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Michał Ożóg
University of Bialystok, Poland
m.ozog@uwb.edu.pl
ORCID ID: 0000–0002–4315–5235

Radosław Puchta
University of Bialystok, Poland
radoslaw.puchta@gmail.com
ORCID ID: 0000–0002–3562–1136

The Right Not to Use the Internet and Protection against the Digital Divide: Some Preliminary Remarks[1]

Abstract: This article discusses the concept of the so-called 'right not to use the internet' in the context of the digital divide. Multiple measures, undertaken at national and supranational levels with the purpose of ensuring the digital transition, have led to the expansion of the online sphere. At the same time, and despite the continuing commitments of public authorities to strengthen digital accessibility, the number of people deprived of full access and the capacity to use new information and communication technologies remains relatively high, even within developed countries. Furthermore, the current digital revolution undermines freedom of choice regarding internet use, imposing a de facto obligation to be constantly online. The authors argue that the concept of the right not to use the internet may serve as a compelling argument when making policies to counteract any digital inequalities and to preserve the fundamental freedom of choice, including the freedom to be offline.

Keywords: right not to use the internet, digital constitutionalism, digital divide, digital accessibility, internet access

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Introduction

It is hard to deny that nowadays, rapid developments in the technology sector are deeply affecting daily lives, rising serious questions about the possibility for everyone to fully enjoy their fundamental rights and freedoms in the digital age. Just as each revolution at some point begins to devour its own children, the current so-called 'digital revolution' also gives rise to certain side effects that pose challenges from the perspective of human rights protection. Ubiquitous digitalisation in fact results in the necessity, or rather an obligation, to use new information and communication technology (ICT) in order to get access to various services or products that have often become only available online. In other words, digital technologies are now no longer merely optional tools serving to ease our private, professional and social lives, but impose themselves as indispensable. This in turn means that some people may face different digital barriers, as they cannot financially afford the necessary devices or mobile applications (digital poverty), or they lack sufficient skills to operate them effectively (digital illiteracy). For others, the key problem might be the interference with their freedom of choice regarding the use of digital technologies and the coercion to be constantly online. Any wish to stay offline could then lead to the marginalisation or even exclusion of an individual from certain spheres of activity. As a result, the phenomenon of a digital divide emerges, which seriously undermines the exercise of many basic human rights, such as the right to protection of one's private and family life, the right to information and freedom of expression, the right to education, etc.

The concept of the 'right not to use the internet' is fairly new doctrinally and is still at the conceptualisation stage (Susi, 2025). Nevertheless, some scholars have already recognised its high potential as a compelling ethical and legal argument in the debate about how to prevent undesirable repercussions from widespread digitalisation and how to maintain people's freedom of choice for living a more analogue life (Kloza, 2024; Terzis, 2025). This article aims to broaden this doctrinal analysis of the right not to use the internet in the context of the positive duties of public authorities to ensure all necessary legal and factual conditions for the full enjoyment of basic human rights by everyone. We argue that the right not to use the internet, considered as a component of the catalogue of so-called 'digital rights', requires that each person shall be given a real option to choose analogue forms of interaction with the outside world, and therefore that a certain amount of offline reality shall be protected so as to guarantee the feasibility of acquiring information, goods and services in some non-digital way. To give reasons for this assertion, we outline major negative consequences of the ongoing process of mass digitalisation and depict the measures that are usually undertaken in response, which mostly result in a further decline of the offline sphere. In this context, we introduce the concept of the right not to use the internet and try to demonstrate its usefulness regarding the need to provide effective protection from the coercion to be constantly online, In the article, we apply research

methods commonly used in legal studies, such as the descriptive and conceptual methods. We analyse both supranational and national legal frameworks related to the issue of the accessibility of digital products and services, as well as relevant soft law. A dogmatic description of the concept of the right not to use the internet then serves to assess possible applications of this newly emerging digital right when developing legal solutions against digital coercion.

