

SYMPOSIUM ON HUMAN RIGHTS & THE INTERNET IN INDIA

discussing

SURVEILLANCE & DATABASES: EXPERIENCES & PRIVACY CONCERNS

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UNPACKING THE INTERMEDIARY LIABILITY DEBATE IN INDIA'

5:00 p.m., 17th January 2015

Organised by

Global Network of Internet and Society Research Centers

UNESCO Chair on Freedom of Communication and Information at the

University of Hamburg

&

Centre for Communication Governance at National Law University, Delhi

at

*Conference Room - II | India International Centre Annexe | Joseph Stein Lane, Lodhi Estate,
Max Muller Marg | New Delhi*

CONCEPT NOTE

Privacy Concerns in India

Although technology has enabled sophisticated forms of data collection and processing and surveillance, Indian law is yet to provide clearly articulated and reasonably comprehensive privacy safeguards to ensure that citizens' rights are protected. These safeguards will need to account for both domestic and international violations of privacy, in view of the fact that the Internet has resulted in Indian citizens' data being stored in other jurisdictions and being accessed by state and private agencies in these jurisdictions.

Databases of personal information are being built in India. This includes government databases like the universal identity card and electoral databases, as well as private databases like the ones maintained by hospitals and educational institutions. Although the quantum of information collected and the ways in which this information is

aggregated, processed and disseminated is on the rise with technological progress, limitations on this activity in the the interests of privacy are inadequate. This raises serious concerns about the security of the personal information in these databases, as well as about the implications for privacy rights when this data is aggregated, mined or shared.

Separately, there is urgent need to examine what appears to be very poorly regulated government surveillance in India. Existing legal safeguards are limited in their coverage, and were codified in the nineties after judicial intervention. However surveillance technology, and correspondingly the quantum and quality of surveillance, has advanced significantly since then, rendering the safeguards ineffective. News reports about the Central Monitoring System, a programme using real time dragnet surveillance and data mining of communications content and metadata, suggest that these privacy concerns are critical. Also significant in this context are the principles of evidence and criminal procedure, and the manner in which constitutional protections such as the right against self-incrimination are operationalized.

This panel will explore how surveillance in India might become more consistent with international human rights standards and Indian constitutional values. It will also discuss the consequences of ubiquitous database programs for citizens' human rights. This will include comparative perspectives around similar problems and a discussion of privacy-compatible practices in other countries.

Intermediary Liability in India

Indian law is just beginning to grapple with concerns around intermediary liability in a meaningful way. The increasingly digitisation of the public sphere means that user's human rights (such as free speech and privacy) depend to a considerable degree on intermediaries. It is therefore important to re-examine Indian law concerning intermediaries to consider how the impact on human rights through regulation of intermediaries may be reduced.

Some of these concerns, particularly as they relate to monitoring and censorship of content online are currently under consideration by the Supreme Court of India, which

will be defining the contours of the right to free expression online, and will be taking a close look at the rules governing online intermediaries from this perspective.

The substantive law governing intermediaries is currently structured such that a conditional safe harbour is granted to online intermediaries. The conditions require broadly that intermediaries perform certain measures of 'due diligence', including what many have described as notice and take down requirements. Other delegated legislation requires intermediaries to block, intercept and monitor content. This raises concerns about whether there are adequate safeguards to ensure that intermediary liability is not leveraged in a manner that affects users' rights.

The panel will focus on the legal framework governing Internet platforms in India, especially with regard to online content and its implications for rights of the citizens. It has been argued that the current legal framework creates incentives for online intermediaries to take down content even when no substantive notice or legitimate reasons have been offered. The panel will consider the debate around intermediary liability in India in light of the ongoing litigation at the Supreme Court. It will reflect on the international experience with intermediary liability legislation and discuss how to ensure that laws support an innovative and competitive environment for intermediaries, while ensuring that they prioritize the preservation of their users' human rights.