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Recognizing "Access to Information" as a Basic Human Right: A Necessary Step in Enforcing Human Rights Provisions Within Free Trade Agreements

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RECOGNIZING “ACCESS TO INFORMATION” AS A BASIC HUMAN
RIGHT: A NECESSARY STEP IN ENFORCING
HUMAN RIGHTS PROVISIONS WITHIN
FREE TRADE AGREEMENTS

Brittany Grasmick*

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I. Introduction

Since December 2010, the Arab world has experienced a constant eruption of civil, social, and political disorder.¹ These events have been coined “The Arab Spring.”² Rulers have been forced from power in Tunisia, Libya, Yemen, and twice in Egypt.³ Thirteen Arab nations, including Syria, have faced unprece-

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¹ Gary Blight, Sheila Pulham & Paul Torpey, *Arab Spring: An Interactive Timeline of Middle East Protests*, THE GUARDIAN, <http://www.theguardian.com/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline> (last visited Mar. 29, 2015) (showing a timeline of protests, regime changes, international and domestic responses, responses in the Arab region since 2010).

² *Id.*

³ *Id.*

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dented unrest.⁴ Arab Spring uprisings have consisted largely of predictable strategies: violent and non-violent strikes, demonstrations, marches, rallies, and protests.⁵ However, Arab Spring protesters have employed one particularly novel tool of civil resistance that has only recently become available: social media and the Internet.⁶ Egyptian President Hosni Mubarak’s overthrow can largely be attributed to his opponents’ use of Internet and social media.⁷ Despite State repression and Internet censorship, protestors in Egypt and Libya used digital platforms to communicate, organize protests, and raise awareness among fellow citizens.⁸ While Twitter and Facebook were certainly not the *reason* for the coup d’états, they were undeniably an effective mechanism in achieving the desired outcome.⁹ In general, citizens gained access to otherwise inaccessible information thanks to the presence of the Internet and social media.¹⁰ Today, nearly 2.9 billion of the world’s 7 billion people use the Internet.¹¹ This number will continue to rise due to the prominence of the Internet as a means to quickly and effectively exchange information worldwide.¹² Moreover, the rate at which information travels will be faster than ever before.¹³

Concurrently, human rights have increasingly become an important part of worldwide trade and democracy.¹⁴ Today, most free trade agreements promote notions of governmental protection of human rights.¹⁵ However, codifying human rights provisions in a free trade agreement (“FTA”) does not lead directly to their enforcement.¹⁶ For example, citizens may be covertly imprisoned for speaking out against their government, despite their right to free speech—a right ensured to them through their country’s FTA free speech provisions. A violation may never be discovered, not even by trading partners who are parties to the

⁴ *Id.*

⁵ Stephan Rosiny, *The Arab Spring: Triggers, Dynamics, and Prospects*, GERMAN INST. OF GLOBAL & AREA STUD. 1, 2 (2012), http://www.giga-hamburg.de/de/system/files/publications/gf_international_1201.pdf.

⁶ *Id.* at 4.

⁷ See Rosiny, *supra* note 5.

⁸ Dr. Natana J. Delong-Bas, *The New Social Media and the Arab Spring*, OXFORD ISLAMIC STUD. ONLINE, http://www.oxfordislamicstudies.com/Public/focus/cssay0611_social_media.html (last visited Mar. 29, 2015).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Stan Schroeder, Zuckeberg Wants To Bring The Whole Planet Internet Access, MASHABLE (Aug. 21, 2013), <http://mashable.com/2013/08/21/mark-zuckerberg-internet-org/>.

¹² See generally Information Technology, Globalization 101: A Project of SUNY Levin Inst., <http://www.globalization101.org/information-technology/> (last visited Mar. 21, 2014).

¹³ *Id.*

¹⁴ See generally Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹⁵ More than seventy percent of the world’s governments now participate in free trade agreements with human rights requirements. Susan Ariel Aaronson, *Human Rights*, THE WORLD BANK, <http://siteresources.worldbank.org/INTRANETTRADE/Resources/C21.pdf> (last visited Apr. 25, 2015).

¹⁶ See Lisa Haugaard, *The U.S.-Columbia FTA: Still a Bad Deal for Human Rights*, THE HUFFINGTON POST (Dec. 4, 2011, 5:12 AM), http://www.huffingtonpost.com/lisa-haugaard/the-uscolombia-fta-bad-deal_b_983780.html.

