



International Chamber of Commerce

The world business organization

Policy statement



Prepared by the ICC Commission on
The Digital Economy

The freedom of expression and the free flow of information on the Internet

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- Limitations to the right to free expression should only be for legitimate public policy objectives, such as protecting the rights of others and the rule of law consistent with international treaties, and should be tailored to meet such objectives, and decisions on Internet governance and policy issues on all levels should be consistent with international human rights.

Introduction

For many years, ICC has been demonstrating its strong support of human rights¹ ICC was closely involved in the development of the UN “Protect Respect and Remedy” Framework, whose underlying philosophy clearly differentiates the State duty to protect human rights and the corporate responsibility to respect human rights. In addition, in the past, ICC has been promoting the freedom of speech, e.g. in its ICC policy statement on the freedom of commercial speech.²

The Commission on the Digital Economy applauds the Working Group on Business and Human Rights of the International Coordinating Committee of National Human Rights Institutions (NHRIs), an affiliate of the Danish Institute of Human Rights, that has been undertaking work in the human rights and business area, such as promoting capacity building, strategic collaboration, advocacy and outreach by NHRIs in accordance with the UN Guiding Principles on Business and Human Rights.³

The UN itself has recently turned its attention to the issue of freedom of expression and the Internet. More than 40 members of the UN and the Human Rights Council issued a Cross Regional Statement on “The Freedom of Expression on the Internet,” and there have been discussions in the General Assembly, initiated by the report of Frank de la Rue. In light of these recent developments, ICC finds it appropriate to limit its comments in this policy statement to the issue of **the freedom of expression on the Internet and the importance of the free flow of information**. (The ‘free flow of information’ is understood in this statement as not including information illegally divulged, transmitted or reproduced).

ICC members are working with governments, regulators, non-governmental organizations, and others to meet the evolving challenges posed by new technologies, and to carry out due diligence to help ensure that communications technologies are used to respect, and not infringe, human rights.

It must be remembered that protection and respect is required for all human rights, which also according to the UN Universal Declaration of Human Rights include the right to property, article 17, and intellectual property rights, article 27, paragraph 2:

(2) " Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

This ICC statement is an initial step to compile existing recommendations with a view to building upon them as part of ICC’s on-going work on these important issues.

¹ See ICC policy statement “ICC views on business and human rights”, 2008: http://www.iccwbo.org/uploadedFiles/ICC/policy/business_in_society/Statements/141-94%20business%20and%20human%20rightsFINAL.pdf

² See ICC policy statement on the Freedom of Commercial Communication”, 2003: [“http://www.iccwbo.org/id545/index.html](http://www.iccwbo.org/id545/index.html)

³ See “ICC [International Coordinating Committee] Working Group on Business and Human Rights”: <http://www.humanrightsbusiness.org/icc+working+group+on+business+and+human+rights>

1. Business strongly supports the freedom of expression and free flow of information in a manner that respects the rights of others and the rule of law. ICC strongly recommends that governments adopt the principle that the offline laws and rules apply online and on the Internet.

ICC recognises the principle that all the rights that people have offline, including but not limited to the freedom of expression, must also be equally protected online.

Limitations to those rights that protect the rights of others and the rule of law that exist offline do also exist online. For example, limitations to address and deter illegal content such as child pornography or theft of intellectual property are legitimate in accordance with Article 29 of the UN Universal Declaration of Human Rights, and wholly appropriate.

All states and governments have the duty to provide a strong protection for the freedom of expression online, consistent with the rights of others and the rule of law in accordance with the Declaration.

In order to be able to exercise the right to freedom of expression, the free flow of information is a pre-condition.

The freedom of expression is the cornerstone of many businesses, e.g. the press and other content companies that rely on it to produce content that challenges governments and informs and entertains users and technology platforms that offer their users the ability to engage in the exchange of views, as well as businesses' ability to advertise its products and services in a responsible manner.

ICC also recognizes the special vulnerability of some human rights on the Internet, including but not limited to the freedom of expression, the right to fair process and the right to privacy. Any legitimate restriction to such rights on the Internet should meet a high standard of protection.

2. The freedom of expression to be fully exercised requires the free flow of information, also over the Internet.

Business is concerned about the growing trend to impose restrictions on cross-border and international data flows. The free flow of information over the Internet has proven itself not only to be highly important in order to freely express human opinions and preferences but also to be a key enabler when it comes to supporting economic development, trade and business, encompassing public and private companies, including Small and Medium-sized Enterprises (SMEs).

Internet services are central to the 21st century economy, and governments must work together to rein in restrictive practices. The international community must address barriers to the free flow of information online in order to protect the freedom of expression and to realize the full potential of the Internet as a platform for innovation and economic growth and a global marketplace.

Governments should work together with business to develop policies and practices to maximize the freedom of expression and free flow of information over the Internet and minimize trade barriers so that all companies have the ability to engage in legitimate commercial activity.

Governments must also ensure that the rights of others and the rule of law are respected on the Internet in order for the Internet to reach its full potential as a trusted medium for speech and legitimate commerce. With this in mind, measures to achieve these goals should not be construed as restrictive but rather facilitate the freedom of expression.

Business recognizes that all efforts to enshrine the principles mentioned in this document should be proportionate and should advance creativity and innovation.

The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the 20th century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rule setting, dispute resolution, and policy advocacy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice. ICC also offers specialized training and seminars and is an industry-leading publisher of practical and educational reference tools for international business, banking and arbitration.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include anti-corruption, banking, the digital economy, telecommunications, marketing ethics, environment and energy, competition policy and intellectual property, among others.

ICC works closely with the United Nations, the World Trade Organization and other intergovernmental forums, including the G20.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with ICC members in their countries to address their concerns and convey to their governments the business views formulated by ICC.

ICC Commission on the Digital Economy

Business leaders and experts develop and promote the continued and stable growth of the digital economy, and further adoption of its underlying Information and Communication Technologies (ICT) foundation, through regulatory advocacy of key business positions and best practices through ICC's Commission on the Digital Economy.

Through its members who are ICT users and providers from both developed and developing countries, ICC is recognized in expert circles as the global consensus voice for private sector expertise on policy matters that drive the Digital Economy. It also provides the ideal platform for developing global voluntary rules and best practices for this area of interest to companies worldwide. Dedicated to the expansion of secure ICT-facilitated trade, ICC champions the liberalization and regulatory harmonization that are required to achieve a free flow of information across all borders.

ICC led and coordinated the input of business around the world to the United Nations World Summit on the Information Society (WSIS), Geneva 2003, Tunis 2005, and continues this effort in the activities established in the Tunis Agenda through its initiative, Business Action to Support the Information Society (BASIS <http://www.iccwbo.org/basis>).



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Policy and Business Practices

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