

Freedom of expression and freedom of information

Course objectives

- To help human rights and ICT professionals, and others with an interest in the issues, to:
 - Understand ways in which the internet is affecting the enjoyment and protection of rights – now and in the future.
 - Explore how these affect their work.
 - Make more effective use of the opportunities provided by the internet and address the challenges that are posed by it.

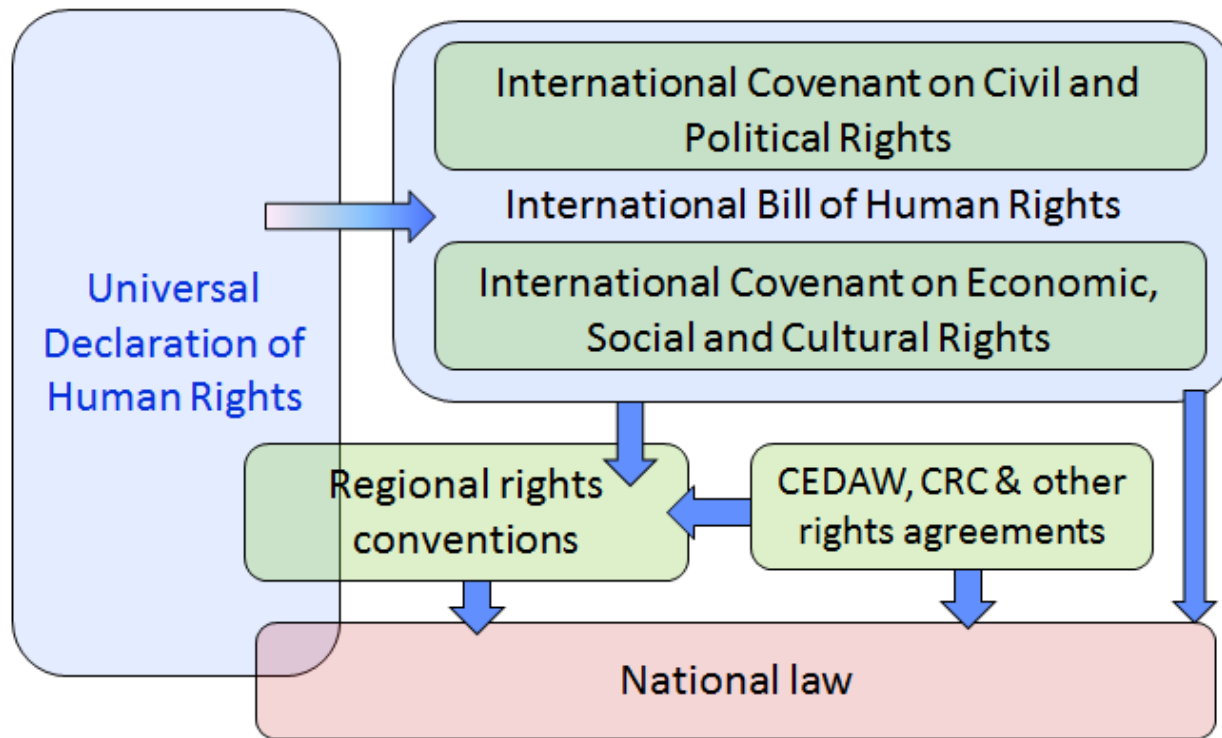
Module introduction

- This module is concerned with:
 - The meaning of freedom of expression and freedom of information.
 - Ways in which the internet is enhancing the exercise of these rights.
 - Ways in which the internet is altering the balance between these and other rights within the international regime.
 - Ways in which the internet can be used to violate these rights.

Key questions

- What is the meaning of freedom of expression and freedom of information?
- What limits are placed upon these within the international rights regime and how do they relate to other rights?
- What has been the impact of the internet on opportunities to exercise freedom of expression and information?
- What has been the impact of the internet on the relationship between these and other rights, including privacy?
- What has been the impact of the internet on limitations to and violations of these rights?
- How should rights professionals respond to the implications of the internet for their work in these areas?

