws, policies and practices that protect, respect and fulfill freedom of expression and privacy.”) Thus, the first four sentences are placed under Multi-stakeholder Governance when the last is under Rule of Law.

**Analysis**

Several issue families are much more favored across all drafting/supporting entities. Among the Procedure family, Governance Structure is the most frequently mentioned (13 out of 18 Declarations), and the least frequent is Compliance to International Standards (5 out of 18). Accessibility is the most mentioned among Subject-matter family (13 out of 18). The least mentioned (2 out of 18) were Development, Individual Economic Growth, Children, Security, Data, and Cross-border Flow.

Though mentioned not frequently, some issue families are favored regardless of the type of drafting/supporting entities. Fundamental Rights, Participation, Diversity, Role of Government, Role of Companies, and Due Process are such. However, other issue families were favored by certain types of drafting/supporting entities. Freedom of Expression and Privacy are mentioned by all the Declarations supported by drafted by civil society. Interestingly, User Empowerment is never mentioned by civil society; it is a favorite of business organizations and government coalitions.

On a side note, notice that the number of issues covered by a particular Declaration may not be equal to the number of provisions of the Declaration. This is because a provision may belong to multiple issues. To capture how comprehensive a Declaration is, the researchers came up with a concept called “Depth of Declarations.” The higher the depth of a Declaration is, the more issues can be addressed by the less number of provisions. The Declaration of Internet Freedom, drafted by the ACLU, addresses 6 issue families with 5 provisions, but the Charter of Human Rights and Principles for the Internet, drafted by the Internet Rights and Principles Coalition, covers 15 issue families with 20 provisions. Yet, a lower depth may not mean the Declaration in question is not advanced. The Code of Good Practice on Information, Participation and Transparency in Internet Governance, developed by the Association for Progressive Communications and the Council of Europe, only covers 8 issue families with 25 provisions, but the purpose of the Code was to tackle practices regarding “information” and “participation” in depth.
Up to this point, the paper looked at the relationship between the type of supporting/drafting entities and the issue families. To focus on issue comparison, Figure 5 shows a bar graph of how many times issues in a given issue family are mentioned. In the case of Governance Structure, it has five issues, so the total number of times-mentioned of Governance Structure sums up the number of times-mentioned for each issue: Multi-stakeholder governance, Democracy and the rule of law, Decentralization, Transparency / Transparent governance, and Code of Conduct/Best practices for a sector. As the value of times-mentioned for Governance Structure is 21, Governance Structure is the highest among Procedure. The highest times mentioned among Subject-matter is also still Accessibility (27 times). The lowest six in Table 2 now are replaced with the lowest three: Individual Economic Growth, Children, and Data.
One may point that the bar graph in Figure 5 may not reflect valid comparison because it is possible that an issue family with a higher number of issues would lead to higher times mentioned. Note that Accessibility has seven issues while Data has only one. Figure 6 attempts to adjust such downside. The y-axis is the percent of the actual “times mentioned” in Figure 5 over the maximum numbers of times mentioned can receive in a given issue family. Hence, Governance Structure’s “times mentioned” value of 21 is divided by the maximum times that can be mentioned, 90. Then, the adjusted value of the issue family Governance Structure becomes 23%. In this way, the absolute value of each issue family in Figure 5 is adjusted to the comparative value.

The result is somewhat different from Figure 5. Per Procedure, Implementation achieves the highest value (33%), and Governance Structure now is the lowest (23%). Per Subject-matter, Privacy (28%) and Freedom of Expression (26%) are the top two while Individual Economic Growth records the bottom (4%).

The researchers also analyzed the relationship between the issues, noticing certain repetitive pairs of issues in Declarations. Privacy is almost always paired with Data Protection or Data Security, and is regarded to enhance the societal value of democracy or accountability. It is also noticeable that some issues are by themselves regarded as fundamental values while others are considered as “enablers.” Enablers refer to issues that can be used as means to achieve issues other than themselves. Just as privacy is regarded as enhancer for democracy, Declarations recognize such relationship as “to promote”, “to contribute to”, or “to protect.” This was recorded as arrows by the researchers (Figure 7). Declarations also recognized antagonistic or contentious relationships (Figure 8). Declarations supported by private companies claimed that government regulation or legislation suppresses competition or innovation. The Declaration of Internet Freedom, drafted by TechFreedom, claimed that “Often, government’s best
response is to do nothing. Competition, disruptive technological change, and criticism from civil society tend to resolve problems better, and faster, than government can.”

Conclusions
Some preliminary conclusions can be taken from the analysis above, when read jointly with the Declarations (see complete comparison chart as Annex 1). These do not intend to be final or the only conclusions, but are inferences that naturally appeared from this process.

1. The type of sponsors give a clue of what issues may or may not be addressed in an instrument. For instance, "Government's non-interference" is covered by all the instruments, but not so in those written or sponsored by the governments. Yet, "responsibility of companies" is mainly argued within those sponsored by private companies.

2. Sponsors may disproportionately advocate the issues to be covered in an instrument. Since the earlier days of Internet governance, organizations interested in human rights such as privacy or freedom of expression (Free Press, ACLU, or EFF) have been more involved than organizations focused on children's rights. Also, organizations advocating human rights are generally more engaged with expressive activities including setting up a fund-raiser or signing up for a statement. Seen in this way, the infrequency of certain issues (i.e. children’s rights) may not be interpreted as their insignificance. Rather, it may mean that subsequent attempts of drafting Declarations on digital rights must raise certain issues that have not received proper attention.

3. Different stakeholders use different words to express similar goals. Note that civil society prefers “openness” or “freedom of expression” while business organizations favor “innovation”, even when the language, goals or results employed within such issues are not significantly different.