

Some Reflections on Two of the Most Visible Developments: The Right to Refuse Internet Use and the 'Chilling Effect'

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*Motto: In this theatre of freedom, the actors choose to move at their own rhythms, with the specific risks and rewards. Each step is a sequence of choices*³.

Abstract

The use of technology brings forth several dilemmas, as does internet usage. Not all individuals possess the necessary skills to master technological capabilities – a challenging feat for most of the world's population. The internet is considered by definition a technology, and in this capacity, it is natural to be attached to a series of rights and obligations. From society's accumulated experience, we have witnessed various metamorphoses of human rights, and one of the precursors to the right not to use the internet is the right to disconnect, increasingly encountered. In what stage is this concept of the individual's right to abstain from participating in the online sphere? Is it an El Dorado for modern human rights? How far can individual autonomy go? Why together with the "chilling effect"? Because the connection between individual autonomy and freedom of expression lies in the fact that freedom of expression is often a way in which people express and affirm their autonomy. Through liberal expression, an individual can express their identity, values, and preferences, contributing to the development and affirmation of their own autonomy. The chilling effect, seen as a modern form of lawfare, stifles the evolution of individual rights, reduces freedom, and diminishes the autonomy of individuals in deciding whether or not to use the internet and to what extent they choose to do so online. This article aims to initiate essential discussions regarding the legal and ethical aspects that may make this option of humanity not to use the internet possible or impossible.

Keywords: *internet, human rights, individual autonomy, chilling effect, lawfare, right to disconnect, digitization, new technologies, society, international law.*

JEL Classification: K24, K33

DOI: <https://doi.org/10.62768/ADJURIS/2024/1/01>

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³ The text of this motto belongs to the authors.

Please cite this article as:

Popa Tache, Cristina Elena & Heliona Miço (Bellani), „Some Reflections on Two of the Most Visible Developments: The Right to Refuse Internet Use and the 'Chilling Effect'”, in Pajuste, Tiina, Heliona Bellani (Miço) & Sejla Maslo Cerkic (eds.), *Legal Perspectives in the Modern Era of Technological Transformations*, ADJURIS – International Academic Publisher, Bucharest, Paris, Calgary, 2024, p. 13-23.

1. Introduction

There is currently a huge gap in international legal instruments for the protection of human rights in the digital domain. International law itself is currently undergoing some transformative stages. Its fragmentation is a double-edged phenomenon: positive in the sense that new branches of law can emerge, such as international law of digitization, and negative in the sense that he must now struggle for its autonomy as a discipline. Issues of adapting the law to modern challenges remain the main concern of doctrine and jurisprudence because indeed, nothing can be more telling in this regard than the efforts made to find an acceptable technique of international law, from the moment old conceptions clashed with realities⁴.

For international law (especially for human rights), today it's as if it has moved to a new place where the scenery changes and the customs are new. The various possibilities of personal choices enjoyed or to be enjoyed by modern humans urge the specialized theory to analyze the established fundamental rights, with a focus on the autonomy of will (as an intrinsic part of individual autonomy) and its delineation through numerous shaping attempts. Circumstances in which autonomy is limited are justified only to ensure the general welfare and respect for the rights and dignity of all individuals. However, all personal choices are umbilically linked to society. From this perspective, the works of sociologists can be a precious source for achieving research results through current methodologies such as inter-, multi-, or transdisciplinary. Discussions concern the effect of policies on the population, as well as standard demographic variables, considerations given by: race, location, age, etc.⁵ Any societal phenomenon has the potential to

⁴ Titulescu, Nicolae. *Documente diplomatice/Diplomatic documents*, Political Publishing House, Bucharest, 1967, p. 846.

⁵ For example, Livingstone, S., & Helsper, E. (2007), *Gradations in digital inclusion: Children, young people and the digital divide*, *New Media & Society*, 9(4), pp. 671-696, doi:10.1177/1461444807080335 or James, Natalie (2022). *Countering far-right threat through Britishness: the Prevent duty in further education*. *Critical Studies on Terrorism*, 15(1), 121–142. <https://doi.org/10.1080/17539153.2022.2031135>. For regression analysis in investigating the impact that tension and resilience, individuals' gender, economic situations, individual life experiences, and internet use have on their propensity to associate with, engage with, and support far-right ideologies and associated violence see Joshua Skoczylis & Sam Andrews (2022) *Strain theory, resilience, and far-*

become a legal phenomenon within the realm of technology usage, and from there, the path to the norm, to codification, is paved. The fundamental principles of law underpin branch principles, between which there exists a relationship of correspondence and amplification⁶; the principles of this new branch of law naturally stand in a relationship of dependency with the general principles of other corresponding fields in society. Principle does not have origin, whereas, the origin of standards is represented by principles, as all things are born from principle, but it cannot be born from anything⁷. The outcome of the application of principles in this field of law is indeed the certainty of law⁸.