The international rights regime

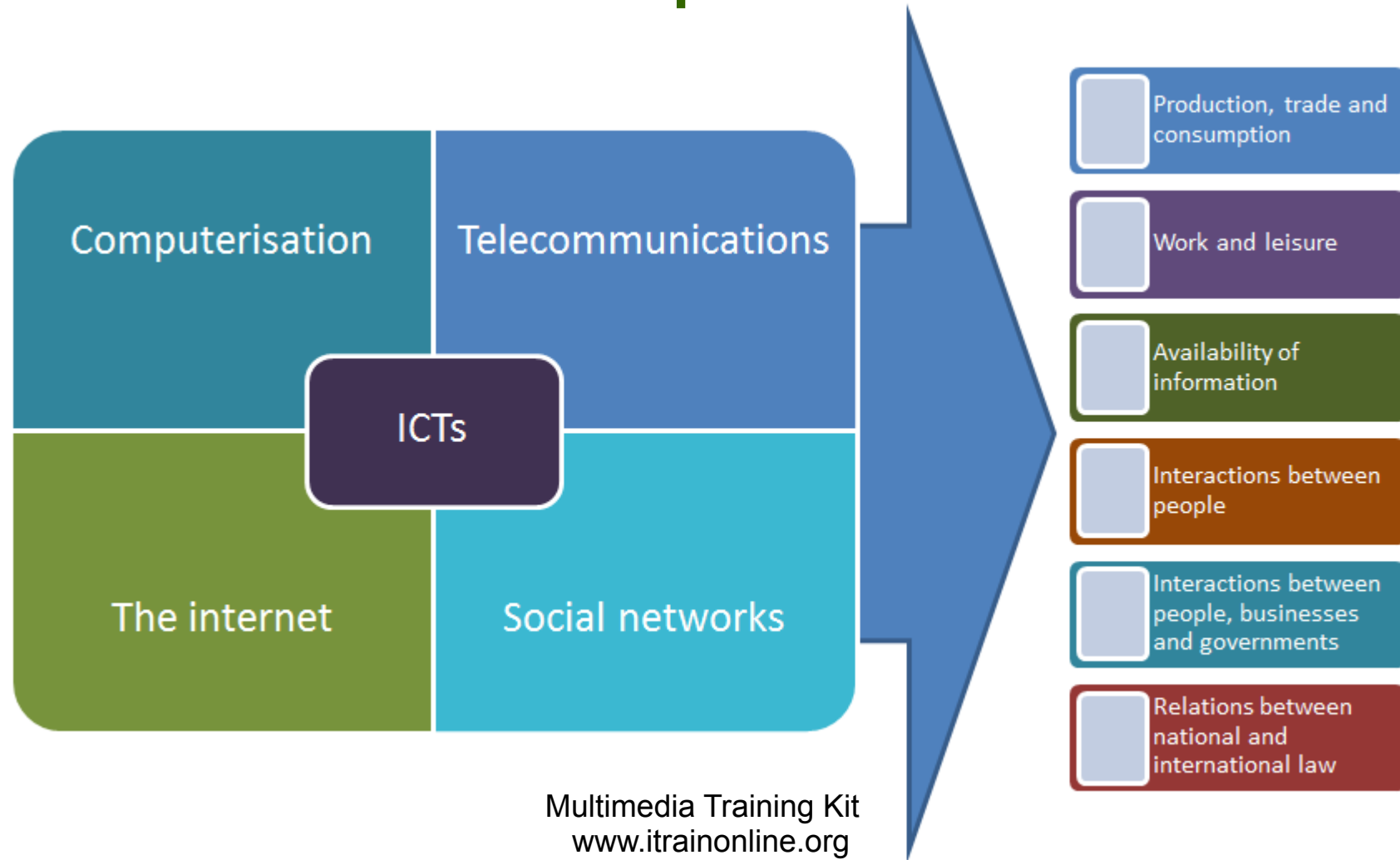


Obligations on governments to:

- Respect the rights of citizens in their own dealings with them.
- Protect the rights of citizens against violation by third parties (non-state actors, businesses, organisations, other individuals).