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agreement. Often, the country in violation will not receive any negative repercussions for its actions, effectively rendering these FTA human rights provisions useless. However, the difficulties in holding governments accountable for FTA human rights violations could be significantly ameliorated if (1) access to information is considered a human right, and (2) access to a device providing such information is available to everyone. In fact, some countries have already declared access to information a human right.¹⁷ Moreover, tech and communication trailblazers (e.g., Google, Facebook, and Yahoo) are combining efforts to achieve what they believe to be a very attainable goal: provide Internet access to everyone worldwide.¹⁸

Overall, this article highlights the importance of declaring access to information a human right, and specifically, how such a declaration would increase the effectiveness of human rights provisions in free trade agreements. The article begins by providing general background information about human rights provisions in free trade agreements, detailed in Part II. Additionally, Part II describes the “Global Digital Divide” and the importance of closing said divide. Part III discusses the provisional shortcomings within free trade agreements with regard to human rights, as well as the global importance of having access to information. Part IV analyzes the debate behind declaring access to information a human right, as well as the link between Internet and human rights. Finally, Part V proposes that access to information should be declared a human right, and by doing so, the human rights provisions within free trade agreements will be much more effective and successful.

II. Background

A. Human Rights Provisions in Free Trade Agreements

For centuries, people and governments have “used trade as an incentive to lock in the habit of protecting human rights.”¹⁹ Gradually, policymakers began to develop trade agreements that would be beneficial, not only in terms of trade, but also for human rights.²⁰ For example, England signed treaties with the United States, Denmark, and Sweden in the early nineteenth century banning slave trade.²¹ In the late nineteenth century, countries such as the United States, England, Australia, and Canada began to ban goods resulting from conflicts of la-

¹⁷ Finland declared access to Internet a legal right. Saeed Ahmed, *Fast Internet Access Becomes Legal Right in Finland*, CNN (Oct. 15, 2009, 8:01 AM), <http://www.cnn.com/2009/TECH/10/15/finland.internet.rights/index.html> (“Finland has become the first country in the world to declare broadband Internet access a legal right.”).

¹⁸ See Schroeder, *supra* note 11.

¹⁹ Susan Aaronson, *A Human Rights Argument for the Columbia Free Trade Agreement*, CARNEGIE COUNCIL (Dec. 4, 2007), https://www.carnegiecouncil.org/publications/ethics_online/0016.html.

²⁰ Susan Ariel Aaronson & Jean Pierre Chauffour, *The Wedding of Trade and Human Rights: Marriage of Convenience or Permanent Match?*, WORLD TRADE ORG., https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_15feb11_e.htm (last visited Mar. 29, 2015).

²¹ *Id.*

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bor.²² Stimulated by international cooperation, countries’ preferential trade agreements (“PTAs”) began to incorporate loose, non-binding human rights provisions.²³ The United States, Canada, and Mexico were the first to explicitly include human rights provisions in a free trade agreement—the 1993 North American Free Trade Agreement (“NAFTA”) includes labor, public participation, and access to information rights in its body and side agreements.²⁴

Today, over seventy-five percent of the world’s governments participate in trade agreements that include human rights provisions.²⁵ The European Communities made human rights improvements a condition of membership in external and internal trade agreements.²⁶ The European Union (“EU”) encouraged member nations like Spain and Portugal, as well as candidate countries Croatia and Turkey, to improve their human rights performance by providing resources and expertise.²⁷ The United States uses its thriving market to incentivize developing countries such as Morocco and Oman to improve governance.²⁸ These countries have been successful in including human rights provisions into FTAs, but the enforcement of those provisions is directly affected by access to information.

B. The “Global Digital Divide”

Despite rapidly falling costs of telecommunications services, a wide gap persists between rich and poor nations in their citizens’ capabilities of accessing, distributing, and exchanging digital information.²⁹ Policy makers and advocacy groups coined this social issue the “Digital Divide” or the “Digital Split” in the late 1990s.³⁰ Often discussed in an international context, the divide indicates that certain developed nations are far more equipped than developing nations to exploit the benefits from the rapidly expanding Internet.³¹ However, the idea that information and technology is important to society is not new.³² It is widely accepted that the Internet has the ability to transform cultures, improve understanding, eliminate authority gaps, and develop a truly free and democratic world.³³ For example, some governmental bodies believe that access to a tele-

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Aaronson & Chauffour, *supra* note 20.

²⁶ Lorand Bartels, *Human Rights and Sustainable Development Obligations in EU Free Trade Agreements*, ACADEMIA 1, 2, http://www.academia.edu/1902855/Human_rights_and_sustainable_development_obligations_in_EU_free_trade_agreements (last visited Mar. 29, 2015).

²⁷ Aaronson, *supra* note 19.

²⁸ *Id.*

²⁹ Nir Kshetri & Nikhilesh Dholakia, *Global Digital Divide*, ENCYCLOPEDIA OF INFO. SCI. & TECH. (2nd ed. 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1286203.

³⁰ *The Digital Divide, ICT and the 50x15 Initiative*, INTERNET WORLD STATS, <http://www.Internetworldstats.com/links10.htm> (last visited Mar. 29, 2015) [hereinafter *The Digital Divide*].

