Security and privacy, as well as net neutrality, jurisdiction, and legal issues, were highly prominent in the policy debates this month. A look at the digital policy observatory reveals many developments in February that are shaping digital policy.

India’s decision on zero-rating services upholds net neutrality, and the principle that once a user is connected to the Internet, they can access any available Internet resource. The decision has raised many critical points, including whether it is better to have some access to the Internet (such as Facebook’s Free Basics service), or no access at all, as is currently the case with many communities.

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The Geneva launch of the latest World Bank’s report on Digital Dividends, on 1 February, co-hosted by the World Bank Group and the United Nations Conference on Trade and Development (UNCTAD), looks at how the Internet and digital technologies can benefit future development, especially of developing countries. The report stresses that technology adoption is not enough; among other recommendations, countries need to strengthen regulations, adapt workers’ skills to the demands of the new economy, and ensure the accountability of institutions.

The two-day discussion organised by the United Nations Institute for Disarmament Research and the Center for Strategic and International Studies, on 9-10 February, was the first of three meetings aimed at reviewing progress in developing norms for responsible State behaviour in cyberspace, developing new ideas, identifying what is technologically feasible and useful, and helping to lay the groundwork for the next meeting of the Group of Governmental Experts. The meeting reaffirmed the importance of developing a common definition of cyber-attacks, critical infrastructure, and cyber-weapons, and proposed to disentangle the concept of national security (under the responsibility of each State) from Internet security, for which the whole Internet community should be responsible.

Following the submission of 50 responses to the CWG-Internet’s second open online consultation on Access to the Internet for Persons with Disabilities and Specific Needs, the working group held a one-day physical open consultation on the same topic on 15 February. A multistakeholder panel of experts discussed the topic in detail in the morning. The authors of the online submissions were then given the opportunity to present their contributions to member states, either in person or via webcast. The CWG-Internet’s main meeting, limited to member states, on 17-18 February, discussed whether to summarise the contributions received during the open consultation, or to tag them with subject identifiers. The group also refined five questions for the third open consultation, on the factors that can create an enabling environment for access to the Internet.

Around 100 stakeholders, representing governments, the private sector, civil society, academia, and international and intergovernmental organisations, participated physically and remotely in the 11th meeting of CWG-CPD, on 16 February. The group discussed several topics related to online safety for children such as awareness raising and capacity building activities, educational trainings, countries’ plans and partners’ engagement. The next topic of the online youth consultation will be dedicated to cyberbullying.

The 28th WG-WSIS meeting, 18-19 February, was the first after December’s WSIS+10 High Level Meeting (HLM). Due to the short time period between the HLM and the WG-WSIS meeting, the vast majority of detailed contributions and reports from the ITU secretariat came in very close to the meeting itself, making it difficult for all member states to fully analyse the implications of the material. Member states did agree that it was important to ensure the WSIS framework supports the implementation of relevant sustainable development goals (SDGs). Member states will continue to deliberate on how to achieve this at the next WG-WSIS in October, as well as at the ITU Council 2016 meeting in May.

The Geneva Internet Platform welcomed College of Europe professors and students for a seminar on Cybersecurity and Digital Challenges for Europe – The Role of International Geneva, on the occasion of their visit to International Geneva on 23 February. The role of different Internet governance actors and the categorisation of issues into clusters, or ‘baskets’, were discussed during the dynamic event.

The final review meeting of the WSIS Forum Open Consultation Process, also known as Phase IV, on 26 February, analysed the 115 submissions received during the consultation process, mostly from civil society, governments and the private sector. Suggestions on the format of the WSIS Forum were made, including more interactive discussions at different levels. The forum will include a WSIS High Level Track for strategic dialogue on sustainable development goals, the WSIS prizes ceremony, policy statements by high-level stakeholders, and a ministerial round table.

The DiploHack on Human Rights event, held on 26-27 February, brought together around 50 participants from different professional backgrounds to tackle challenges related to human rights in innovative ways. The hackathon featured two projects, or ‘challenges’: the first aimed at discussing the large amount of visual content that requires verification, and the second aimed at finding solutions that would enable human rights defenders to collect and transport evidence in a safe way.
January brought techno-realism into focus. The World Bank’s Development Report 2016 argued for the need to reap the benefits of the ‘digital dividends’ the Internet brings to modern society and the World Economic Forum alerted us to the risks of Internet fragmentation.