Source: D. Souter, course material, London
School of Economics & Political Science

ICTs & the internet and their impact



Freedom of expression and information (Article 19 rights)

- *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

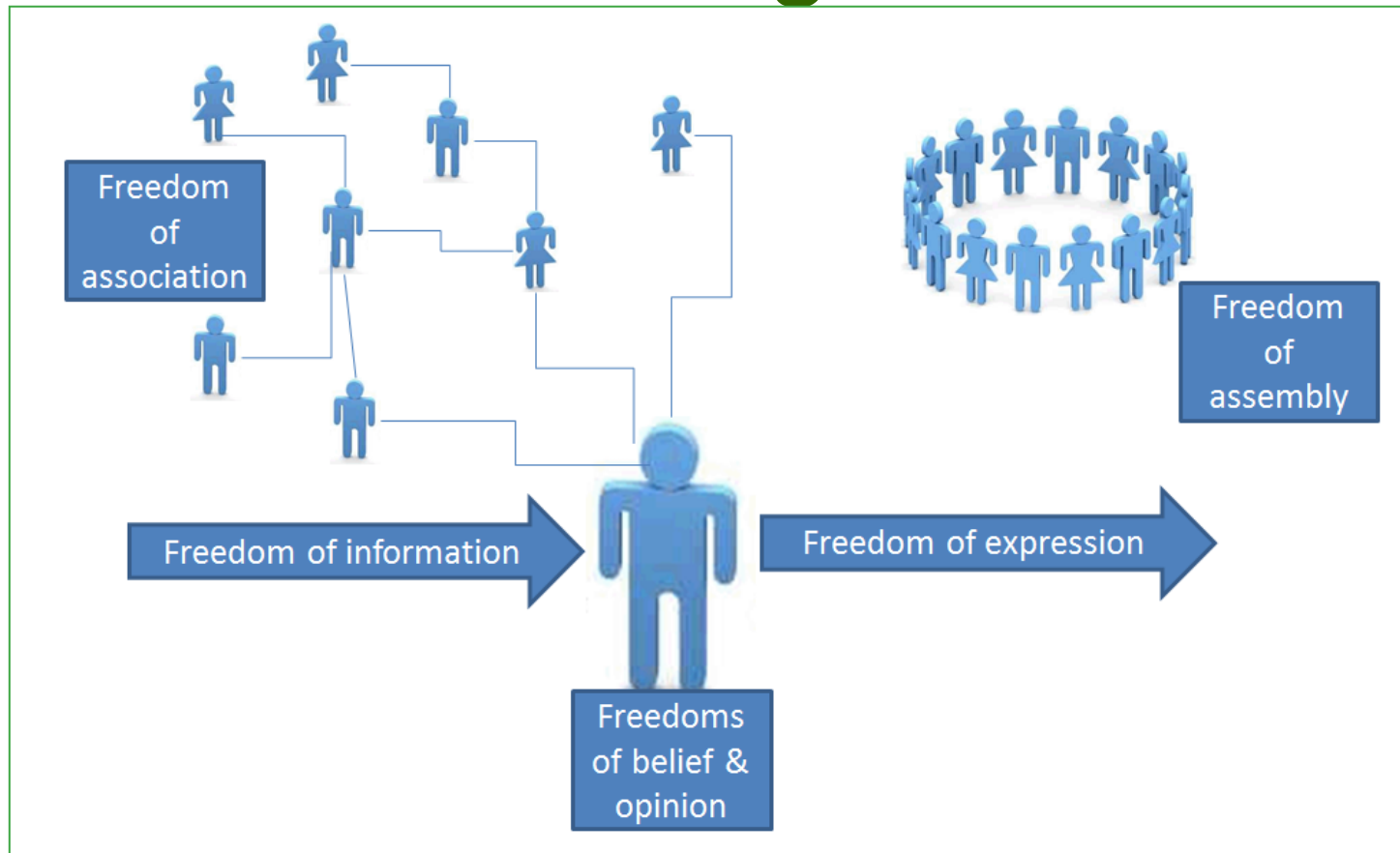
Article 19 clause 2 of the International Covenant on Civil and Political Rights

- Freedom of expression is often seen as an enabling right where other rights are concerned.

