



The Introduction of Digital Rights to the Constitution of Malta

Students' Report

As part of the public consultation launched on the publication of the White Paper on the introduction of Digital Rights in the Constitution of Malta, KSU has compiled the following report on University students' view on Digital Rights.

The report has been prepared following a snapshot survey which received 63 responses after being in circulation for 10 days. The results from this survey are presented below.

The absolute majority of respondents agree with the introduction of such rights in our legislation, with many students believing that their online activity is included in their freedom of expression.

Disclosure of identity online should not be obliged, according to most students. However, most believe that Internet Service Providers should be able to disclose information about their clients to the authorities in criminal and/or civil cases.

On restrictions on the internet, almost all the respondents think that the Government should never filter or block websites and most think that the state should refrain from introducing laws that unnecessarily impinge upon internet access. Despite this, restrictions on the basis of protecting the rights and freedom of others in a democratic society are deemed justified by a third of respondents. This is in agreement with what is proposed in the paper.

Almost three-quarters of respondents are of the opinion that the proposed rights should be made enforceable in a Court of Law. This is the main disagreement with the paper, which proposes that these rights are not enforceable.



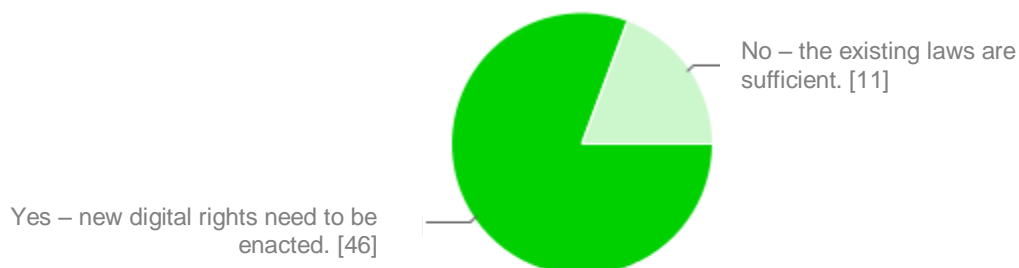


Most of the respondents who commented on the White Paper expressed positive feedback towards the proposed legislation, while a few made statements against such rights being introduced in the legislation as they believed that such regulation may actually impede freedom of expression and access to the internet. The public opinion on the current status of freedom of expression is still very much divided.

The Results

Do you think there is any scope in enacting new digital rights or are the existent human rights enshrined in our Laws sufficient?

74% are of the opinion that new digital rights should be enacted and that our current laws are not sufficient for the protection of digital rights.



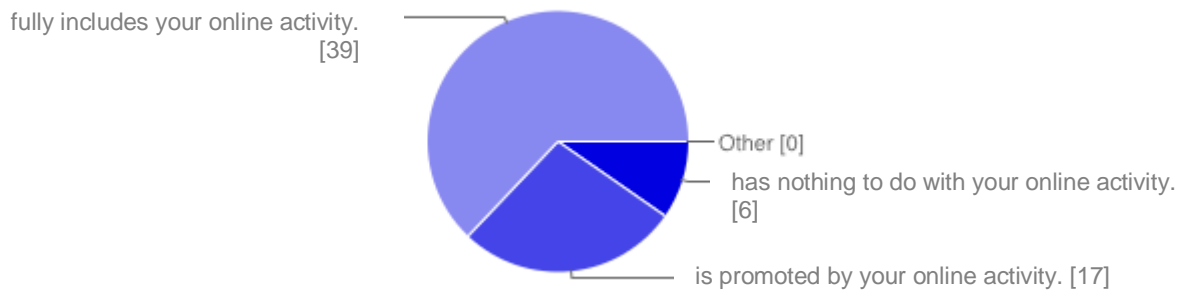
Freedom of expression and online activity

63% of respondents believe that their freedom of expression fully includes their online activity. This is followed by 27% that believe that their freedom of expression is promoted by their online activity and the rest (10%) believe that the two are unrelated.



