

## PROTECTING DIGITAL EXPRESSION: RECOMMENDATIONS TO STATES

*Censorship and surveillance pose major obstacles to a free and open Internet. What are the obligations of States to respect and protect freedom of expression online? The Special Rapporteur outlines five concrete steps that States should take to fulfill these obligations.*

**Refrain from network shutdowns:** The Human Rights Council, in its resolution 32/13, condemned unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and called upon all States to refrain from and cease such measures. This condemnation, which is critical to the Council's promotion of human rights online, should be supplemented and specified. Intentional prevention or disruption of access includes any action that shuts down or renders ineffective access to telecommunications networks, mobile services, social media platforms and so forth. Future work of the Council that clarifies the rules that apply to digital access, as outlined in this report, would advance the right to freedom of opinion and expression online.

**Protect digital privacy and rein in surveillance:** It is also critical for the Council and States to draw the connections between privacy interference and freedom of expression. To be sure, interferences with privacy must be assessed on their own merits under article 17 of the International Covenant on Civil and Political Rights and other norms of human rights law. But certain interferences — such as overbroad requests for user data and third party retention of such data — can have both near- and long-term deterrent effects on expression, and should be avoided as a matter of law and policy. At a minimum, States should ensure that surveillance is authorized by an independent, impartial and competent judicial authority certifying that the request is necessary and proportionate to protect a legitimate aim.

**Respect the safety of company employees and the integrity of network infrastructure:** The Special Rapporteur is particularly concerned about reports of threats and intimidation of companies, their employees and their equipment and infrastructure. Also, the Council's emphasis on the important role — and need for protection — of the private sector deserves consideration. States should review all activities to obtain network access to ensure that they are lawful, necessary and proportionate, paying particular attention to whether these activities are the least intrusive means for protecting a legitimate aim.

**Protect net neutrality:** The protective role that States may exercise over the private sector can only go so far. They should not be promoting the economic gain of private entities over users' rights to freedom of opinion and expression. Thus, States should prohibit attempts to assign priority to certain types of Internet content or applications over others for payment or other commercial benefits.

**Work with companies to protect human rights:** The intersection of State behaviour and corporate roles in the digital age remains somewhat new for many States. One profitable way forward, at both the international and domestic levels, would involve the development of national action plans on business and human rights in order to establish meaningful avenues for all categories of the digital access industry to identify and address their respective human rights impacts.