³¹ *Id.*

³² *Id.*

³³ *Id.*

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phone system is such an important element that the governments themselves have started to implement various programs granting access to affordable telephone services.³⁴ There are many reasons why governments and countries strive to close the global digital divide. The main reasons include: (1) economic equality, (2) social mobility, (3) democracy, and (4) economic growth.³⁵

1. Economic Equality

Access to information and communication is fundamentally one of the most important human rights.³⁶ Many countries guarantee their citizens this right because they believe that access to information is a basic component of civil life, which contributes to economic equality overall.³⁷ For instance, a telephone is often considered important for security reasons because certain types of emergencies (health, safety, etc.) will likely be handled more efficiently if the injured person can access a telephone.³⁸ In the United States, the newly implemented Affordable Care Act requires participants to purchase health insurance through an online marketplace—illustrating the importance of having access to Internet.³⁹ A variety of government services specifically offered to low income individuals (e.g., social welfare services) are administered and offered electronically.⁴⁰ However, having access to Internet or information is not only vital for someone’s health and safety, but also for their career. Many companies now receive applications through a company website and conduct interviews over the phone or via Skype.⁴¹ Clearly, many services ensuring a person’s most basic human rights are primarily obtained via the Internet. Therefore, having access to the Internet and information is going to be the first step in ensuring those basic human rights.

2. Social Mobility

Computers and access to Internet play an increasingly important role in a person’s ability to learn.⁴² Educational institutions’ inclusion of computers and Internet into curriculum is an illustration of the idea that Internet access should be customary and required.⁴³ The ratio of students to instructional computers in United States public schools was 5:1 in 2000 (down from 6:1 in 1999), which

³⁴ *Id.*

³⁵ *Id.*

³⁶ Toby Mendel, *Freedom of Information as an Internationally Protected Human Right*, ARTICLE 19, <http://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf> (last visited Apr. 28, 2015).

³⁷ *The Digital Divide*, *supra* note 30.

³⁸ *Id.*

³⁹ See generally HEALTH.GOV, <http://www.health.gov> (last visited Mar. 29, 2015).

⁴⁰ *The Digital Divide*, *supra* note 30; see also U.S. WELFARE SYSTEM, <http://www.welfareinfo.org/> (last visited Mar. 29, 2015).

⁴¹ Ben Davies, *Job Interviews by Skype*, JOBS.AC.UK, <http://www.jobs.ac.uk/careers-advice/interview-tips/1252/job-interviews-by-skype/> (last visited Apr. 25, 2015).

⁴² *The Digital Divide*, *supra* note 30.

⁴³ *Id.*

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was a dramatic change from 125:1 in 1983.⁴⁴ Without such access, the existing digital divide widens and children in higher socioeconomic classes are unfairly favored—poorly funded schools cannot afford computers and other digital learning tools, whereas properly funded schools can.⁴⁵ In order to provide equal opportunities socially, governments might offer some form of support in providing access to computers, Internet, and technology within schools.

3. *Democracy*

Abid Hussain’s 1995 report to the UN Commission on Human Rights stated that, “Freedom will be bereft of all effectiveness if the people have no access to information. . . [it’s] basic to the democratic way of life.”⁴⁶ Proponents of eliminating the digital divide suggest that there may be a correlation between increased Internet usage and healthier democracies—primarily, that increased Internet usage leads to stronger public participation in elections and decision-making processes.⁴⁷ As this article later discusses, Arab nations have already demonstrated that online presence and the ability to access and share information via the Internet are extremely important assets in achieving democratic status.⁴⁸

4. *Economic Growth*

Experts believe that the development of information infrastructure and its active use would be a shortcut to economic growth for less developed nations.⁴⁹ Countries utilizing certain technological advances usually gain a competitive advantage against less advanced countries.⁵⁰ For example, India’s Internet economy growth was the second fastest among G-20 countries.⁵¹ Also, developing markets contributed seventy-six percent of the G-20’s Internet economy in 2010.⁵² Generally, productivity improvement is associated with increases in information technology.⁵³

⁴⁴ *Elementary and Secondary Education: IT in Schools*, NAT’L. SCI. FOUND., <http://www.nsf.gov/statistics/seind02/c1/c1s8.htm> (last visited Apr. 25, 2015).

⁴⁵ *The Digital Divide*, *supra* note 30.

⁴⁶ Mendel, *supra* note 36.

⁴⁷ *The Digital Divide*, *supra* note 30.

⁴⁸ See Rosiny, *supra* note 5, at 5.

⁴⁹ *The Digital Divide*, *supra* note 30.

⁵⁰ *Id.*

⁵¹ The G-20 (or “Group of Twenty”) is a block of 20 member nations that developed a forum to discuss economic development and growth across the world. See generally, *About G-20*, G20, <https://g20.org/about-g20/> (last visited Mar. 29, 2015).

