GLOBAL INFORMATION SOCIETY WATCH 2009

Focus on access to online information and knowledge – advancing human rights and democracy

Association for Progressive Communications (APC)
and Humanist Institute for Cooperation with Developing Countries (Hivos)

Global Information Society Watch 2009

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Dedicated to A.K. Mahan - an activist who valued intellectual rigour and concrete outcomes.

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Preface

Freedom of expression and the free flow of information and knowledge are essential to democratic societies. Therefore the focus of this year's Global Information Society Watch (GISWatch) *report is "access to online information and knowledge – advancing human rights and democracy".*

GISWatch *aims to be a leading platform for civil society perspectives on the state of the information society. Through encouraging individuals and organisations to contribute, it also aims to strengthen and support networking platforms, and build capacity in research, analysis and writing.*

The rationale for this annual process of stocktaking – resulting in a print and online report – is that it helps to give focus and context to the policy development process, and to civil society networking and advocacy at the local, regional and global levels.

GISWatch *wants to help overcome disparities in access to ICTs while also advocating for human rights, promoting education and public access to information, women's empowerment and economic prosperity. This can only be accomplished – according to the Tunis Commitment – through the involvement, cooperation and partnership of governments, the private sector, civil society and international organisations.*

GISWatch 2009 *is dedicated to Amy K. Mahan. Amy was part of* GISWatch *since its conception and, as a special contributor, wrote the section called "Measuring progress" for* GISWatch 2007 *and* GISWatch 2008*. If not for her untimely death on 5 March 2009, she would have undoubtedly been part of* GISWatch 2009*. Amy touched all who worked with her, leaving a legacy of activist work that aspires to combine intellectual rigour and concrete outcomes that make a difference in the lives of people who lack access to resources and power.*

We are pleased to present to you the third edition of the report. We truly believe this critical contribution to building a people-centred information society will eventually have its impact on policy development processes across the world. ■

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Introduction: Access to online information and knowledge – advancing human rights and democracy

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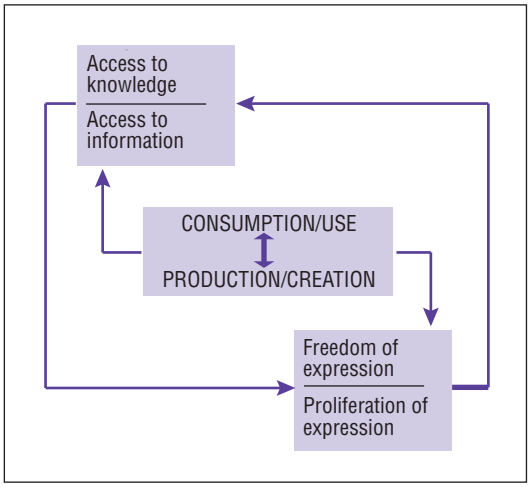
Information and knowledge are crucial factors in human development. We are reminded of this constantly, from the "knowledge economy" we live in, to the emotional and financial power that information and communications technologies (ICTs) have over our lives. In the words of philosopher Francis Bacon, "*Scientia potentia est*" – knowledge itself is power. Present-day movements for access to knowledge and the right to information have their origins in this simple and arguably ancient idea. Despite a rich history and wide intellectual acceptance, the right to know is not universally granted, and the right to know on the internet is a particularly bitter struggle in many parts of the world.[1]

Information, knowledge and access are terms with a multiplicity of meaning. Even as they constitute an ambitious goal that disparate global actors work towards, it is worth considering how these terms are construed in relation to each other.[2]

"Information" in this context usually refers to government and institutionally held records. Legislation that mandates greater transparency is critical. The earliest example of this kind of legislation was implemented in Sweden as far back as the late 18th century, while countries such as South Africa and India have had theirs enacted as recently as 2000 and 2005 respectively. Freedom of information and the resulting power to make informed decisions are bedrocks of liberal democracy, essential tools for active citizen participation – and the foundation of dominant ideas of the better life, such as that of an open society.

"Knowledge" in its most instrumental sense usually refers to the elements of learning; to scholarly and artistic work and its tools. The access to knowledge movement,[3] for instance, works on copyright law reform and the promulgation of open access. Access to knowledge in its present incarnation is a relatively new frame of reference compared to the right to information, which has been demanded for a longer period of time. But it is worth bearing in mind that the underlying theme has always existed and even been expressed, most notably in the hope and anxiety surrounding every disruptive technological shift, from the printing press to the internet.