This month, techno-realism shows us that societies worldwide need to make some difficult choices. The Apple/FBI controversy and India’s decision on net neutrality (in detail on page 7), highlighted the dilemmas that surround such services.

The Apple/FBI debate (in detail below) brought back into the digital realm the old question of balancing security and human rights. Can we have more security while safeguarding our human rights, or are trade-offs necessary?

The controversy over zero-rating services in India, which led the telecom regulatory authority to rule on net neutrality (in detail on page 7), highlighted the dilemmas that surround such services.

While many are in favour of providing full Internet access to users, the question remains as to how this can be achieved. Some argue that Internet access to a hand-picked range of services (such as that offered by Facebook’s Free Basics) is better than no access at all. The ideal scenario would be for governments and the private sector to join forces in providing full Internet access to the next billion users worldwide. If this cannot happen soon, the real dilemma will persist between the idea of equality of access, and the current reality of millions of unconnected citizens worldwide.

From the perspective of digital dividends, societies worldwide will have to make hard choices regarding access to the Internet, and security and human rights, and gradually create new models of consensus. These can become the first building blocks of an ‘Internet social contract’, or ‘digital social contract’. Not the typical precedent: authorities may then ask companies to build other encryption-bypassing techniques to help in their law enforcement activities. This would not only represent a serious threat to the privacy and security of users and devices, but could grant authorities de facto power to influence the way in which companies develop their products.

The FBI and the US Department of Justice have argued that they are not requesting backdoors or decryption of devices, but rather a ‘one-time solution’, limited to the case at hand. In their view, Apple’s refusal to assist the FBI means that the company is giving more value to its business interests than to a terrorism investigation.

The outcomes are difficult to predict, and some important questions will need to be resolved: On one hand, under which circumstances are authorities entitled to request tech companies to break the security systems they created for their devices? What safeguards are, or should be, in place? Should authorities be allowed to influence the way companies design their products? On the other hand, to what extent should companies protect the privacy of users? Should privacy be protected whatever the cost?

The next court hearing is scheduled for 22 March. Follow our dedicated page on Encryption for the latest developments.

Encryption is currently a major subject of controversy between technology companies and law enforcement authorities (LEAs), especially in the United States. The battle recently gained a new dimension after the FBI asked Apple to help break into an iPhone belonging to one of the terrorists who killed 14 people in San Bernardino last December. The Court confirmed the request.

Although the FBI believes the phone might shed more light on the terrorist’s activities, which would help its investigations, it cannot break the passcode to access the information: a security mechanism is likely to erase the data if the wrong code is entered multiple times. The bureau therefore requested Apple to help bypass this mechanism in a way that would allow as many passcodes attempts as needed to unlock the phone.

Apple reacted strongly to the Court’s order, arguing that the FBI’s request is not only about breaking into a specific phone, but also about creating a backdoor that could then be used by both LEAs and criminals to access any other iOS device. Other companies have expressed support, including Google, Twitter, and Facebook; digital civil rights activists have also lent their support.

The company is also concerned that by complying with the order it would be creating a danger-
### Global IG Architecture

The GSMA’s new report recommends a ‘reset’ of legacy regulations, which are considered outdated, and puts forward principles for policymakers that impact access regulation, barriers to entry and exit, privacy and data protection, merger review, spectrum management, and universal availability and access.

The inaugural Coordination Council of the NETmundial Initiative (NMI) agreed that NMI will serve as an open capacity development coalition during its next phase. The Council also proposed to monitor the implementation of the NETmundial Principles and Roadmap, and to consider organising a NMI+5 conference in 2019.

### Sustainable development

The global indicator framework as a basis for the annual progress report on SDGs is under development; the UN Statistical Commission is expected to reach an agreement next month. Digital aspects are likely to feature prominently in the creation of the indicators.

Without urgent reform, the Association for Affordable Internet predicts that the world will miss SDG target 9c (on ensuring universal and affordable access in LDCs), by two decades. Policy recommendations include prioritising public access facilities and reducing the cost of devices.

### Security

A US court’s ruling requesting Apple to assist the FBI in unlocking an iPhone triggered a global controversy over encryption and the creation of backdoors. The FBI asked Apple to create a ‘new version of the iPhone operating system, circumventing several important security features’. In a letter to its customers, Apple’s CEO said the company was challenging the court order, arguing that the FBI’s request could endanger user data and privacy. The outcome of this case is likely to have a major impact on security and privacy.