⁵² *India’s Internet Economy Growth Second Fastest Among G20 Countries*, THE HINDU (Mar. 19, 2012), <http://www.thehindu.com/sci-tech/technology/Internet/indias-Internet-economy-growth-second-fastest-among-g20-countries/article3013087.ece>.

⁵³ *Id.*

III. Discussion

A. The European Union's Human Rights Provisions

For decades, the European Union has insisted that member nations comply with human rights and democratic principles.⁵⁴ However, within the last forty years the EU made this type of compliance a necessary condition under external agreements and relations with non-member countries.⁵⁵ One particular event was the driving force behind the heightened importance placed on human rights provisions by the EU.⁵⁶ In 1977, the EU discovered Ugandan human rights violations and tried to terminate Stabex payments to Uganda.⁵⁷ The EU realized this was not officially possible because no human rights provisions existed under the then African, Caribbean, Pacific ("ACP")-EU Lomé Convention.⁵⁸ Therefore, the EU tried to persuade its ACP partners to introduce a clause into the Lomé Convention agreement that would suspend or terminate the agreement in the event of human rights abuses.⁵⁹ These efforts were unsuccessful, but a human rights clause was later introduced into the agreement in 1989.⁶⁰

The initial clause incorporated into the Lomé Convention was inadequate. However, the 1990 Argentine-EU Cooperation Agreement contained a human rights provision that was effective.⁶¹ Thereafter, the EU included human rights provisions in their new cooperation agreements with countries worldwide.⁶² Finally in 1995, after two decades of negotiation, an operative and elaborative human rights clause was added to the Lomé IV Convention agreement, labeled as Articles 9 and 96 of the 2000 Cotonou Agreement.⁶³ Since 1995, the EU Council has adopted the position that all future agreements the EU enters into will include human rights provisions, which the Council has adhered to ever since.⁶⁴

Human rights provisions found within various agreements largely convey similar ideas. The most central and common element of human rights provisions is called the "essential elements" clause.⁶⁵ The 2012 EU-Central America agree-

⁵⁴ See, Bartels, *supra* note 26.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 2. For more information on Stabex payments, see generally *Stabex Beneficiaries' Handbook*, FOURTH ACP-EEC CONVENTION OF LOMÉ (Dec. 1990), http://aei.pitt.edu/33866/1/A568_3.pdf.

⁵⁸ *From Lomé I to IV*, EUROPEAN CONVENTION, http://ec.europa.eu/europeaid/where/acp/overview/lome-convention/lomeitoiv_en.htm (last visited Mar. 21, 2014).

⁵⁹ Bartels, *supra* note 26, at 2.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ The first Lomé Convention agreement ("Lomé I") was signed into effect in 1975. Lomé I evolved into Lomé II, III, and eventually IV (essentially adding signatory countries, as well as investment and aid commitments). Lomé IV was enacted in 1989, with its trade provisions covering from 1990-1999. Seventy ACP countries are party to Lomé IV, as opposed to forty-six ACP countries who were party to Lomé I. EUROPEAN CONVENTION, *supra* note 58.

⁶⁴ Bartels, *supra* note 26, at 3.

⁶⁵ *Id.* at 4.

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ment's essential elements clause states that the "[r]espect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of both parties and constitutes an essential element of this Agreement."⁶⁶

The 1993 EU-India cooperation agreement produced another common element called the "implementation" clause.⁶⁷ This clause states that "[t]he Parties shall adopt any general or specific measures required for them to fulfill their obligations under this Agreement."⁶⁸ Generally speaking, this provision has been interpreted as imposing a variety of additional obligations on EU member nations.⁶⁹ These additional obligations include proactively taking steps to ensure, not only that "human rights and democratic principles are *respected*, but also a positive duty to ensure that these norms are *ensured* and *fulfilled*."⁷⁰ Over the last fifty years, the EU has made attempts at advancing human rights through provisions located within their free trade agreements.⁷¹ However, although the EU has codified these human rights, the provisional enforcement of them is far from perfect.

B. Provisional Shortcomings

To date, no specific governmental bodies have been developed to focus solely on ensuring the implementation and adherence to human rights provisions within free trade agreements.⁷² Instead, governmental bodies have dealt with provisional issues on an ad hoc basis.⁷³ This runs contrary to other types of governmental bodies that have been created to ensure adherence to free trade agreement provisions, such as the sustainable development mandate.⁷⁴ Overall, the EU's efforts to implement ethical foreign policies have been successful, specifically with regard to its respect for social equality in free trade agreements.⁷⁵ However, room for improvement exists with regard to compliance and enforcement, especially because they are legally required.⁷⁶

C. Importance of Having Access To Information

Greater access to information creates a viable ability to improve our lives, careers, education, governmental bodies, etc. Studies demonstrate benefits from

⁶⁶ EU-Central America Association Agreement art. 1, June 29, 2012, available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689> [hereinafter EU-CAA].

