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Een recht op identiteit

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& University of Tilburg (TILT)

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Waarom is het Internet zo belangrijk:

- democracy
- development
- economy
- “enabler” of human right
 - freedom of expression – crucial
 - right to education
 - access to the culture, results of scientific research
 - etc.

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EU: Digital Agenda
UN: Rapport Frank La
Rue, May 2011
UN: Commentary on Art.
19 ICCPR, July 2011
World Information
Society Summit
Millennium Development Goals

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Gevaren en uitdagingen

1. Digital divide
2. New Borders
3. Reassembled identity

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digital divide

- territorial: developed countries (almost already built infrastructure) vs. undeveloped (the need to build infrastructure)
- discrimination
 - vulnerable groups, e.g. disabled people, gender, poor
 - languages

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new borders of cyberspace

content-blocking & net-neutrality

- blocking
 - » CSA content (child sexual abuse) – yes?
 - » copyright infringing material – justifiable?
- filtering
- ISP liability & privatised censorship
- privacy & data protection (disclosure of identity could have a chilling effect on freedom of expression)
- right to be forgotten (also? re-writing history?)

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Borders (vervolg)

- user-blocking
 - “three strikes”: FR, UK, ACTA (but dropped)
 - » what if we bloc only certain protocols, not entire access to the net?
 - » “*limit piracy, not news*”
 - sexual abusers – well, justifiable?
 - silencing criticism – e.g. imprisonment of journalists/bloggers in China and similar regimes (RSF: “*Enemies of the Internet*”)
 - hackers and banning from computers for 10 years – justifiable

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Het mensenechtendebat

The recent (May 2011) UN Human Rights Council’s report on the promotion and protection of the right to freedom of opinion and expression has heated the worldwide debate on the Internet access as human right.

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Idee: ensuring access

- Having underlined the role of the Internet in exercising these rights, the Special Rapporteur, Frank La Rue, wrote: “ensuring universal access to the Internet should be a priority for all States” (§ 85). The report also acknowledges its two dimensions: (1) access to the content, and (2) access to the physical and technical infrastructure required to access the Internet.

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Eerste initiatieven

- A few countries already have undertaken some steps in ensuring the universal Internet access. Some jurisdictions consider the Internet access as a universal service. This is a case for Estonia (Art. Art. 5(2) of Telecommunications Act of 2000), Finland (Sec. 60(C), Communications Market Act of 2003) and Spain (Art. 52, Sustainable Economy Act of 2011). Moreover, both Finland and Spain have set the minimum rate of a functional Internet access as a universal service at 1 Mbit/s.

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Grondwettelijk erkenning van access

- a number of countries have given some kind of constitutional protection to the Internet access. In 2001, the Greek constitution has been amended to add a provision stating that “*all persons have the right to participate in the Information Society*” (Art. 5a(2)). In June 2009, the French Constitutional Council declared access to the Internet to be a basic human right by stating that freedom of expression “*implies freedom to access*” public on-line communication services (§ 12, Decision No. 2009-580). The Constitutional Court of Costa Rica is reported to have reached a similar verdict in 2010 (§ 5, Decision No. 09-013141-0007-CO).

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Idee 2: een recht op identiteit

Convention on the right of the
child

Raad van Europa

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Voor – nadelen

- Advantage
 - many & broader than right to internet access (De Hert, De Andrade, P. Bernal)
- Disadvantage
 - Identitarian politics? (Gutwirth)

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Juridische vragen

- Only digital ID?
- Relatie rechtspraak Europees Hof voor de Rechten van de Mens artikel 8 EVRM?

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