The most frequently misunderstood term in this troika is, perhaps, "access". The common interpretation of the term is its strict dictionary meaning, which is to use, to consume, to be allowed entry into or contact with. In relation to information and knowledge, however, and especially since the advent of the internet, access is just as much about production as it is about consumption. Knowledge is not something that Northern countries produce and Southern countries consume; it is a vast and porous domain that consists of formal and as yet unrecognised realms, all of which are growing and evolving. To read is a necessary precondition to being able to write; access, by analogy, implies entry not just into the world of knowledge consumption but also knowledge *creation*.



One manifestation of this fusion is Wikipedia, the encyclopaedia that is collaboratively produced online. Granted, many more people read Wikipedia than edit it. Nevertheless, for a growing global volunteer base, it is simultaneously a place to read and consume as well as edit and produce. In a similar vein, it is access to information that propels people around the world to intervene in public processes and change laws; without the information, there could be no change.

With regards to government information, it is important that not only are there mechanisms put in place that facilitate

1 For one understanding of the right to know, see Stiglitz, J. (2009) On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life, Oxford Amnesty Lecture, Oxford, UK, 27 January. siteresources.worldbank.org/NEWS/Resources/oxford-amnesty.pdf

For an understanding of how countries restrict access to the full potential of the internet, see Reporters Without Borders' list of "Internet Enemies": www.rsf.org/List-of-the-13-Internet-enemies.html

2 Naturally, all three words offer a wide scope of understanding. The descriptions that follow are only an attempt at clarifying a functional definition, not at fixing definitive meaning.

3 The movement for access to knowledge (sometimes abbreviated as A2K) refers to a loose grouping of individuals and institutions who work locally as well as on a potential international treaty on access to knowledge; an early draft is available at: www.cptech.org/a2k/a2k_treaty_may9.pdf

access to it, but also that these mechanisms work. The history of events leading up to the enactment of the Right to Information Act in India provides valuable lessons as to what the scope of government information should be, in how punitive measures can be implemented to guarantee that the process works, and, above all, as to how marginalised citizens can gain the space and the means to use the law to their advantage.[4] To a large extent, the rich genealogy of the right to information has naturalised it as an obvious, just and urgent issue. Furthermore, it is an umbrella concern, covering as much as specific local contexts demand.

In contrast, the movement for access to knowledge works primarily on one crucial barrier, namely, intellectual property. For some, this focus is problematic. If, for instance, knowledge is imparted by education, then isn't access just as much hampered by the lack of skilled teachers as restrictive intellectual property laws? This is certainly true, and yet, there are at least three good reasons why this narrow focus makes strategic sense. One: education is a long-standing priority of societies and governments the world over, and there is an inestimably large group of individuals and institutions who work in the area. However, relatively few people are aware of the impact of intellectual property on access to educational material, and even fewer research it. Two: the advent of the internet has created hitherto unprecedented opportunities in the knowledge domain, opportunities that could turn into unrealised potential if the application of intellectual property online is decided by copyright industries alone. Three: knowledge is more than just formal education, and the internet provides limitless ways in which it can be redefined and multiplied. The overzealous application of intellectual property significantly limits the manner in which knowledge operates online.

A chain of events that unfolded in France over the last two years dramatically illustrates the level of threat faced by those seeking information and knowledge online. In 2008, at the insistence of the domestic recording industry, the French government began considering the enactment of a law designed to thwart online piracy. As industry forces pressed on and Nicholas Sarkozy added his support, the effort culminated in a bill that would be popularly known as HADOPI[5] after the enforcement agency it intended to create. HADOPI employed the three strikes principle. If an internet user was found to have committed an act of piracy, the copyright holder in question was entitled to warn the user through HADOPI. No details as to the exact nature of the copyright violation were required to be provided other than that a violation had occurred. After three such warnings, internet service providers (ISPs) in France would be mandated under HADOPI to bar the user from being allowed access to the internet for a period of up to one year.