⁶⁷ Bartels, *supra* note 26, at 4.

⁶⁸ EU-CAA, *supra* note 66; see also Bartels, *supra* note 26.

⁶⁹ See Bartels, *supra* note 26.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See *id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

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increased information and Internet technology, including educational advancement, access to government services, health information, and increased community participation.⁷⁷ More generally, increased Internet use may contribute to more democratic and involved elections.⁷⁸ Recent events in Egypt illustrate this—Egyptian citizens used Internet and social media to educate themselves about their rights or lack thereof, shared this information with each other, and organized gatherings and protests to effectively end a thirty-year dictatorship.⁷⁹ Additionally, e-commerce and market productivity increases with the development of technology skills, which have been found to positively affect wages.⁸⁰ Lastly, the Internet can be helpful for not only making important decisions (e.g., purchasing a home or health insurance), but also for lesser, everyday decisions (e.g., a farmer checking weather patterns as they pertain to his crops, applying for jobs, or shopping for the best product value at the supermarket).⁸¹

Another argument supporting the importance of access to information is the advancement of less developed nations.⁸² The development of information infrastructure and its active use could act as an economic catalyst for such nations.⁸³ Generally, information technologies are associated with productivity improvements.⁸⁴ The exploitation of the latest technologies may give industries of certain countries a competitive advantage.⁸⁵ Overall, the possibilities that having access to the Internet and information provide seem endless.

D. Bridging The Gap

As previously mentioned, alleviating information and technology disparities amongst populations (i.e., eliminating the Digital Divide) is incredibly important. One main reason this gap exists is because rural areas and less developed nations cannot access the Internet due to location and lack of infrastructure.⁸⁶ According to studies, however, inaccessible telephone lines will not single-handedly limit access to the Internet.⁸⁷ New technology, such as satellite and power line technology, is being developed everyday that will help remote areas or countries without the necessary infrastructure gain access to the Internet.⁸⁸ However, these techno-

⁷⁷ See Samantha Becker, et al., *Opportunity for All: How the American Public Benefits from Internet Access at U.S. Libraries*, INST. OF MUSEUM & LIBR. SERV. (Mar. 2010), available at <http://www.ims.gov/assets/1/assetmanager/opportunityforall.pdf>.

⁷⁸ *The Digital Divide*, *supra* note 30.

⁷⁹ DeLong-Bas, *supra* note 8.

⁸⁰ *Id.*

⁸¹ Becker, *supra* note 77.

⁸² *The Digital Divide*, *supra* note 30.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

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logical advancements are useless if access prices are not lowered, which is another key factor in eliminating the Divide.⁸⁹

Moreover, assistance from governments will prove extremely helpful in bridging the Divide. Governmental bodies are beginning to implement legislation initiatives aimed at eliminating this issue. To eliminate the Digital Divide in Illinois, the Illinois General Assembly enacted the “Eliminate the Digital Divide” law to create a fund to help develop information technology infrastructure by purchasing IT goods and services.⁹⁰ Not only are domestic governmental bodies enacting legislation to end the Divide, but countries and governments worldwide are as well.⁹¹ While governments are moving towards bridging the information divide, they should go a step further and recognize a right to this information.

IV. Analysis

A. Recognition of “Access to Information” as a Basic Human Right

1. *Opposition to Right Recognition*

While access to information is clearly valuable, it is highly debated whether it can meet the standard to be recognized as a fundamental human right. Many experts argue that, although access to information may be an important means to improving the human condition, it is not an inherent human right.⁹² Despite the fact that some countries have already declared Internet access a human right, opponents of such declarations feel that a particular distinction is being missed—namely, “[t]echnology is an enabler of rights and not a right itself.”⁹³ The Universal Declaration of Human Rights—which ensures many fundamental human rights such as the right to free speech, movement, privacy, education, and a standard of living—supports the proposition that access to information is not a human right by failing to ensure it.⁹⁴ Moreover, even the United Nations reports that declare Internet access a human right go on to undermine such a declaration by stating that access to information is a means to an end, and not an end itself.⁹⁵ According to those reports, there is a high threshold for classifying something as

⁸⁹ See Eliminate the Digital Divide Law, 30 ILCS 780/ art. 5, (July 1, 2000), available at <http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=574&ChapterID=7>.