Encryption debates over the Snooper’s Bill continued in the UK, with parliamentary committees asking the government to clarify its proposed legislation on encryption, while the Investigatory Powers Tribunal has ruled that GCHQ hacking is lawful.

One in every four users in the EU faced an online security issue last year, a Eurostat study released on Safer Internet Day, revealed.

### Privacy and human rights

In the wake of the newly agreed EU-US privacy shield, details of which are expected soon, Wikileaks revealed that the US National Security Agency (NSA) intercepted world leaders, including UN Secretary General and several prime ministers, ministers, and ambassadors.

Apple’s CEO reacted strongly to the US ruling which requested the company to assist the FBI in unlocking an iPhone, and announced it would oppose the order. The Electronic Frontier Foundation said it will legally support Apple’s position. Facebook, Google, and other Internet companies expressed support for Apple.

Google is extending the ‘right to be forgotten’ rule to its global sites accessed within Europe, filtering will be based on European IP addresses. The Korean Communications Commission will introduce guidelines to uphold the right to be forgotten by mid-2016.

Kuwait’s new Cybercrime Law, which imposes severe restrictions on freedom of speech, came into effect. Consultations under way in Brazil over proposed amendments to Marco Civil are seen as an attempt to amend particular protections, such as those on user’s privacy.

### Infrastructure

Cisco is predicting a considerable increase in the adoption of mobile technologies that will make the Internet of Everything more sustainable, while research suggests the Internet of Things in the utility market will be worth more than $10 billion by 2020.

Microsoft is testing whether data centres can operate below the surface of the ocean, in a bid to prevent computer services from overheating.
Net neutrality

After months of controversy, the Indian Telecom Regulatory Authority ruled in favour of net neutrality principles and against discriminatory tariffs for data services, blocking Facebook’s Free Basics service in the country. Read more about the decision, and the debates surrounding zero-rating services, on page 7.

E-commerce and Internet economy

The US Senate has passed legislation that puts a permanent ban on states’ and local governments’ taxing of Internet access, while the British Chancellor has called for an update in international tax laws which he believes have not ‘kept pace’ with the development of the Internet.

The European Central Bank plans to introduce a system that would allow consumers to transfer money using phone numbers or email addresses, rather than a bank account number, while the EU plans to propose measures for transactions in virtual currency.

Jurisdiction and legal issues

A French court has ruled that Facebook can be sued in French courts, despite the company’s terms of service stating that its jurisdiction lies in California, while the French data protection authority ordered Facebook to comply with the French Data Protection Act within three months of the formal notice, or face sanctions.

IANA Transition

ICANN has named its new CEO – Göran Marby, Director-General of the Swedish Post and Telecom Authority (PTS) – who will assume office in May, replacing outgoing CEO Fadi Chehadé.

The Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) has published a draft supplemental final proposal on accountability recommendations under Work Stream 1, which need to be in place during the transition phase. The proposal was submitted for approval to the CCWG chartering organisations as an intermediary step preceding its submission to the ICANN Board of Directors.

AHEAD IN MARCH

29 FEB–24 MAR
Human Rights Council - 31st session (Geneva)

29 FEB–3 MAR
Internet Research Fair (Amsterdam)

4–6 MARCH
Africa Domain Name System Forum 2016 (Marrakech)

1–6 MARCH
Internet Freedom Festival (Valencia)

14–18 MARCH
CeBIT 2016 (Hannover)

5–10 MARCH
ICANN 55 (Marrakech)

23–25 MARCH
Nonprofit Technology Conference 2016 (San José)

30 MAR–1 APR
RightsCon Silicon Valley 2016 (San Francisco)

For more information on the IG Barometer, consult www.giplatform.org/barometer
Child online protection, as it is commonly known by stakeholders working in this field, is a complex yet important area. Its increase in significance is not surprising, given that a large and growing number of Internet users are children. Recent trends have shown that children as young as two or three are accessing the Internet.

Until recently, due to the risks children face and the vulnerability of young users, the area of child online protection was primarily tackled — as the name itself implies — from a protectionist point of view. Protecting children is often seen as a top priority over anything else for stakeholders — including governments, the industry, civil society, educators, and parents — who cooperate in this area at national, regional, and global levels.