The prospect of HADOPI had people up in arms. A broad coalition of internet users, consumers and their allies quickly assembled in France and elsewhere in the world. To users in France, it represented an immediate threat; to users elsewhere in the world, it represented the extent to which their online freedoms could be restricted in the future. Apart from the draconian nature of the punishment meted out by this bill, users were outraged that every kind of misdemeanour – whether deliberate, inadvertent, supposed or even mistaken – would be treated the same, with the benefit of doubt given to the copyright holder.[6]

Throughout 2009, the bill faced several setbacks, including a complete rejection by the French National Assembly. But its backers pushed on, eventually winning approval after modifications; until 10 June 2009, when the Constitutional Council of France struck down HADOPI on the grounds that it was inconsistent with the country's Constitution – for going against freedom of expression and the presumption of innocence.

To involve infrastructure providers (ISPs) in enforcing private copyright disputes and suspend user privileges in the wake of alleged copyright violations, as HADOPI wished to do, was admittedly an extreme step. But there are other, less visibly harmful ways by which access to online information and knowledge is threatened and thwarted, and the problem is that some of these ways appear innocuous – though in fact any investigation of them would provide cause for serious alarm. Of the many concerns that exist, at least a few deserve our immediate attention: (a) Digital Rights Management (DRM) and Technological Protection Measures (TPMs); (b) copyright law provisions that affect online education, whether by distance or in a physical classroom setting, or in a library; (c) the lack of provisions that would meaningfully allow disabled learners and users (particularly the visually disabled) to access information and knowledge online; and (d) the extent to which users can usefully integrate online copyrighted material into their lives in a manner that would be considered fair.

4 For an understanding of the concerns of a key Indian social movement, the Mazdoor Kisan Shakti Sangathan (MKSS), in the years leading up to the enactment of India's Right to Information Act, see Sampat, P. and Dey, N. (2005) Bare Acts and Collective Explorations, in Narula, M. et al. (eds.) *Sarai Reader 05: Bare Acts*, Sarai, New Delhi. www.sarai.net/publications/readers/05-bare-acts/02_preeti.pdf

5 HADOPI: Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet (High Authority for the Diffusion of Works and the Protection of Rights on the Internet).

6 For one account of the story of HADOPI, see O'Brien, D. (2008) The Struggles of France's Three Strikes Law, Electronic Frontier Foundation. www.eff.org/deeplinks/2008/05/struggles-frances-three-strikes-law

A primary anxiety around copyrighted material in the online environment has been, on the part of copyright industries, how to regulate the flow of exchange. Previous to the advent of mass use of the internet, a song or a book was limited in its capacity for exchange by the physical, tangible form it came in. With the proliferation of digital material and peer-to-peer systems, however, the possibility for exchange is virtually boundless, and this makes content industries nervous – for it signals the end of an already outdated business model and the beginning of another. In return, industry retaliation has consisted of a strategy of lockdown. The tools of this strategy are DRM and TPMs – software that regulates what one can do with a digital file, or rather cannot do – and the vehicles by which these are legislated and proliferated around the world are a set of World Intellectual Property Organization (WIPO) agreements collectively known as the WIPO Internet Treaties.[7]

DRM is oblivious of the specific circumstances of the user, and is therefore unaware of both the user's individual needs as well as her rights – for example, the nuances of copyright law in the country of the user's residence. It doesn't matter therefore that a user may be blind, or work for a public library, and that national copyright law in the country might specifically extend provisions to visually disabled people and libraries (for instance, by enabling permission-free format changes and reproductions for research). DRM will still operate on a one-size-fits-all model that supersedes national law. In some countries, fair dealing – or fair use – might allow for ways of personal consumption of copyrighted material that the DRM withdraws, resulting in a situation where the whims of a multinational industry render national law meaningless.

DRM is software that can be hacked – up to an extent. In this way, it is still possible for users to legitimately exercise their rights with and upon DRM-protected material. Yet, following the model of the Digital Millennium Copyright Act (DMCA) – the United States' (US) interpretation of the WIPO Internet Treaties – many countries have legislated that such circumvention constitutes a copyright violation. In some cases this renders sections of their own copyright law redundant, and in effect, casts an unnecessarily heavy shroud over certain copyrighted material merely because it happens to be online. More worryingly, the WIPO Internet Treaties themselves do not ask of countries that anti-circumvention provisions apply even when a user is exercising a legitimate right such as fair use, and yet countries around the world have allowed their laws to imply so[8] because of bilateral persuasion, often from the US or the European Union, without a clear understanding of how this can stunt the potential of the internet within their borders.