1. Universal digitalisation and its side effects

Since the beginning, the development of new ICT has been enthusiastically embraced by policymakers as a useful means of fostering economic and social progress. It soon became commonly assumed that this newly emerging 'digital economy' might ensure dynamic and stable economic growth (Gomes et al., 2022). At both supranational and national levels, multiple policy documents and legislation have begun to be adopted with the purpose of boosting the digitalisation process in the fields of, for instance, goods trade, services, education or public administration. Already in 2002, access to the internet was recognised as a universal service under European Union law (European Parliament & Council of the European Union. (2002, 7 March). Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services (Universal Service Directive). At the same time, because of 'the need to make further progress to keep the development of the e-economy as a priority on the European policy agenda', the eEurope 2005 Action Plan was launched (Council of the European Union, 2003). In 2010, in the aftermath of the Great Recession of 2007–2009, the European Commission presented the 'Digital Agenda for Europe', aimed at delivering sustainable economic and social benefits from a 'Digital Single Market' based on fast and ultra-fast internet and interoperable applications (European Commission, 2010). According to its assumptions, proper implementation of this agenda was supposed to spur innovation, economic growth and improvements in daily life for both EU citizens and businesses.

From the perspective of human rights law, the question has arisen, however, as to whether such a dynamic digitalisation of virtually all spheres of an individual's social, commercial or civic activity requires the guarantee of a new fundamental right, referred to as a 'right to internet access' (Best, 2004; De Hert & Kloza, 2012). Although the existence of such a right has not been explicitly acknowledged in any act of international law, universal internet access has been recognised as an indispensable tool for realising a range of human rights, combating inequality and accelerating development and human progress (La Rue, 2011). In 2012, the United Nations' Human Rights Council adopted its first resolution on the promotion, protection and enjoyment of human rights on the internet. The Council affirmed that 'the same rights that people

have offline must also be protected online', and it called upon all states to 'promote and facilitate access to the internet'. In parallel, in 2014, the Parliamentary Assembly of the Council of Europe adopted Resolution 1987 (2014), 'the right to internet access', in the light of which 'everyone shall have the right to internet access as an essential requirement for exercising rights under the European Convention on Human Rights', and therefore that 'the member States should recognise the fundamental right to internet access in law and in practice' (Council of Europe Parliamentary Assembly, 2014). This document placed particular emphasis on the requirements of the affordability, interoperability and integrity of internet services, taking into account the latest technological developments, and underlined the duty of the Member States to 'increase their efforts to ensure internet access for people with special needs and disadvantaged internet users'. Over the past decades, a clear evolution can be discerned in the approach of the European Court of Human Rights in cases where digital issues have arisen in the context of fundamental rights, as evidenced, for example, by the creative interpretation of the provisions of the Convention to formulate a standard for the protection of individual rights on the internet. In addition to the internet accessibility standard, attention is paid to the need to respect a number of other values of democratic societies, including in particular the right to privacy enshrined in Article 8 of the Convention (Wiśniewski, 2021, pp. 114–131). Subsequently, access to and use of the internet has been a constant focus of attention for international bodies responsible for protecting human rights (Szoszkiewicz, 2018). At the same time, at the national level, a new right to internet access has been constitutionalised either directly, by adopting a constitutional amendment act, or indirectly, through the creative jurisprudence of apex courts; examples of such countries include Portugal and Greece. Since 1997, the Portuguese Constitution has guaranteed everyone access to public information technology networks (Ożóg & Puchta, 2025, pp. 94–95).

Notwithstanding this favourable, sometimes even naively enthusiastic, approach to internet access, commonly regarded as a means of ensuring general well-being for all, various side effects of the digital revolution have become increasingly apparent over time. Given the fact that many goods and services – both public (e.g. submission of a tax return or registration for a medical consultation) and private (e.g. handling of a bank or insurance account) – have become available exclusively or mostly through specific websites or mobile applications, internet use, at least in some cases, has turned out to be de facto compulsory. In other words, a 'right to internet access' has transformed into a kind of obligation to get online and use ICT. For some people, universal digitalisation has resulted in limiting their freedom of choice as to how they might interact (online or offline) within horizontal and vertical relations. In the other words the horizontal perspective concerns equivalent bodies (individuals versus individuals), while the vertical perspective concerns individuals versus public authorities and we analyze the right not to use the Internet in both legal relationships, taking into account the specific circumstances of the individual. For others, in turn, this pro-

cess has brought new barriers that impede or restrain their capability to get certain goods or services. Such barriers might be due to a lack of financial resources needed to acquire the necessary devices and services from an internet provider, as well as a lack of sufficient skills to operate constantly more sophisticated ICT (so-called 'digital illiteracy'). As a result, a new phenomenon of a 'digital divide' has arisen, reinforcing already existing social, economic and political inequalities (Ragnedda, 2017).