### What are the elements of a rights-based approach?

Children’s rights are enshrined in one of the most widely ratified international human rights treaties: the Convention on the Rights of the Child. The Convention sets out the rights of children according to three broad spheres – provision, protection, and promotion (or participation) — commonly referred to as the 3 Ps. The convention promotes media content of social and cultural benefit to children’s well-being; provides for children’s rights to recreation, leisure, freedom of expression and association, and to be consulted on matters affecting them; and protects against abuse, neglect and exploitation, interference, and attacks on the child’s honour and reputation.

Experts — such as Prof. Sonia Livingstone from the Department of Media and Communications, London School of Economics and Political Science; John Carr from the UK Council on Child Internet Safety; and Jasmina Byrne from UNICEF’s Office of Research-Innocenti — agree that although formulated before the mass adoption of the Internet, the convention applies as much in the digital age as before. In their recent paper they describe how certain provisions carry immediate relevance to the digital world. For example, a child’s access to information, freedom of expression, and their right to be consulted can find a direct application in the digital world.

Yet, experts today agree on the need to look at children and the digital world from a rights-based approach. While protecting children from risks is undoubtedly important, there are other crucial dimensions to children’s use of the Internet. A rights-based approach, therefore, aims at maximising the opportunities of the digital world for children and young people, while protecting them from risks.

Former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue openly criticised the protectionist approach, arguing against protection policies which tend to focus exclusively on the risks posed by the Internet and neglecting its potential to empower children.

But perhaps this is not enough. As the experts themselves point out, and as UN Committee on the Rights of the Child recently recommended — what is needed is an interpretation of every article of the Convention, adapted to today’s digital age; a range of policies that translate the convention into tangible action; and a clear set of guidelines and a programme of action that address children’s digital rights. Events that focus on digital rights and the safe and responsible use of technology – such as the annual Safer Internet Day — are also important steps in the right direction.

[Editor’s note: Comments on a draft of this article, provided by Jenny Jones, public policy director at GSMA, and Patrick Geary, children’s rights and business specialist with UNICEF, are gratefully acknowledged.]

Read more about child online safety and children’s digital rights on the GIP Digital Watch observatory.
ZERO-RATING: APPROACHES AND COMMON DENOMINATORS

On 8 February, after months of controversy over Facebook’s Free Basics service, the Indian Telecom Regulatory Authority ruled against zero-rating services. The prohibition was clear: ‘No service provider shall offer or charge discriminatory tariffs for data services on the basis of content.’ Effectively, this decision blocked Free Basics in India. What were the main points of contention, and what approaches are countries adopting towards zero-rating services?

Zero-rating services, offered by telecom providers often in cooperation with providers of content and services (known as over-the-top – or OTT – providers), offer mobile users free access to a hand-picked range of Internet services or applications. If the user already has a data plan, such access would typically not count towards the data threshold.

Facebook’s Free Basics is one of the most widely known examples of zero-rating services. Introduced in 2014 in several developing and less developed countries, the service provides users with access to Facebook, Wikipedia, weather reports, health sites, and a limited number of other services.

Alternative initiatives have also emerged. Mozilla’s Equal Rating which is offered in partnership with a telecom provider, for instance, offers Bangladeshi users 20MB of unrestricted data in exchange for viewing an advert. In several African countries, the package includes a $40 smartphone (running on a Firefox OS), and free voice, text, and data services for a limited time.

The main arguments

Although zero-rating services are increasingly adopted in many parts of the world, this has become a controversial subject.

On one hand, proponents argue that the service is particularly important in countries where Internet access rates are low, in that zero-rating can help connect ‘the next billion users’. When offered free of charge, zero-rating gives users who cannot afford a data plan access to (some) online information; when offered as part of a data plan, it lowers the cost of access to online information. It is therefore argued that access to some information is preferable to no access at all. In addition, free access to certain types of applications can generate demand for wider Internet access, indirectly encouraging telecom operators to invest in building and deploying infrastructure.