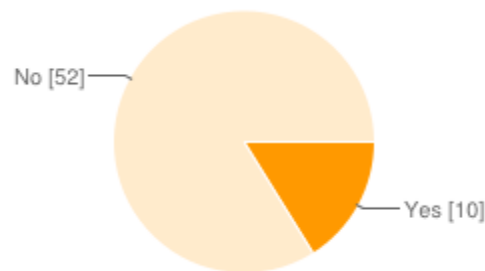


Your freedom of expression:



Do you think that a person should in any way be obliged by law to disclose his identity when communicating online?

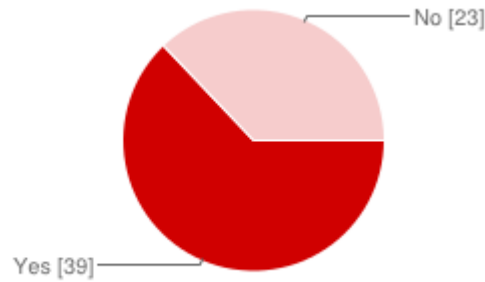
The vast majority of respondents (84%) do not think anyone should be obliged by law to disclose their identity when communicating online.



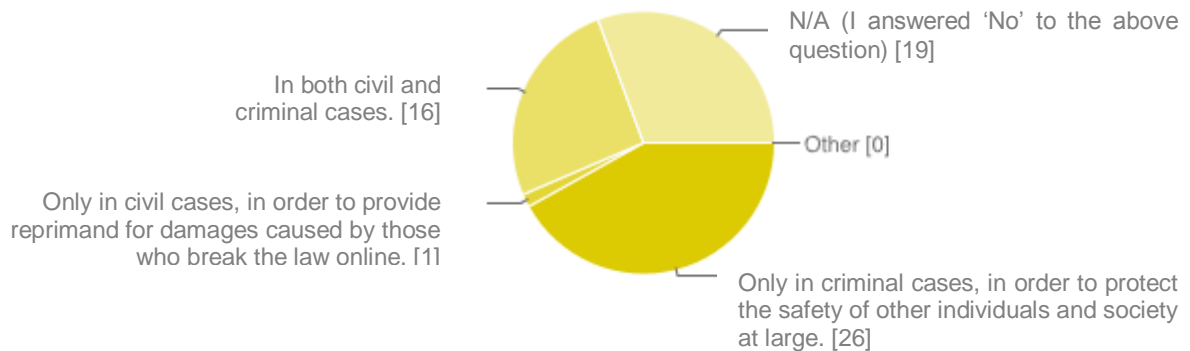
Do you think that Internet Service Providers should be legally able to disclose information regarding their clients to third parties, such as the authorities, in order to uphold the law?

Despite the results from the above question, 63% of respondents think that Internet Service Providers should disclose information about their clients to third parties in order to uphold the law.





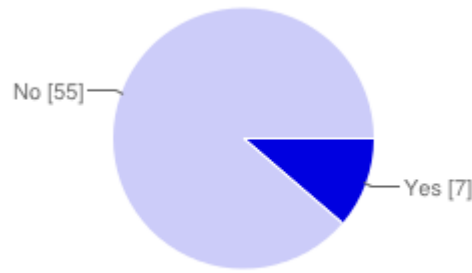
Most of these (42% of all respondents) think that this should only be permitted in criminal cases, to protect the safety of other individuals and society at large, while a further 26% think that information can be disclosed for both criminal and civil cases.



Do you think that the Government should ever filter or block websites?

The gross majority (89%) of respondents think that the government should never filter or block websites.

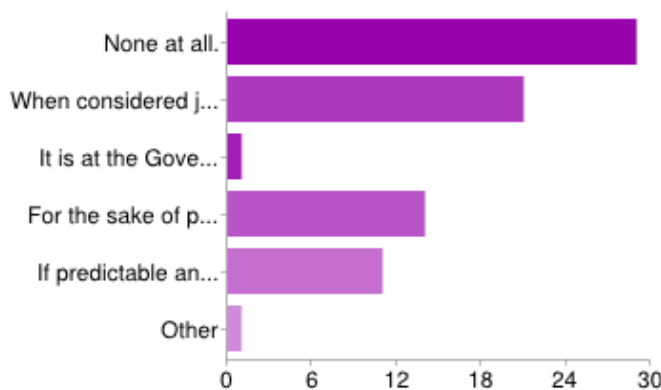




Do you think that there should be any restrictions on the internet?