This phenomenon of a 'digital divide' was already recognised in the last decade of the 20th century. During research in the late 1990s, a series of surveys was conducted by the National Telecommunications and Information Administration in the USA, with the aim of assessing the number and characteristics of 'information-disadvantaged' people (so-called 'Have Nots'). It was concluded that the divide between those with access to new technologies and those without was at that time 'one of America's leading economic and civil rights issues' (NTIA, 1999). In 2001, the OECD defined the 'digital divide' as a gap between individuals, households, businesses and geographic areas at different socio-economic levels with regard both to their opportunities to access ICT and to their use of the internet for a wide variety of activities (OECD, 2001). It soon became clear that such inequalities within access to and use of the internet are related to criteria such as income, age, education and geographic location. As the notion of a 'digital divide' might suggest that there is a simple division between two clearly separated social categories ('Haves' and 'Have Nots'), analysis of the phenomenon as 'a range of positions extending across whole populations – from people having no access and use at all to those with full access and using several applications every day' (van Dijk, 2020, p. 10) has been proposed. At the same time, some other terms have been promoted to describe these digital inequalities, and in particular the notion of 'digital poverty', understood as somebody's inability to interact with the online world fully, when, where and how they need to (Allmann, 2022). In contrast to the digital divide, digital poverty 'cannot be seen in dichotomic terms (i.e., digitally poor versus digitally rich) but as a continuum where different degrees of digital poverty could be observed' (Ragnedda et al., 2022, p. 5).

Although the existence of various barriers to the use of new ICT has been known for years, and despite the fact that endless efforts have already been made to remove such barriers, the phenomenon of digital inequality persists, and in some parts of the world is even increasing (Heeks, 2022). It might be said that the more goods and services have been transferred to the digital world, the more social, economic and political exclusion there is in the analogue one. According to the International Telecommunication Union's statistics, in 2024 fully 5.5 billion people were online, which represented only 68% of the world population. It means that 2.6 billion people, one-third of the global population, still did not have enough access to the internet. In the ITU's opinion, 'universal connectivity remains a distant prospect' (International Telecommunication Union, 2024, p. 1). As far as the European Union is concerned, 94% of all households surveyed in 2024 had access to the internet (Eurostat, 2024), but still about 2.4% of the

EU's 450 million inhabitants (i.e. nearly 11 million) could not afford an internet connection (World Economic Forum, 2023). The statistics of the Polish Central Statistical Office show that although 95.9% of households had internet access in 2024, the percentage of 16 – to 74-year-olds with at least basic digital skills was still only 48.8%. What is more, while at least basic digital skills were possessed by 73.5% of 16 – to 25-year-olds and by 72.1% of 25 – to 34-year-olds, the percentage was only 13.7% within the age group of 65 – to 75-year-olds. In addition to these inequalities based on age, differentiation related to territorial criteria (the degree of urbanisation) is also noticeable, as among rural residents the percentage of people with at least basic digital skills is significantly lower compared to the percentage of residents of small and large cities (33%, 45% and 55%, respectively) (Statistics Poland, 2024).

2. Common measures to address the digital divide

From the perspective of human rights law, the digital divide implies new impediments to the full enjoyment of several fundamental rights and freedoms (Saraceni, 2020). An inability to access the internet and to make use of new ICT equals an inability to freely exercise, for instance, the right to lead a private life in undisturbed contact with relatives and friends, the right to acquire and disseminate information and opinions, the right to participate actively in public and private life, the right to obtain appropriate healthcare, and the right to education, as well as the right to access cultural goods and services, etc. In the framework of the United Nations' Convention on the Rights of Persons with Disabilities, adopted in 2006, and to enable persons with disabilities to live independently and participate fully in all aspects of their life, state parties have agreed to take all appropriate measures to promote access for such people to new information and communication technologies and systems, including the internet. European institutions adopted the European Declaration on Digital Rights and Principles for the Digital Decade in 2023, announcing their commitment to 'a digital transformation that leaves nobody behind' (European Parliament et al., 2023). According to the wordings of this Declaration, everyone throughout the EU should have access to affordable and high-speed digital connectivity, as well as the right to education, training and lifelong learning enabling the acquiring of all basic and advanced digital skills. The Polish Constitution of 1997 prohibits any discrimination in social, political or economic life on any grounds; such a prohibition also applies to an individual's activities in digital reality. The Constitutional Court has stated that 'technological development expands the sphere of human functioning' and has noted that 'although the Constitution does not explicitly refer to the functioning of the individual in the virtual space, the protection of the constitutional freedoms and rights of individuals in connection with the use of the internet and other electronic means

of remote communication is no different from that concerning traditional forms of communication or other activities' (Judgment of the Constitutional Tribunal, 2014).

