

Interactive Dialogue: Special Rapporteur Freedom of Expression

3 June 2011

New Zealand welcomes both Special Rapporteurs to the Human Rights Council and thanks them for their reports and presentations this morning. In the time available, we will address our comments to the Special Rapporteur on the Right to Freedom of Expression and Opinion.

Mr La Rue, your mandate is an important one and we consider your discussion of the use of the internet as a means to exercise the right to freedom of expression and opinion is timely. Indeed in her address to this Council on Monday, the High Commissioner for Human Rights said in reference to the popular uprisings of the “Arab Spring” that *“people’s calls spread from village to village, country to country, and across the globe by email and text message and social media, in one of the most powerful examples of the exercise of the right to free expression that we have seen in decades.”*

We agree with you that the right to freedom of expression and opinion can act as an enabler for other rights, and thus that the internet can act as a catalyst to empower individuals to enjoy other rights, such as the rights to education, to take part in cultural life, to benefit from scientific progress and rights to freedom of association and assembly. We are grateful that you have highlighted the difficulties in accessing the internet faced by certain individuals or groups of individuals, such as persons with disabilities. New Zealand has many times in this Council raised the issue of accessibility, including to internet resources, for persons with disabilities.

Mr La Rue, in a context of unprecedented internet use where new technologies are constantly re-shaping the way we communicate, many States are grappling to find the right balance between the human rights of internet users, and the intellectual property rights of copyright holders. In our domestic context, we

have considered this issue at length and have recently enacted a multi-step system to address illegal peer-to-peer file sharing. If a copyright holder identifies an illegal copy of its work, it can ask the infringer's ISP to issue a "first notice", which will include education information and inform the account holder that any further evidence of infringement will be logged. There is the possibility of two further notices being issued which would include warnings of the possibility of compensation being awarded to the copyright holder. After three notices, if the infringement persists, the copyright holder can apply for compensation to the Copyright Tribunal. The legislation also provides that the copyright owner can seek a Court order for the suspension of an internet account. However, this provision is not in force in New Zealand and would only be brought into force (by Order in Council) if the notice regime and the Tribunal measures are found to be ineffective.

We should be interested for you to comment further on situations where it might be appropriate for internet access to be denied, in a manner consistent with a State's international human rights obligations. Could you comment also on what differences you see between denials of access for breaches of civil and criminal laws?

New Zealand considers freedom of expression and opinion a fundamental right and we look forward to the increasing role the internet can play in guaranteeing the enjoyment of this and other human rights.