It must be noted that copyright law in general – in most countries around the world[9] – generally does not do enough for access to knowledge. To the extent that the majority of the world learns not online but from the printed and spoken word, copyright law in its general application matters tremendously. When considering the potentially limiting aspects of copyright regulation online, one must keep in mind that many countries around the world do not have the kind of provisions that could be limited by new regulation of online material. In fact, most countries do not expressly facilitate distance learning, nor make all the provisions they can for access for the visually disabled, or freedom of information, or even education in general.[10] In part, this is because ever since the globalisation of intellectual property rights, including as recently as the founding of the World Trade Organization (WTO) in 1996 and the instituting of its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),[11] there has been a distinct shift away from the minimum copyright protection demanded by this trade rule to a maximally protectionist approach.

In the majority of national circumstances today, copyright law is what is referred to as TRIPS-plus, which is to say, excessively protective of copyright-holders' interests. The excess is overwhelmingly in favour of copyright industries and at the expense of users of copyrighted material. In such a situation, when copyright as it applies offline is already imbalanced, it is even harder to demand a balanced interpretation of copyright in the online space.

Finally, it hardly needs repeating that without a strong sovereign commitment to freedom of speech and information – in effect, a guarantee against censorship – any gains made in access rights stand to be nullified. And this commitment, worryingly, is by no means universally evident. ■

7 The WIPO Internet Treaties consist of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

8 For instance, in a recent eight-country study in Africa, it was found that Morocco, Kenya and Egypt all have anti-circumvention provisions enacted into law. See the ACA2K Briefing Paper for the WIPO Development Agenda meetings, April 2009: www.aca2k.org/attachments/180_ACA2K%20Briefing%20Paper1_WIPODevtAgenda-042009.pdf

9 Among several country studies, regional and international reports, one recent survey that confirms this finding is the Consumers International IP Watch List report for 2009, in which it is reported that in relation to access to knowledge, "no countries adequately took account of consumers' interests." See: a2knetwork.org/sites/default/files/ip-watchlist09.pdf

10 Ibid.

11 TRIPS is currently the overarching international trade rule that governs the global sovereign application of intellectual property; for the full text of the TRIPS agreement, see: www.wto.org/english/tratop_e/trips_e/trips_e.htm

Thematic reports

Intellectual property rights

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Introduction

The issues of access to information and intellectual property (IP) rights are fundamentally intertwined. A properly calibrated IP system is one of several factors that can facilitate access to information by protecting incentives to create and disseminate content while simultaneously safeguarding the human rights of freedom of expression, communication and cultural participation. Equilibrium in IP law, policy and practice is affected by a number of key issues and institutions.

This report examines two emerging trends in the global governance of IP that most seriously impact on access to information. These are the changing role of intermediaries in online copyright enforcement and the prospective harmonisation of minimum limitations and exceptions to copyright. Such developments have arguably supplanted digital rights management (DRM) systems as the most important current IP issues affecting access to information in 2009.

Intermediaries' changing role in online copyright enforcement

Around the end of the 20th century many countries were introducing legal reforms to clarify the obligations of intermediaries concerning copyright-infringing content on the internet. The most common approach was to immunise intermediaries that act passively in hosting or transmitting online materials; only if they become aware of alleged infringements, usually through notification from copyright holders, do active obligations ensue. Those obligations include most notably a requirement to remove or disable access to the allegedly infringing content. The United States' (US) Digital Millennium Copyright Act is a paradigmatic example of a "passive-reactive" immunity scheme for online service providers, though similar principles are embedded in many national laws in developed and developing countries around the globe.

Recent developments demonstrate a worldwide trend toward a more "active-preventative" role for internet and mobile communications intermediaries in copyright enforcement.[1] By far the most publicly discussed example is the French "three-strikes" law establishing HADOPI, a high-level authority for the diffusion and protection of works on the internet. A new government entity in France will have the power to order internet service providers to implement a graduated response to allegations of copyright infringement made against their subscribers, beginning with stern warnings but escalating to termination of the accused persons' internet access.

This development has serious, disturbing implications for access to information. Indeed, France's *Conseil constitutionnel* censored the new law and held – based on the 1769 Declaration of the Rights of Man and of the Citizen – that only judges may order internet access denied to alleged infringers following due process of law.