The existence of any barriers hampering individuals from exercising their fundamental rights and freedoms implies the positive obligation of public authorities to undertake every necessary action to overcome such barriers. It is up to competent supranational or national authorities to choose appropriate measures, provided that these are adequate, effective and proportionate. However, when it comes to removing barriers to digital inclusion, it seems that the most common answer to the side effects of the phenomenon of universal digitalisation is simply more digitalisation. In practice, countering digital exclusion most often involves seeking to facilitate accessibility and the use of services in the virtual world, and no provision is made for an offline option as a voluntarily chosen alternative that would not put the individual at a disadvantage. In other words, policy – and lawmakers are willing to adopt measures which, in general, consist in imposing on public entities as well as on private sector actors various new duties regarding the availability of goods and services offered online.

For instance, in 2016, European lawmakers adopted Directive 2016/2102 on the Accessibility of the Websites and Mobile Applications of Public Sector Bodies, also referred to as the Web Accessibility Directive. The objective was above all to harmonise national laws, regulations and administrative provisions related to the accessibility requirements of the websites and mobile applications of public sector bodies so as to make such websites and applications more accessible to their users, in particular to persons with disabilities, on the basis of common accessibility requirements. This Directive imposes on EU Member States the obligation to 'ensure that public sector bodies take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust' (European Parliament & Council of the European Union, 2016). Websites and mobile applications shall be presumed to be in conformity with these requirements where they meet the European harmonised standard EN 301 549 v3.2.1 (2021–03) (European Commission, 2021). Pursuant to this Directive, public sector bodies are supposed to provide and regularly update a detailed, comprehensive and clear accessibility statement on the compliance of their websites and mobile applications with these accessibility requirements. Each statement shall also include, firstly, information on those parts of the content that are not accessible, an explanation of the reasons for such inaccessibility and, where appropriate, information on the accessible alternatives; secondly, a description of and a link to a feedback mechanism enabling any person to notify the body concerned of any failure to comply with the accessibility requirements; and thirdly, a link to the enforcement procedure in the event of an unsatisfactory response. The Member States have therefore been obliged to set up an adequate and effective enforcement procedure, for example by enabling users to lodge a complaint with the ombudsman for failure to comply with the provisions of the Directive.

In addition, taking into account the fact that no matter how accessible a website is, it cannot be used without a suitable computer or smartphone, in 2019 European lawmakers adopted Directive 2019/882 on the Accessibility Requirements for Products and Services, which concerns products and services such as computers and operating systems, smartphones, tablets, e-readers and dedicated software, payment terminals and automated teller machines, as well as ticketing and check-in machines, consumer banking services, e-commerce services, and parts of services related to air, bus, rail and waterborne passenger transport, etc. This Directive, also referred to as the European Accessibility Act, obliges EU Member States to ensure that economic (this time private) operators place on the European market only such products, or provide only such services, that comply with the common accessibility standards set out in European law. Economic operators must ensure that they design, manufacture and place on the market products (or that they design and provide services) which correspond to multiple requirements listed in relevant annexes attached to Directive 2019/882, which have passed through a special conformity assessment procedure and bear the CE marking affixed to them (in the case of products) or include information assessing how the service meets applicable requirements. At the same time, competent national market surveillance authorities have been vested with the task of evaluating whether products meet applicable requirements, and in the event of non-compliance they may call on the economic operator concerned to take all appropriate corrective action or, in the absence of such action, to withdraw the product from the market. The Member States are supposed to establish, implement and periodically update adequate procedures in order to check the compliance of services with the requirements of this Directive, should follow up complaints or reports related to any case of non-compliance, and should verify whether the economic operator has taken the necessary corrective action. The European Accessibility Act should be implemented in national law by issuing appropriate legal regulations from 28 June 2025.