The European Union currently leads in regulating new technologies. Article 8 of the Charter of Fundamental Rights explicitly recognizes this protection and serves as a necessary reference point for formulating internet principles globally. All internet rights are based on the full recognition of the freedom, equality, dignity, and uniqueness of each individual. Guaranteeing these rights is indispensable for ensuring democracy and the democratic functioning of institutions, to prevent the abuse of power by public or private authorities that could lead to a surveillance, control, and social selection society. The lingering question is who and why causes the chilling effect. The chilling effect refers to the phenomenon where individuals or groups refrain from exercising their rights or engaging in certain activities online due to fear of surveillance, censorship, or other forms of repression⁹. The entire process of normative adaptation is difficult in itself, and any actions resembling lawfare lead to the cessation of any progress under discussion. It is true that since January 23, 2023, we have the European Declaration on Digital Rights and Principles for the Digital Decade, a document promising that the European way of digital transformation places people at the center and is supported by European values and fundamental rights of the EU, reaffirming the universal human rights and bringing benefits to all individuals, businesses, and society as a whole¹⁰. At the same time, the first principle presented in the declaration is that of people-centered digital transformation. Starting from the date of

right extremism: the impact of gender, life experiences and the internet, Critical Studies on Terrorism, 15:1, 143-168, DOI: 10.1080/17539153.2022.2031137.

⁶ I. Dogaru, *Elemente de teoria generală a dreptului*, Ed. Oltenia, Craiova, 1994, p. 115.

⁷ *Principii autem nulla est origo; nam e principio oriuntur omnia, ipsum autem nulla ex re alia nasci potest.* Cicero, Tusculanae, disputationis.

⁸ In the sense of a guarantee given to individuals in the face of the sometimes unpredictable nature of coercive rules and the congruence of the legislative system. Nicolae Popa, *Teoria generala a dreptului*, Ed. Univ. Titu Maiorescu, 2002, p.111.

⁹ Penney, J. (2016), *Chilling Effects: Online Surveillance and Wikipedia Use*, Berkeley Technology Law Journal. Vol. 31, No. 1 (2016), pp. 117-182, Published By: University of California, Berkeley, School of Law, DOI: <http://dx.doi.org/10.15779/Z38SS13>. This study explores the chilling effect of online surveillance on internet users' behavior, particularly focusing on Wikipedia use. It analyzes traffic data from Wikipedia articles related to sensitive topics and finds evidence suggesting that traffic to these articles decreases following revelations about government surveillance programs.

¹⁰ At the European level, a source for principles and rights in communications and new technologies is: the European Declaration on Digital Rights and Principles for the Digital Decade 2023/C23/01/

publication of the Declaration in the Official Journal of the EU, on 23.01.2023, it is understood that any document must be interpreted based on the set of principles and rights from the Declaration. Following the path of legal logic, people-centeredness can be equivalent to focusing on personal rights, including autonomy of will. In the EU, another soft law rule, the Human Rights Guide for Internet Users¹¹ focuses on the following fundamental human rights and freedoms concerning the Internet: 1) access and non-discrimination; 2) freedom of expression and information; 3) freedom of assembly, association and participation; 4) protection of privacy and personal data; 5) education and literacy; 6) protection of children and young people; and 7) the right to an effective remedy for invoking fundamental human rights and freedoms¹².

2. Relevance of the subject and some observations

The research attention is directed toward the responsibility and legal protection of states. In this context, we are once again victims of our own disinterest in the development of international state responsibility, so the orientation is based on the trends of strategies and policies of a state or group of states. Their tendency is either to protect or restrict the right not to use the internet in the public interest. In the former case, protection is characteristic of democratic societies, while in the latter case of restricting rights, the danger is of abuse. Thus, we can discuss state bullying as a concept that describes the abuse of power by the state or authorities against individuals or groups, including political harassment, excessive surveillance, persecution of minorities, and systematic discrimination. Such actions can violate individual rights and freedoms, causing negative effects on society and undermining the principles of democracy and the rule of law.

It is an epiphenomenon of technological possibilities that brings to mind Francisco de Goya, resulting in a paraphrase according to which the sleep of reason has given birth to the monster named chilling effect. When reason and logical thinking are suspended or asleep, negative consequences or irrational and dangerous behaviors can occur. In the context of Goya's work¹³, the image illustrates

PUB/2023/89. Recently, on 23.01.2023, this Declaration was published in the Official Journal of the European Union.