⁹⁰ ELIMINATE THE DIGITAL DIVIDE LAW, *supra* note 89. The program seeks to provide disadvantaged communities access to computers, telecommunication technologies, and related training. “Under this program, the Illinois Department of Commerce and Economic Opportunity (DCEO) is authorized to award grants of up to \$75,000 to plan, establish, administer and expand Community Technology Centers (CTC’s) and to support basic computer literacy training programs.” *Eliminate the Digital Divide 2014-2015 Grant Program*, ILL. DEPT. OF COM. & ECON. OPPORTUNITY, <http://www.illinois.gov/dceo/whyillinois/TechnologyServices/Pages/EliminatetheDigitalDivide.aspx> (last visited Mar. 29, 2015).

⁹¹ Finland was the first country to declare Internet access a legal right. See Ahmed, *supra* note 17.

⁹² Vinton G. Cerf, *Internet Access Is Not A Human Right*, THE NEW YORK TIMES (Jan. 4, 2012), http://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html?_r=0.

⁹³ Cerf, *supra* note 92.

⁹⁴ Universal Declaration of Human Rights, *supra* note 14.

⁹⁵ Cerf, *supra* note 92.

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a human right.⁹⁶ Consequently, questions have been raised about whether having access to information and the Internet should be considered, if anything, a human or civil right.⁹⁷

Opponents of declaring access to information a human right maintain strong convictions about what constitutes a human right. They argue that “human rights” consists of values we need as humans to live meaningful lives, such as freedom from torture or freedom of conscience.⁹⁸ Thus, not only is it inconsiderate to place the need for technology in the sacred category of “human rights,” but it is a mistake.⁹⁹ Furthermore, if access to information were labeled as a human right, over time, society would place value on the wrong things.¹⁰⁰ These opponents suggest that the best way for people to discern whether something is a human right or not is by looking at the outcome that is trying to be ensured (e.g., freedom of speech, right to assemble).¹⁰¹ And although those outcomes are assisted with the use of technology and information, they are not dependent on it.¹⁰² “For example, at one time if you didn’t have a horse it was hard to make a living. But the important right in that case was the right to make a living, not the right to a horse.”¹⁰³

Additionally, opponents utilize similar arguments to conversely argue that access to information and the Internet should be a civil right, not a human right.¹⁰⁴ They reason that civil rights are those that are conferred to the people using governmental legislation—different from human rights, which are innate to humans sans governmental intervention.¹⁰⁵ While the United States has never passed legislation stating every citizen has the right to a telephone, there appears to be an increasing notion to the right of “universal service.”¹⁰⁶ Universal service is the idea that services (i.e. telephone, electricity, and now broadband) must be available to everyone in the country, even in the most remote areas.¹⁰⁷ Therefore, opponents argue that Internet access is an instrument for obtaining something more important, and the closer we edge towards accepting the idea that everyone deserves universal service, the closer we come to making Internet access a civil right and not a human right.¹⁰⁸

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

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2. *Support for Right Recognition*

While opposition to recognizing access to information as a basic human right exists, an increasing number of countries and organizations have recently demonstrated their support for such a right. Critics of this right recognition point to the level of responsibility placed upon technology creators themselves to support human and civil rights as a reason for not declaring it a human right.¹⁰⁹ However, Finland is one particular country that will soon feel the impact of supporting these rights because it was the first country in the world to declare broadband Internet access a legal human right.¹¹⁰ As of July 2010, Finnish telecom companies were required to provide all 5.2 million citizens with Internet connection.¹¹¹ The law requires that the connection must run at speeds of at least one megabit per second.¹¹² The legislative counselor for Finland’s Ministry of Transport and Communications explained, “We think it’s something you cannot live without in modern society. Like banking services or water or electricity, you need Internet connection. . . [u]niversal service is every citizen’s subjective human right.”¹¹³ Even though France’s highest court in June 2009 declared access to Internet a human right, Finland was the first to legally mandate Internet speed.¹¹⁴ Finland’s goal to provide Internet access to everyone is complicated by geographic challenges, especially in rural areas where access is limited.¹¹⁵ However, this law mandating a certain minimum Internet speed seeks to ameliorate such a digital divide.¹¹⁶ Ninety-five percent of Finland’s population has Internet access, making it one of the most “wired” nations in the world.¹¹⁷

Even the United States, which in 2010 remained the only industrialized nation without a national high-speed broadband policy with only fifty-four percent of rural households subscribed to broadband Internet, is making strides similar to those of Finland and France.¹¹⁸ In 2012, the United States Congress passed the Federal Communications Commission’s (“FCC”) broadband policy called the “National Broadband Plan” with hopes of improving Internet access in the United States.¹¹⁹ In its first year, the FCC reached eighty-seven percent of its

¹⁰⁹ *Id.*

¹¹⁰ *See* Ahmed, *supra* note 17.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* In June 2009, France’s highest court declared access to Internet to be basic human right and ruled that, “free access to public communication services online is a right laid down in the Declaration of Human Rights, which is in the preamble to the French Constitution.” *Top French Court Declares Internet Access ‘Basic Human Right’*, THE LONDON TIMES (June 12, 2009), <http://www.foxnews.com/story/2009/06/12/top-french-court-declares-internet-access-basic-human-right/>.