So as to implement the above-mentioned European directives, Polish lawmakers have enacted new national legal frameworks, namely the 2019 Act on Digital Accessibility of Public Entities' Websites and Mobile Applications (referred to as the DAA) and the 2024 Act on Ensuring the Compliance by Economic Operators with Accessibility Requirements Related to Certain Products and Services. These two legislative measures, together with the 2019 Act on Ensuring Accessibility for People with Special Needs, are designed to create a coherent system for protecting vulnerable people's needs (Mędrzycki, 2025). According to the DAA, 49 elements of technical requirements listed in its annex shall be met for the websites and mobile applications of public sector entities to be considered as enabling digital accessibility at the required level. These elements correspond to the Web Content Accessibility Guidelines (WCAG) success criteria (Marzec & Pietrasiewicz, 2020). A public sector entity fulfils its duty to ensure the digital accessibility of its website or application if the latter is functional, compatible, perceivable and

understandable in accordance with the relevant provisions of the Polish standard that implements the EN 301 549 V3.2.1:2021 standard.

At this point, it is premature to assess the real impact of the measures taken. It seems that the current understanding of service accessibility is not fully adequate for the needs of all people. First and foremost, the issue of people who express a preference to remain offline by choice has still not been addressed. The remedies outlined above are combined with the belief that it is necessary to provide access to the network and its services to people with special needs, which in itself, of course, deserves a positive assessment, but accessibility should be understood here, more broadly, also as the ability to decide to remain offline. This should apply to a situation in which an individual is fully capable of using the internet and the digital services it offers and has the necessary technical conditions, but is not interested in this form of activity. Respecting her choice is closely linked to respecting human freedom and decision-making autonomy, which is at the heart of the modern democratic state. Nonetheless, efforts to promote digital accessibility support those already interested in using the Web and are not combined with any measures to protect the interests of those who would like to preserve their analogue way of living. The reasons for such a decision are irrelevant and should not be subject to assessment by public authorities. Respecting somebody's choice to be offline means, however, seeking to maintain alternative forms of activity alongside the digital ones. In other words, it is crucial to ensure that, as far as possible, any activity or service carried out via the network is also available in an analogue manner. Exclusion from a certain aspect of public life solely because of one's attitudes towards new digital ICT should also be considered as a kind of digital divide.

3. The right not to use the internet as a pertinent argument in combating the digital divide

The concept of the 'right not to use the internet' is a more recent doctrinal idea and has not been explicitly expressed in any modern legal acts. Nonetheless, it may be deduced from the 'classical' human rights and freedoms as a new guarantee necessary for effective protection in the so-called 'digital age'. It has been aptly noted that 'assuming that the non-use of the internet merits protection, human rights might be invoked as a means to protect individuals from the obligation to use the internet […] As the use of the internet could be protected by means of human rights law, it follows that the opposite – its non-use – could too be protected thereby' (Kloza, 2024, p. 3). In other words, a new right not to use the internet – or, at least, some safeguards from digital coercion – may be rightly interpreted from existing human rights law and justify the need to preserve adequate non-virtual space for human activity. In the face of overwhelming digitalisation, though, some reinterpretation of the norma-

tive content of the conventional or constitutional provisions in force seems somehow obvious and desirable from the point of view of the adaptability of human rights law to changing social and technological realities. For example, as freedom of access to new digital services has been recognised as part of the 'classical' freedoms of opinion and expression (Constitutional Council of the French Republic, 2009), it might be justly assumed that the right to information also requires the opposite, which is the maintenance of alternative, non-digital ways of accessing the information and data resources one needs. It therefore seems questionable that if, under Polish law, a given public authority places a piece of public information on a website dedicated to acting as a 'bulletin of public information', such information ceases to be available in an analogue manner (e.g. in writing or orally), even if this is requested by the rightsholder (Wyporska-Frankiewicz, 2023). Furthermore, some commonly adopted conventional or constitutional provisions may also serve as an at least indirect textual anchorage for reconstructing the right not to use the internet. Taking here the example of the existing conventional and constitutional requirements to ensure healthy and hygienic conditions of work, it is rational to argue that such requirements constitute a sufficient legal basis for the so-called 'right to disconnect' (or simply the 'right to be offline'), which is becoming more and more broadly recognised within European legal systems (Vargas-Llave et al., 2020).