¹¹ Recommendation CM/Rec (2014)6 of the Committee of Ministers to member states on the Human Rights Guidelines for Internet Users and Explanatory Memorandum adopted by the Committee of Ministers on 16 April 2014.

¹² On 16 April 2014, the Committee of Ministers adopted Recommendation CM/Rec(2014)6 on Human Rights Guidelines for Internet Users. The material is available here: <https://rm.coe.int/guide-to-human-rights-for-internet-users-romanian-/1680768064> and was accessed on 06.02. 2023.

¹³ "The Sleep of Reason Produces Monsters" is a famous phrase, used today in various contexts, and originally the title of a well-known engraving by the 18th-century Spanish painter Francisco Goya. In 1799, Goya exhibited a series of 80 engravings titled "Los Caprichos" (The Caprices), with "The Sleep of Reason Produces Monsters" being the 43rd. In contemporary language, whether in Romanian or any other language, the expression "The Sleep of Reason Produces Monsters" refers

the artist asleep on a table, while monsters and nightmare creatures surround his space. It is often interpreted as a critique of ignorance, superstition, and abuses of power, suggesting that the lack of reason and discernment can give rise to manifestations of evil and irrationality. In fact, this is how the chilling effect was born - the phenomenon in which people become hesitant to exercise their rights or freely express their opinions due to fear of repercussions or sanctions. It can result from a variety of factors, such as threats of legal action, intimidation, legislative restrictions, or any other action that creates a hostile or inhibiting environment for free expression. The term chilling effect is synonymous with a form of lawfare in certain contexts, especially when it results from state actions. Lawfare is the use of law as a weapon or tool of influence, including to obstruct or discourage opposition or free expression of opinion. In this sense, when individual rights are undermined or when the law is used to intimidate or discourage certain actions, including free expression of opinion, this can be considered an aspect of lawfare.

The chilling effect, as an ultra-chameleonic phenomenon, is not always associated with lawfare but sometimes encompasses all the reasons that lead individuals to refrain from using the internet. Thus, it can result from cultural, social, or political factors that create an environment in which people feel they cannot freely exercise their rights or that there are too many risks associated with expressing their opinions. Following the line of detail, we can see how abstaining from the internet can be, for some individuals, a way to protect themselves against digital dependence to maintain balance in their lives, as well as to avoid the negative impact of excessive internet use. Here, decisions by a portion of the global population to avoid the internet for ethical or philosophical reasons related to data collection, information manipulation, or other aspects of the online environment can also be listed¹⁴. Moreover, access to the internet can be limited due to financial or geographical resources, so abstaining from the internet can be a consequence of the lack of accessibility to technology. All of these factors weaken legal boundaries of individual autonomy to the point of fragility.

Balance must be sought primarily for antagonistic cases, such as putting those who choose to abstain from the internet against those for whom the internet has become an essential tool. Technology is gradually replacing humans in various activities. Many causes of the chilling effect are generated by the control of political power, especially when certain governments or political parties promote a particular political or ideological agenda, attempting to reduce or discourage

to moments in which, in individual or collective life, intelligence, balance, harmony, wisdom, culture, authentic human substance, and the spiritual dimension of being give way to instinct, chaos, disorder, arbitrariness, and fear.

¹⁴ See Aviv Weinstein & Michel Lejoyeux (2010) *Internet Addiction or Excessive Internet Use*, *The American Journal of Drug and Alcohol Abuse*, 36:5, pp. 277-283, DOI: 10.3109/00952990.2010.491880.

any voice that opposes or criticizes that agenda. In some conferences, we proposed the creation of new professions of the future such as human intermediaries or human internet or technology agents. Likewise, we can envision a world where politicians are replaced by software programs, any compatible artificial intelligence systems, etc. In this way, it seems that the risks associated with political abuses, including the form of lawfare characteristic of those in power in a state who wish to conserve and strengthen it using the chilling effect to discourage any opposition or challenge to the status quo, would be eliminated. The robot politician seems to be a solution against all forms of abuse, including the abuse of not regulating the legal regime of lawfare through instruments of international law or even domestic law. Lawfare and its countless faces have long been known, but it seems that we are very far from the result of its legal regulation.

These crises intensify when we fail to find established obligations to use the internet, the right not to use it, or the corresponding protections, leaving these two exposed to the risk of the chilling effect. In evaluating the social impact on individuals who choose not to use the internet, the rights of vulnerable individuals such as children and the elderly take precedence, for example, or the impact on personal and professional development. The imperative of reconciliation with the needs and interests of society, especially from a legal point of view, leads to situations where the solution is the identification of limits and rules that could ensure the balance between individual rights and the common good.