¹¹⁵ *See* Ahmed, *supra* note 17.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *See id.* (citing a study released in August 2010 by the Communications Workers of America, the country’s largest media union).

¹¹⁹ *See generally Executive Summary*, NAT’L BROADBAND PLAN-CONNECTING AMERICA, <http://www.broadband.gov/plan/executive-summary/> (last visited Mar. 29, 2015).

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agenda goals, including the creation of different governmental bureaus responsible for launching various Internet services provided to the public.¹²⁰

Finally, the Arab Spring protests that occurred within the last few years were highly successful because they utilized information technology, such as the Internet, cell phones, and social media platforms.¹²¹ As previously mentioned, the rallies’ success can mostly be credited to the shared views of protesters and their collective turnout, not the Internet alone.¹²² However, the protesters’ ability to instantaneously communicate, organize, and publicize everywhere could not have been possible without the Internet; therefore, it was a very important component of the Arab Spring. In June 2011, a UN special reporter covering the Middle East and North African uprisings went so far as to pronounce that the Internet had “become an indispensable tool for realizing a range of human rights.”¹²³

Regardless of the controversy surrounding the declaration of Internet access as a human right, many people, if not all, may in the near future be able to access the Internet from anywhere in the world, notwithstanding economic status. Mark Zuckerberg, Facebook founder and CEO, recently entered into a venture aimed at bringing Internet access to everyone in the world.¹²⁴ Today, only 2.9 billion people in the world have Internet access—meaning two-thirds of the world cannot get online.¹²⁵ Furthermore, Internet adoption is growing by less than nine percent annually.¹²⁶ With those statistics in mind, Zuckerberg formed a global partnership with media and technology titans Ericsson, MediaTek, Nokia, Opera, Qualcomm, and Samsung to launch an initiative called Internet.org.¹²⁷ The organization’s goals include the efficient use of data, making Internet access affordable, and driving Internet access by helping businesses create new business models and services.¹²⁸ In terms of profit, this venture’s founders will likely not see any profits at least in the short term—possibly not even in the long-term.¹²⁹ The unfair economic reality is that Facebook users already have more money than the total world population without Internet.¹³⁰ So after removing any possibility of being profitable from the equation, it is clear why these tech-industry

¹²⁰ See generally *National Broadband Plan: Year 1 Progress Report*, NAT’L BROADBAND PLAN-CONNECTING AMERICA, <http://www.broadband.gov/plan/broadband-progress-report.html> (last visited Mar. 21, 2014).

¹²¹ See Rosiny, *supra* note 5.

¹²² See Richard A. Lindsey, *What the Arab Spring Tells Us About the Future of Social Media in Revolution Movements*, SMALL WARS J. (July 29, 2013, 8:53 PM), <http://smallwarsjournal.com/jrnl/art/what-the-arab-spring-tells-us-about-the-future-of-social-media-in-revolutionary-movements>.

¹²³ Cerf, *supra* note 92.

¹²⁴ Schroeder, *supra* note 11.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

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billionaires are pursuing Internet.org—they believe that everyone has the right to be connected.¹³¹

Internet.org’s projects potentially include the development of lower-cost, higher-quality smart phones that could help direct Internet access to hard-to-reach areas of the world, as well as the localization of mobile devices.¹³² Zuckerberg says that “[t]here are huge barriers in developing countries to connecting and joining the knowledge economy. Internet.org brings together a global partnership that will work to overcome these challenges, including making Internet access available to those who cannot currently afford it.”¹³³ Thus, even if Internet access is not declared a universal human right, it may still be possible for everyone to achieve universal access.

B. The Relationship Between Internet Access and Human Rights

History demonstrates that having access to Internet in this day and age is a benefit,¹³⁴ so governments and corporations should illustrate this by placing emphasis on providing everyone Internet access.¹³⁵ Former Egyptian President Hosni Mubarak took the radical and unparalleled step of shutting off his nation’s Internet for five days in 2011.¹³⁶ His goal was clear: he wanted to terminate his opponents’ flow of communication and organized assembly occurring on social media outlets such as Facebook and Twitter.¹³⁷ This misstep cost Egypt \$90 million and enraged the international community.¹³⁸ In the end however, the Egyptian youth’s online and social media presence arguably single-handedly overthrew Mubarak’s regime, demonstrating the power of social media and Internet access.¹³⁹

On August 21, 2013, the world learned of Syria’s chemical weapons use, not from the U.S. Central Intelligence Agency, but instead from cellphone video footage posted to YouTube.¹⁴⁰ Forums were created so that anyone capturing the Syrian atrocities on cellphones could upload the data to a centralized location.¹⁴¹ Also, UN inspectors attempting to investigate Syria’s use of chemical weapons were able to avoid areas with heavy fighting by using crowd-source mapping (cell-phone users are able to instantaneously report incidents of fighting, and that

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See *The Digital Divide*, *supra* note 30.