On the other hand, opponents argue that zero-rating prioritises certain services over others, and, as such, challenges the principle of net neutrality and harms market competition and innovation. Some also express concern over the implications that zero-rating could have for users’ human rights, in that such services could conflict with a user’s right to information when seen as part of the broader right to freedom of expression. Another concern is that the new users are provided access to only a segment of the Internet, giving the impression that those points of all there is to the Internet. One of the consequences is that zero-rating could therefore distort users’ understanding of the value of open Internet.

Identifying common denominators

Despite the seemingly clear-cut arguments, there are many open questions: Will it be necessary to subsidise the cost of access to help connect the next one billion users? Can the issues be resolved if zero-rating services offered more educational and local content among its hand-picked services? Should users themselves be allowed to decide which services they would like to use?

While there are already a number of studies that look into the effects of zero-rating services, more research is needed to help answer other key questions: If users are allowed access to only a limited number of services, can we really say that such services increase access to the Internet? Do such services lead to ‘walled gardens’, or are they a step in the right direction in terms of connecting the next one billion users?

We may however be able to identify a few common denominators in the main arguments and approaches.

• A one-size-fits-all approach is unlikely to work. Instead, regulatory mechanisms should look towards local interests and dynamics, since local needs define public interest, and local dynamics demand different approaches.

• Data plans should offer users as much choice as possible.

• As a minimum, zero-rating plans and practices need to be monitored by regulators and discussed on a case-by-case basis.

• The long-term effects of zero-rating services also need to be considered.

• Policy discussions should be based on evidence-based research and involve various stakeholders and communities.

Meanwhile, the controversy over Free Basics has led some countries – such as India and Egypt – to suspend or block the service. Regulators in countries such as Brazil are closely watching the implications of zero-rating on competition and consumer rights. In other countries such as Slovenia, existing regulation protecting net neutrality was directly implemented to ban zero-rating, arguing that the challenges go beyond competition law.

Follow the latest developments on net neutrality and zero-rating services through our dedicated page.

The map shows which countries have adopted Free Basics and how countries have reacted.
The impact of the Internet on modern society is undeniable. Yet, further research is needed in response to the many Internet-triggered questions that have arisen. In a bid to address this gap, DiploFoundation and the Geneva Internet Platform are launching a series of Internet Research Fairs.

The first fair, which runs from 29 February to 3 March in Amsterdam, is co-organised with Amsterdam University College in collaboration with researchers from the Network Institute. It will feature evening lectures, an Internet and Society Day with panel discussions among scholars in Internet studies, and a poster exhibition of illustrations created by Diplo’s CreativeLab to highlight the key challenges. To see additional illustrations and learn more about the fair, visit the event website, http://irf.diplomacy.edu.

INTERNET BUSINESS MODELS

The increasing number of Internet users has led to extensive business opportunities and generated new business models. The mechanisms that are at the basis of the success of Internet companies and the impact of the Internet on existing business models are still poorly understood. Nevertheless, these emerging business models pose implications for taxation, competition policy and labour regulations, as well as for privacy and data protection, which all need further exploration. What are the implications of new business models on these fields?

ICT FOR DEVELOPMENT

It has become clear that the Internet has a great impact on the level of economic and social development in a country, although further research is still needed to understand how access to ICTs affect international development. With the increased integration and dependence on the Internet by those who have access to it, the gap between the connected and the unconnected is becoming increasingly more relevant. What are the specific effects of Internet access on development indicators? How can opportunities for development generated by ICTs be harnessed and controlled? What are the most effective mechanisms to close the digital divide?

COMPETITION POLICY AND THE RISK OF MARKET MONOPOLIES

The nature of the Internet industry is prone to the establishment of market monopolies (e.g., Google’s share of Internet searches is more than 80% in Europe). In addition, there are no global anti-monopoly policy regimes that can deal with the potential global market monopoly of the Internet industry. Some argue that the establishment of monopolies and the loss of the diversity of Internet resources would inevitably affect the price and quality of Internet services. How can the competitiveness of the Internet market be stimulated? What will be the long-term consequences of Internet monopolies?

E-MONEY AND VIRTUAL CURRENCIES

E-money is a digital equivalent of cash, integrated in the existing banking and monetary system. Virtual currencies are not directly linked to the traditional financial system and their issuance is akin to creating money without the consent of a central authority. In what ways have they impacted financial markets, in terms of efficiency, risk management, and economic development? How do they contribute to financial stability and how do they affect the broader economy? How can they be regulated to prevent their use in illegal activities such as money laundering?