It is certain that individuals cannot be deprived of the possibility of voluntarily distancing themselves from the online environment, considering ethical options, personal values, or security concerns, without affecting fundamental rights to education and access to information in available non-digital alternatives. Any form of restriction on these rights can easily slip into the form of lawfare chilling effect. Medical sciences have brought some limits conferred by online dependence¹⁵. It has been found that there is internet addiction to a similar extent as there is abuse of drugs and alcohol, pathological gambling, and even video game addiction¹⁶.

Although not universally recognized, if we were to give a definition of the right not to use the internet, we can view it as the potential fundamental right of a person to choose not to directly and actively participate in the online environment, without facing negative consequences or discrimination, ensuring the freedom to manage their own digital presence and protect their personal privacy.

Who is the guarantor of human rights? The state is a structure for maintaining security and the proper functioning of society in the digital era. Ultimately, at the center of the triangle with equal sides - digitization, human rights,

¹⁵ Fortson B. L., Scotti J. R., Chen Y. C., Malone J., Del Ben K. S., *Internet use, abuse, and dependence among students at a southeastern regional university*. J Am Coll Health 2007; 56(2):137–144 and Young KS. *Internet Addiction: A new clinical phenomenon and its consequences*, in American Behavioral Scientist 2004; 48(4):402–415.

¹⁶ Aviv Weinstein & Michel Lejoyeux (2010), *op. cit.*, pp. 277-283.

and security - will be these reforms of models that protect rights and limit powers on a global scale. The Triangle (human rights, digitization, and security) and how they interact with each other, are based on the observation that the triangle is indeed a modern paradigm of international relations that focuses on the interconnectedness of its three equal sides. In other words, following the same correspondence, we can observe: legality, necessity, and proportionality.

Human rights contain principles that protect human freedoms and dignity and are safeguarded by international laws and treaties such as the UN Universal Declaration of Human Rights and the European Convention on Human Rights. In general terms, we list the right to life, liberty, and security of the person, the right to a fair trial, freedom of expression and opinion, the right to education, work, and privacy¹⁷.

The right of a person not to use the internet, as well as the forms of guaranteeing and protecting it, are directly proportional to their formal and detailed recognition in legislation, the elimination of chilling effect lawfare forms, societal awareness, and adaptation.

If we were to outline the general lines of arguments for or against the right not to use the internet, we could observe how, in the "pro" category, arguments may include: 1) the right to privacy as a way to protect intimacy and avoid excessive exposure of personal information online; 2) the right to make personal choices - a fundamental principle of democratic societies according to which the refusal to use the internet is an expression of individual autonomy; 3) preservation of mental health, reducing the negative impact of excessive use, such as online stress and anxiety; 4) avoiding digital dependence and the negative impact of excessive time spent online; 5) opting for an "offline" lifestyle; or 6) protecting individual religious, philosophical, or traditional values. These arguments are presented through the lens of the individual.

On the other hand, several arguments "against" the right not to use the internet can be identified, such as 1) access to information and education (to educational resources), in which case its refusal may limit learning and personal development opportunities; 2) the internet facilitates communication and social interaction, and absence from online platforms can lead to social isolation and limited connections with other people; 3) issues for labor rights regarding workplace efficiency or even professional opportunities, as most employers use the internet in the recruitment process, and online absence can limit career and professional opportunities; 4) exclusion from participation in the digital economy, affecting access to services and business opportunities; 5) the internet brings advantages in terms of communication efficiency, rapid access to information, and solving daily problems, and its refusal can lead to the loss of these advantages;

¹⁷ Cristina Elena Popa Tache, *The New International Triangle: Human Rights-Digitalization-Security*, International Investment Law Journal Volume 4, Issue 1, February 2024, pp. 4-17.

and 6) social exclusion. Many of the "against" arguments seem to align with issues raised by public authorities.

Considering the reflections of this work, we can affirm that the right not to use the internet is necessary nonetheless and contributes to maintaining a healthy balance between online and offline life, thus promoting a diversified lifestyle. If something contradicts the public interest here, then we turn to corresponding changes within the labor market, which is currently undergoing reform.

Ultimately, by emphasizing the issues of lawfare/chilling effect, attention is directed towards the numerous examples of lawfare threats to human rights in the context of digitization, which can continue on many pages. One of these is illustrated in recent doctrine and consists of greater governmental control over encrypted online communication, considered to violate the right to privacy and freedom of expression of ordinary internet users¹⁸. These loopholes of "escape" by state authorities must be subject to legal limits established through preferably international regulations. As detailed in previous work¹⁹, following this line of legal reasoning, some authors have reported that the importance of controlling online content has been fetishized by governments pressuring internet companies to introduce stricter mechanisms in this regard, which has proven not to have the quality to solve the issue of digital jihad, but has effectively raised concerns regarding the respect for human rights, including issues regarding freedom of expression and the right to privacy online²⁰.