Taking, in turn, the right to internet access as an autonomous human right, it may then be argued that the normative content of such a right shall always be viewed in two contexts, positive and negative, as is usually the case for many other fundamental rights and freedoms. Freedom of conscience and religion, for instance, is commonly understood as both freedom 'to' (freely choose) one's own religion, and freedom 'from' (professing) any religion. Similarly, the freedom of association in unions also includes the so-called negative freedom of association, by which is meant the ability to decide not to belong to any trade union without suffering negative consequences because of such a decision. The freedom to choose and pursue a given occupation also inevitably includes the possibility of deciding to change one's current occupation or not to have any; one of the elements of this freedom is, therefore, the freedom to decide simply not to work. From this perspective, the right to internet access, in negative terms, implies a freedom from being forced to make use of the network and the services offered on it. From the point of view of legislative technique, the right not to use the internet would thus require that, on the one hand, a real option for refusing the use of digital means of interaction is provided, and that, on the other hand, an individual willing to benefit from such an option is not subject to any sort of exclusion which would lead to discrimination against him in social, political or economic life. It seems that in terms of guaranteeing the individual's right not to use the internet, there should be both a negative element, in the form of an injunction to respect the decision not to use the internet, and a need for public authorities to take positive action by creating appropriate legal and institutional solutions to pro-

tect those opting out. In other words, public actors cannot be indifferent to non-users of the internet, and alternative solutions must be implemented in the real world.

From this perspective, the right not to use the internet is not merely a negative right, where the task of public authorities would be simply not to interfere with the individual's activity. An effective realisation of such a digital right also implies certain positive actions by public authorities, such as adjusting the legal framework with the purpose of assuring non-digital access to services and products, without any additional barriers for those who would prefer not to use digital tools, in comparison to those acting online. In other words, proper regulation of the right not to use the internet should be combined with the enactment of a programmatic norm that would oblige lawmakers to shape legislation in such a way that making use of digital tools will not be the only option in the future. In doing so, it is desirable to define a long-term strategy for measures to be taken so as to respect somebody's decision to remain offline. Situations when there is no other option than acting via the internet should be absolutely exceptional and proportional. Even in such cases, however, some measures need to be adopted to prevent a digital divide. For instance, some specialised social assistants might be appointed to help digitally excluded persons with accessing services or products which are only available online (Mędrzycki, 2024). Another conceivable solution could be so-called 'Digital Senior Clubs' (*Cyfrowe Kluby Seniora*), which have been opened in Poland since 2022. Different public organisations may seek financial support from the Polish government for creating such clubs in order to increase the digital skills of elderly people and to counteract their digital exclusion (Polish Ministry of Family, Labour and Social Policy, 2022).

Conclusion

One might be tempted to say that remaining offline today is a modern luxury that is increasingly difficult to afford. Reaping the benefits of innovation, however, should be the right of every person, but not an obligation on them to make use of new technological solutions. Offline status is an asset that is not available to everyone, so efforts should be made to protect freedom of choice (Kloza, 2024, p. 5). It is becoming increasingly difficult, if not impossible, to adopt a negative or indifferent attitude towards the phenomenon of universal digitisation without worsening one's situation. It is not a matter of merely guaranteeing the right to remain offline, but of creating a level playing field between those who consciously choose to operate offline and those who prefer to operate online; the choice to remain offline should not be combined with any automatic deterioration of the protection of one's basic rights and freedoms. Bridging the divide between the analogue and the virtual worlds in the area of public life is the current challenge for lawmakers. It should be borne in mind that any revolution – and the so-called 'digital revolution' is no exception – brings profound social

changes, which are usually combined with the emergence of a new social stratification, if only because of different abilities to adapt to new conditions, including digital ones. The new dimension of the general principle of equal treatment emerges precisely in social relations with the virtual world.

Every democratic society should put the need to protect and maximise freedom of choice at the forefront, rather than an obligation to operate in one predetermined way. This is especially important in a time of mass digitisation and the unknown direction of its further development. The possibility of opting for an offline way of life should thus be explicitly promoted. Undoubtedly, the concept of a right not to use the internet may serve as a compelling argument while making policies to counteract digital inequalities and to preserve the fundamental freedom of choice, which includes the freedom to operate offline.

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