47% think that the internet should not be restricted at all while 34% think restrictions in order to protect the rights and freedom of others in a democratic society are justified (as in agreement with the white paper). A further 23% think that such restrictions are justifiable for the sake of privacy while 18% believe that restrictions can be justified if they are predictable, transparent, legitimate, necessary, proportional and impartial.

A respondent highlighted the justification of internet restriction against criminal activity, such as child pornography.



None at all.	29	47%
When considered justified and necessary in a democratic society or necessary to protect the rights and freedom of others.	21	34%
It is at the Government's discretion.	1	2%
For the sake of privacy.	14	23%
If predictable and transparent, legitimate, necessary and proportional, and impartial.	11	18%
Other	1	2%

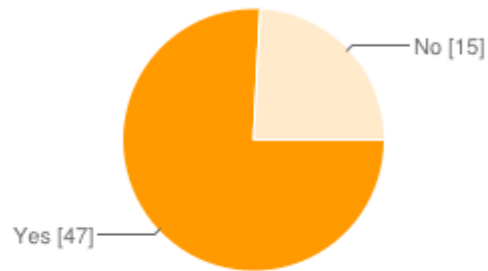
People may select more than one checkbox, so percentages may add up to more than 100%.





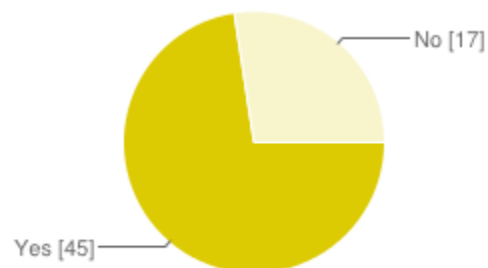
Do you think the State should undertake to refrain from introducing laws that unnecessarily impinge upon internet access?

76% of respondents think the state should refrain from introducing laws that unnecessarily impinge upon internet access.



Do you think that the proposed rights should be enforceable in a Court of Law?

73% think that the proposed rights should be enforceable in a Court of Law, which contradicts what is proposed by the White Paper, where the rights proposed are not going to be enforceable in a Court of Law.





How do you feel about freedom of expression in Malta? What is your opinion of this paper?

Here, respondents were given the option to express themselves freely on their opinion of the white paper. From these results, 13 respondents specifically mentioned the White Paper, and viewed it as being generally a useful and positive initiative. The answers were as follows:

- “The paper seems to be rather complete and justified.”
- "The paper, as you summarised it, seems an adequate formulation of rights that follow from the fundamental right to freedom of expression."
- “The paper may be seen as a step forward, however I believe it should be seen as the first of many steps in the area of digital rights.”
- “I fully support the introduction of new internet rights.”
- “In my opinion this paper should be useful.”
- “If this paper doesn't fall on deaf ears I believe it can be of great benefit for the enactment of new legislation.”
- “Over recent years expressions of personal views and opinions have revolved largely around the non-technological media i.e. newspapers and magazine articles. I do think that this paper will encourage more individuals to express themselves in a more diverse way while safeguarding their right to privacy and anonymity, an aspect which is close to vital in such a small nation.”
- “Work still needs to be done about freedom of expression in Malta, both offline and online. I feel that this paper is a start to outlining this freedom, as in today's 'free' society, one's freedom should be allowed to the point where it would start to impose upon another person's freedom, but if it does not impose upon others, then there should be no limitations to that freedom”





- “I am very much in agreement with the paper”
- “I am very pleased and surprised with this paper since it is a total change from how local governments have been dealing with freedom of expression so far. I believe that freedom of expression can be lacking in Malta, especially due to the still powerful censure laws still in practice. This paper, unless it is not another political move for sympathy votes from internet users, is surely a way forward towards better legislation on freedom of expression and human rights”
- “I feel this paper strengthens an already strong area and reflects Malta’s transition into a 21st century first world country in which IT holds a prominent position”
- “Good freedom of expression. Useful paper”
- “The idea of Freedom of expression has improved, however although I believe in legalizing online activity I do not think we should go so far as to monitor everything downloaded/said online. What is done online is also private in a way. Unless uploaded on a public website which can be accessed by all, one's activity online is one's business. The paper is structured well.”