Exemplifying, in international legal literature, the existence of another type of technological lawfare effect has been identified: Sieber stated in a study: "Undoubtedly, the newest human development is the relationship between humans and their increasingly sophisticated technologies. Modern technologies have grown without watchdogs capable of legal opposition to what could be called the colonization of the mind through modern technologies."²¹ In his study, Sieber refers to modern platforms and neurotechnological devices, which he considers colonizers of minds, against the backdrop of insufficient regulation regarding the protection of human rights against these threats. He invokes the courage of scientists to produce human rights protections "to safeguard not only the psychological life of human beings but also the human spirit itself, as both largely remain unaddressed."²² These threats to human rights protection are often likened

¹⁸ See Jeroen Veen and Sergei Boeke, *No Backdoors: Investigating the Dutch Standpoint on Encryption*, Policy and Internet, Volume12, Issue4, December 2020, pp. 503-524.

¹⁹ Cristina Elena Popa Tache, Cătălin-Silviu Săraaru, *Lawfare, Between its (Un)Limits and Transdisciplinarity*, *Precedente Revista Juridica*, 23, 37-66, 2023. <https://doi.org/10.18046/prec.v23.5889>.

²⁰ Miron Lakomy, *Why Do Online Countering Violent Extremism Strategies Not Work? The Case of Digital Jihad*, in "Terrorism and Political Violence", Routledge, 2022, p. 14. DOI: 10.1080/09546553.2022.2038575.

²¹ Alexander Sieber, *Digital Barbarism: The New Colonization of the Mind*, *Critical Arts*, 35:5-6, 2021, p. 252.

²² *Ibid.*

to colonialism of the mind, with the definition of colonialism provided by the Oxford Advanced American Dictionary being cited: "the practice by which a powerful country controls another country or countries."²³ Such colonialism continues to happen today through less visible means, such as lawfare, Sieber concludes, in turn, along with other theorists who have set out to uncover lawfare²⁴.

Lawfare in the form of a chilling effect is certainly a reality, as it can entail the use of legal systems and institutions to deter a person from exercising their legal rights²⁵.

3. Conclusions

The internet has become a vital space for free expression, idea exchange, and access to information. The legal reaffirmation of the importance of individual rights in the modern context is a natural process, essential for safeguarding the freedoms and autonomy of each individual in the face of technological, social, and political developments. On one hand, individuals who choose these rights should seek alternatives that meet their needs and preferences, thereby reaffirming the importance of diversity in the process of personal formation and development. On the other hand, states must pursue finding adequate solutions to new technological metamorphoses, as there is no place for delay.

The chilling effect phenomenon undermines the right to free expression online, through deterrence or fear. The use of lawfare through chilling effect by some subjects of international law in the digital context generates significant consequences for freedom of expression and access to information. By imposing legislative restrictions or using the judicial system to intimidate or discourage the free expression of opinion, states or non-state actors are tempted to consolidate their power or promote their political or ideological agenda.

To counteract these negative effects, both legislative measures and policies to guarantee the protection of privacy and freedom of expression online are necessary, as well as the initiation of establishing the legal regime of lawfare. Efforts in this regard must be supported both locally and globally, to protect the rights and freedoms of all citizens equally valid online and offline.

²³ Hornby, Albert Sydney, *Oxford Advanced Learner's Dictionary of Current English*, London: Oxford University Press, 1995, p. 76.

²⁴ A. Sieber, *op. cit.*, p. 256; Cristina Elena Popa Tache, *The New International Triangle: Human Rights-Digitalization-Security*, International Investment Law Journal Volume 4, Issue 1, February 2024, pp. 4-17.

²⁵ See the full Report drafted by Michael Scharf & Elizabeth Andersen, assisted by Cox Center Fellows Effy Folberg, Michael Jacobson, & Katlyn Kraus, *Is Lawfare Worth Defining? Report of the Cleveland Experts Meeting September 11, 2010*, in *Case Western Reserve Journal of International Law*. 43 (1). 11 September 2010. Also see Kittrie, Orde F., 'Conclusion', *Lawfare: Law as a Weapon of War* (New York, 2016; online edn., Oxford Academic, 21 Jan. 2016), <https://doi.org/10.1093/acprof:oso/9780190263577.003.0009>, accessed 8 May 2024.

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