Article 19 rights in relation to other rights

- **Freedom of belief** (“thought, conscience and religion”), including the right to manifest belief (e.g. through worship and teaching) (Article 18 of the UDHR and ICCPR)
- **Freedom of opinion** (Article 19 of UDHR, 19(1) of ICCPR)
- **Freedom of expression** (Article 19 of UDHR, 19(1) of ICCPR)
- **Freedom of information** (implicit in Article 19 of UDHR, 19(1) of ICCPR)
- **Freedom of association** (Article 20 of UDHR, 22 of ICCPR)
- **Freedom of assembly** (Article 20 of UDHR, 21 of ICCPR)
- **Freedom to participate in political and public life**, including democratic elections (Article 21 of UDHR, 25 of ICCPR)
- **Freedom to participate in cultural life** and to use one’s own language (Article 27 of UDHR, Article 27 and elsewhere in ICCPR)

Article 19 rights in relation to other rights



Limitations to freedom of expression

- The UN Special Rapporteur on freedom of expression has reaffirmed as a general principle for interpreting the application of limitations that they should be:
 - Articulated in law
 - In clear pursuit of the goals (a and/or b) set out in clause 3 of Article 19 of the ICCPR
 - “Necessary and proportionate” for that purpose
 - Transparent and subject to appeal.

Limitations to freedom of expression

The exercise of the rights provided for in paragraph 2 of this article [see above] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 19 clause 3 of the International Covenant on Civil and Political Rights

Article 20 of the ICCPR prohibits “propaganda for war” and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Incitement to genocide and terrorism are also prohibited in international law.

Limitations to freedom of expression and balances between rights

- The ICCPR also confers rights which can conflict with freedom of expression, particularly:
 - Life, liberty and security
 - Right to fair trial
 - Rights to privacy, honour and reputation
 - Authorial rights.
- The CRC prohibits “the exploitative use of children in pornographic performances and materials.”

Freedom of information

- Article 19 of the ICCPR includes the right to “seek” and “receive” as well as “impart” information.
- This is subject to the same provisos and limitations as freedom of expression.
- The term freedom of information is also used to refer to:
 - Open access to public information
 - Access by citizens to information that is held about them by governments, businesses and others.

Article 19 rights and the internet

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Article 19 clause 2 of the International Covenant on Civil and Political Rights

Expression and the internet

- The internet has:
 - greatly extended the range of opportunities for freedom of expression,
 - making it possible for anyone with internet access to publish information, opinion and other content to a global audience at minimal cost.
- Applications include email and IM, websites, blogs, social network services.

Information and the internet

- The internet has:
 - greatly extended the range of opportunities for accessing content,
 - including content which is digitally available from any source worldwide, usually at no or virtually no cost.
- Websites and file downloads have made the internet “the world’s library”.

Implications of increased opportunities for Article 19 rights

- Increased plurality of information and expression
- Globality of expression
- Globality of available content
- Problems of validation of content
- Ease of publication of content which potentially violates other rights (e.g. privacy, honour and reputation)
- Anonymity and pseudonymity

Issues for discussion – political expression and information

- The internet provides opportunities for greater inclusiveness of political debate.
- Some governments wish to:
 - suppress expression
 - suppress access to content
 - monitor expression and access to content.
- What are the implications for law and rights?
- What are the implications for internet businesses (ISPs, OSPs)?

Issues for discussion – challenges concerning rights, laws & norms

1. Pornography and child pornography (child sexual abuse material)
 - Article 19 limitations concerning “moral order and general welfare”
 - CRC prohibition of exploitation of children for pornography
 - Children’s rights of privacy
2. Intellectual property
 - Article 15 of the ICESCR protects authorial rights

Issues for discussion – challenges concerning rights, laws & norms

3. Incitement to discrimination, hostility and violence

– Prohibited by Article 20 of the ICCPR

4. Defamation (attacks on honour and reputation)

– “Unlawful attacks” prohibited by Article 17 of the ICCPR

Controls on Article 19 rights and violations of rights

- Various mechanisms have been used by governments either to enforce limitations within the rights regime or to impose political or moral censorship.
- Issues include:
 - Closure of the internet
 - Website blocking
 - Website filtering
 - Intermediary liability and self-regulation
 - Surveillance

Summary

- The internet has significantly enhanced the ability of people to exercise freedom of expression and to enjoy freedom of information.
- This has raised new challenges of interpretation concerning the limitations to expression and information in the rights regime, and concerning balances between rights.
- Some governments have sought to impose limits on content or to suppress expression and information using a variety of mechanisms.