However, a further ten respondents held that freedom of expression is lacking in Malta without making reference to the White Paper. The responses were as follows:

- “Freedom of expression leaves a lot to be desired.”
- “Freedom of expression is one of the most fundamental rights and I don't think it's respected enough in Malta.”
- “I think that Malta still has a lot to work on; given that we are limited to how much 'freedom of expression' we actually have!”





- “Censorship reigns supreme. The internet should not be restricted in ANY WAY.”
- “I don’t feel that I know the legislation enough to comment, however judging from current affairs I don’t think we have freedom of expression.”
- “I feel freedom of expression is very limited and the understanding of the term tends to be discriminatory depending on who exercises and who is subject to the freedom of expression being exercised.”
- “I think that freedom of expression in Malta has a long way to go.”
- “Freedom of expression in theory is ok however there have been too many cases involving people expressing their opinion and then finding themselves in a court case.”
- “In Malta unfortunately one cannot express his/her own opinion without being judged by others, and if this happens to offend anyone life can become very difficult, since some people fail to realise that this is only one person's opinion.”
- “It has to improve a lot.”

One respondent rightfully opined that:

“The paper introduces nothing that already did not exist on a de facto level. The provisions to be introduced will lack enforceability in the courts.”



Ten respondents had positive opinions about freedom of expression in Malta, but did not make reference to the White Paper. The responses are as follows:



- “We live in a fervently pluralist society. Our democratic republic ensures that the individual's freedom of expression is safeguarded; the media on the other hand promotes it.”
- “Freedom of Expression is strong at the moment, and measures have to be undertaken to preserve it.”
- “Freedom of expression in Malta is quite good, except when it comes to certain sensitive subjects like religion, but this is probably a social phenomenon.”
- “Freedom of expression in Malta has improved a lot throughout the years. Although there is room for improvement.”
- “I believe that there is considerable freedom of expression which allows people to voice their opinions”...“There are many moderate individuals and, save for the few heated discussions which arise by closed-minded individuals on closely-knit social networks or local media, there is more than enough freedom provided by the democratic foundations on which our country's government thrives.”
- “I feel that in Malta freedom of expression is well tolerated. Everyone can say whatever he wants, whenever he wants to say without any serious consequences unless what he says is of a threat to anyone else. Freedom of expression in my opinion should always be allowed up to a point however where it does not cause any harm to others or threaten any other person.”
- “There is adequate freedom of expression. I think restrictions lie within views of public perception rather than of a legislative nature.”
- “Malta is much better off than most countries when it comes to Freedom of Expression, especially now that Censorship is going to be abolished. One must always distinguish between freedom of expression and criminal acts disguised as acts of expression.”





- “Freedom of expression is in a good state in our islands, bar last year's censorship problems.”
- “While freedom of expression is not entirely liberal, it is sufficient.”

Three respondents held that the legislation itself could be a threat to freedom of expression and the Internet should be completely unregulated. The responses were as follows:

- “I think freedom of expression is OK in this country, but this legislation is seriously putting it at risk.”
- “The Internet is a free-flowing, constantly evolving highway of information. Everyone should have a right to an Internet connection and to free speech, especially in a democratic country such as Malta. Legislation would only impinge upon these rights, and so Government and all other bodies involved should refrain from tampering with the Internet.”
- “The Internet is a virtual environment and all regulation should be non-existent or at least, based on etiquette rather than legally enforced in the real world.”

One respondent held that:

- “It is a hurried, knee-jerk reaction to fill a void in our law”.



Concluding remarks

The general opinion of our respondents on freedom of expression in Malta is mixed. However, the positive feedback on the White Paper in question



outweighs the negative. One major factor that must be taken into consideration is the non-enforceability of the rights which the White Paper seeks to create.