¹³⁵ See Ahmed, *supra* note 17; see also Schroeder, *supra* note 11.

¹³⁶ Amir Hatem Ali, *The Power of Social Media in Developing Nations: New Tools for Closing the Global Digital Divide and Beyond*, 24 HARV. HUM. RTS. J. 185, 185 (2011).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at 187.

¹⁴⁰ Carol J. Williams, *Experts: Syrians Can Aid Chemical Weapons Hunt with Social Media*, LOS ANGELES TIMES (Sept. 12, 2013), <http://articles.latimes.com/2013/sep/12/world/la-fg-wn-syria-chemical-weapons-hunt-social-media-20130912>.

¹⁴¹ *Id.*

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information is compiled into a usable crowd-source map).¹⁴² This demonstrates the effect that social media, Internet, and more generally, access to information, have on disseminating information to the public and world. The tie between access to information and the advancement of human rights in Egypt and Syria is obvious. More importantly, these lessons can be applied to the advancement of human rights on a more global scale.

V. Proposal

Recognizing “access to information” as a basic human right within the Universal Declaration for Human Rights would operate as a vehicle for ensuring the most basic and established human rights. Moreover, declaring “access to information” a human right would increase the effectiveness of human rights provisions within free trade agreements. While trade agreements are not designed to advance human rights *per se*, they have an important effect on them. For example, trade agreements have inherently required legislators to make trade-related regulations transparent and allow for public remark when conditions are below what is stipulated in the agreement.¹⁴³ Furthermore, domestic economic participants are granted due process rights where they may seek relief related to trade by proposing comments to national agencies.¹⁴⁴ Because citizens are able to demand rights through trade, they will likely demand good governance habits in other policymaking events.¹⁴⁵ Also, dispute settlement mechanisms support these provisions.¹⁴⁶ If a government violates the provisions, it may lose its trade benefits.¹⁴⁷ Thus, governments have strong incentives to uphold human rights provisions in FTAs.¹⁴⁸

Access to information is capable of affecting large social change. Due to improvements in technology and organizations like Internet.org, providing worldwide Internet access may soon be a viable reality. The benefits from worldwide Internet access are immense. As previously mentioned, worldwide Internet access could enable the poorest and most repressed populations of the world to share their story, read about what rights they have been conferred, and voice concern when those rights are violated. Just as quickly as the world learned of Syria’s human rights violations, the world can be exposed to other types of atrocities at an even faster rate. If human rights violations were uncovered, awareness and public pressure would force governmental agencies to immediately address

¹⁴² William Potter, et al., *The CW Will Be Tweeted*, MONTEREY INST. OF INT’L STUD. (Sept. 13, 2013), http://cns.miis.edu/stories/130912_cw_revolution_tweeted.htm.

¹⁴³ The Columbia Free Trade Agreement allows for public comment, grants due process rights, and citizens may submit comments to agency bodies with regard to human rights violations. Dispute settlement mechanisms are in place. If Columbia is found to have violated human rights, it may lose its trade benefits. See Aaronson, *supra* note 19.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *See id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

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their trading partner's violations—or even cease trade. The worldwide online presence Internet.org envisions would practically ensure that accounts of human rights violations would gain more attention, and at a faster rate, than ever before. Therefore, with free trade agreements being dependent on compliance with their human rights provisions, trading partners will be more likely to ensure they do not commit human rights violations because the risk of the world finding out is simply too high, if not certain.

VI. Conclusion

Today, many free trade agreements include human rights provisions, but they are neither efficient nor followed. However, human rights protection is fundamental to protecting the human condition. Free trade agreements containing human rights provisions would be much more efficient and effective if access to information and the Internet was declared a universal human right. The provisions are present, but monitoring and compliance is difficult or non-existent. However, citizens advocating on their own behalf through an online presence may alleviate this problem. Currently, organizations are attempting to provide Internet to everyone in the world. If attainable, millions (even billions) of people would have access to information that they otherwise did not have before. As we have seen, social media has provided citizens with a platform to come together, get educated, communicate, and affect social change.

The power of the Internet, coupled with an organization determined to bring this right to everyone in the world, could significantly alter the way and frequency with which human rights are protected. Free trade agreements' human rights provisions may no longer be only effective on an ad hoc basis. If access to information was recognized as a basic human right, it could be the enabler and protector of all other fundamental human rights. Therefore, declaring access to information as a human right is a necessary mechanism in the effectiveness of human rights provisions within free trade agreements.