

# UNESCO, the Internet and jurisdiction issues

Remarks by Guy Berger  
Director for Freedom of Expression and Media Development, UNESCO

Global Internet and Jurisdiction Conference  
Ottawa, 26-28 February 2018

Organized by the Internet and Jurisdiction Policy Network (IJP), in partnership with the Government of Canada and institutionally supported by the OECD, UNESCO, the Council of Europe, the European Commission, and ICANN.

1. Jurisdiction and Internet issues are not simply about finding appropriate legal interoperabilities, practical process mechanisms, or computer engineering around geo-location and spatial limits of online data, etc.
2. The business implicates values. So let us go back to source values, because these are what impact downstream. What better place to start, on this 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights, with the inspiring wording that recognizes our right to “seek, receive and impart information and ideas through any media and regardless of frontiers”. If this value is at the head of the flow, it has also evolved as a norm. My remarks are to explore how it connects to what happens further down the river, spanning multiple jurisdictions. In particular, I will highlight the significance of the juncture when the flow encounters UNESCO’s Internet indicators.
3. What was agreed 70 years ago as a value is now upheld as a norm against which practice could be assessed. Reinforcing this, it is also a standard agreed by the international community. This status emerged when freedom of expression was recognised in the International Covenant on Civil and Political Rights. Today, as society continues to evolve, it is this agreed standard that can help us develop, interpret and assess the legitimacy any actions that impact on this (and other) rights. This is a standard that today applies offline and online, and it should apply domestically within states as well as to interfaces between different legal jurisdictions.
4. As part of its mandate, UNESCO promotes the international standard on freedom of expression, as a beacon for designing and assessing communications-related law. This is why we have trained some 8000 people linked to judiciaries worldwide in the past three years. From these experiences, we note a great hunger in this constituency to understand how the international standard on free expression applies to online content issues - many of which issues implicate cross-border dimensions.
5. As part of the flow since 1948, UNESCO in 2015 adopted four principles for the Internet. Known as the ROAM principles, these uphold the importance of an Internet that is characterized by respect for Rights, Openness, Accessibility, and Multistakeholder participation.

Online content is implicated in each of these principles. It is shaped by Rights (and by when in terms of international standards, they may be legitimately - though exceptionally - limited).

Online content has dimensions related to Openness; it is also key to Accessibility – especially in issues such as local content, language, script, as well as affordability and the media and information literacy levels of users.

Multistakeholder engagement can clearly enrich both state and private sector policies for stimulating and using online content, and for deciding when or if curbs may be called for, and to what extent.

ROAM points to the key pillars that make the Internet relevant to knowledge societies and the Sustainable Development Goals. But the model also offers a way to consider questions of jurisdiction and online content.

6. In the Rights realm in general, we know well that there is sometimes a need to balance an individual's Right to produce and receive content, with another's Rights to reputation or to security. We know that in such cases, it is important to consider the least intrusive solution, and that legality, necessity, proportionality and legitimate purpose should shape any solution that entails a limitation of expression.
7. In principle, these criteria about curbs on expression should apply both domestically and in cross-jurisdictional cases. They should apply in the drafting of laws and regulations, in court decisions and indeed in the Terms of Service of individual companies that mediate content on the Internet.
8. However, what the ROAM frame also tells us is that this kind of calculus should also take into account the particular circumstances when the contested content is online, i.e. when it is within the environment of the Internet.

Hence the ROAM framework tells us that assessments of online content within the concerns of the Rights realm should be considered in relation to the other essential dimensions of the Net. In other words, as regards the relevance of Openness, Accessibility, and Multistakeholder participation. In other words, ROAM suggests to us that any limits on freedom of expression should be considered as to whether they resonate, or erode, our shared interests in also upholding the Internet's alignment with O, A, and M principles.

9. As societal flow has continued, UNESCO has now advanced to the stage of seeking to give the ROAM framework practical utility. We have contracted the Association of Progressive Communications to help us consultatively develop indicators to assess how a national dispensation compares vis-a-vis ROAM.
10. The aim of the indicators is to enable evidence-based policy recommendations, which will include, inter alia, options for national policies and practices as regards online content. UNESCO is now nearing completion stage of the consultation on these indicators, so this is a last chance to help shape these indicators - please visit our website in the next two weeks!
11. When these ROAM indicators are ultimately finalized, they will stand as a UNESCO research tool based upon international standards. They will help stakeholders in a range of countries to assess inter alia what is, and what could be, the national situation in regard to issues of content issues domestically.
12. Clearly the ROAM indicators work from the vantage point of nation state-based stakeholders, and so of course they implicate the extent to which a state can exercise jurisdiction. You can call this "ROAM at home".

Yet the domestic regime on the Internet is also often bound up with actors abroad. This means that the spectre of cross-jurisdictional issues is an still an inevitable presence at the Internet banquet. While generally not a problem, this can sometimes pose issues when different stakeholders have divergent interests in this supporting or changing the situation.

For UNESCO, promoting alignment to international standards under ROAM, in a large number of countries, does not mean a homogeneity. For example, the way that multilingualism and a diversity of cultural expression thrive (or are under threat) online is integral to a ROAM-centred Internet. But a common broad standard relating to expression online underpinning diversities could help to reduce the number of contestations between jurisdictions.

At the same time, many frictions will no doubt continue. The question is then whether, in such cases, the ROAM principles themselves can “ROAM” – in other words, whether they can be useful for the design of operational interfaces between jurisdictions when the issue concerns online content. UNESCO requests you to consider this dimension through giving comments on our draft ROAM indicators before mid-March.

13. You can easily find these [draft Internet indicators online](#). By making your comments, you can enhance their contribution to the complex challenges of jurisdiction and the Internet, and help synergise the work of UNESCO and the IJP.
14. If progress can be made, we can envisage an ever-strengthening flow – one that began with a value at source. However, it could still become, on one hand, dissipated and diluted across myriad separate streams, or – on the other hand – overrun and drowned by dangerous competing currents. But finding ways to sustain it online, in a multi-jurisdictional environment, is what we need to arrive at Knowledge Societies focused on achieving the Sustainable Development Goals.