Despite the recognition of access to the internet as a fundamental human right that cannot be completely disregarded in IP enforcement efforts, around the world we are witnessing increased pressure on internet intermediaries to stop their own subscribers and other internet users from infringing copyright. Legislative reforms similar to France's were enacted in South Korea, and very nearly passed in New Zealand as well.

And pressure is not only coming through newly created laws or administrative agencies empowered to potentially cut off alleged infringers' internet access. It is also reflected in judicial decisions from various jurisdictions and even in privately negotiated agreements between copyright holders and online intermediaries. In countries like the US, the United Kingdom and Ireland service providers have voluntarily agreed to more aggressively deter allegedly copyright-infringing activities.

Furthermore, it is not only traditional internet service providers that are playing a greater role in online copyright enforcement. In exchange for immunity from copyright liability for their users' activities, new content distributors like YouTube and DailyMotion, and social networking sites such as Facebook and MySpace, are settling for "best practices" that often require automated content fingerprinting and filtering. Those technologies may contribute to solving some copyright enforcement challenges, but are ill suited to address the nuances of flexibilities including fair use/dealing, or to protect access to the public domain.

Harmonising minimum limitations and exceptions

In the face of threats to freedom of expression and communication that would undermine the balance between IP protection and access to information, efforts are underway to harmonise minimum limitations and exceptions to copyright around the world. As international IP law stands now, only *maximum* limitations and exceptions are specified. This is done through a three-step test, which requires provisions to be limited to certain special cases that do not conflict with copyright holders' normal exploitation of works or unreasonably prejudice their legitimate expectations.

Harmonising *minimum* limitations and exceptions instead of just minimum standards of protection would be a remarkable reform to international IP law, policy and practice.

1 See de Beer, J. and Clemmer, C.D. (2009) Global Trends in Online Copyright Enforcement: The Role of Internet Intermediaries, *Jurimetrics* 49 (4) (forthcoming), which explains in detail all of the trends described in this section.

Rights-based justifications for standardising protections can be just as compelling when it comes to protecting the right of access to information. And proponents of minimum protection standards have for a long time pointed to the benefits of standardisation, which ostensibly include greater predictability and more cross-border trade. If these justifications hold true for minimum standards of protection, they equally apply to establishing minimum limitations and exceptions. Without a harmonised baseline for limitations and exceptions, copyright holders might not know whether and how their content may be used without permission or payment of royalties. Likewise, copyright users cannot predict the scope of rights and obligations from one territory to another.

The current unstable situation adversely impacts individual consumers; students, teachers, libraries, archives and educational institutions; the sensory and other disabled persons; and of course innovative entrepreneurs and commercial entities experimenting with new kinds of business models. Imbalance compounded by uncertainty jeopardises the efficiency and effectiveness of the entire global system of copyright protection, to the detriment of all stakeholders.

Consequently, support has been growing for some kind of worldwide consensus on the issue of minimum limitations and exceptions to copyright protection. Serious momentum was generated following a report by two respected academics calling for a "soft law" approach to this problem, perhaps as a joint initiative between the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO).[2] Others are advocating in favour of formal treaties, in the specific context of education, for example, as a means of implementing WIPO's Development Agenda.[3] And it is now becoming clear that empirical evidence based on rigorous, large-scale research supports the idea of a more flexible system of copyright that takes into account the realities of everyday life in countries across Africa and, presumably, elsewhere in the world.[4]

At a 2008 meeting of WIPO's copyright committee, Chile, joined by Brazil, Nicaragua and Uruguay, presented a proposal for further study and eventual reform of international and national laws regarding limitations and exceptions. That proposal struggled to gain acceptance from some segments of the developed world, such as the US and European Union. But when the Standing Committee on Copyrights and Related Rights met again in May 2009, the issue of limitations and exceptions was still on the table.

The most recent reform proposal was more specific than previous ideas had been. In particular, the World Blind Union was working closely with several civil society organisations and delegates of WIPO member states to prepare draft text for a treaty on limitations and exceptions.[5] Though this proposal was also not received enthusiastically by all member states, WIPO seems to be treating the issue seriously. A media release following the committee meeting explained that work on limitations and exceptions for the reading-impaired, as well as educational exemptions more broadly, would be expedited. Details will be dealt with during a November 2009 WIPO meeting; the lead up to that meeting will undoubtedly be a pivotal period for copyright stakeholders worldwide.

Implications and outcomes

Not long ago, concerns over the use of DRM systems and related prohibitions against picking digital locks preoccupied the minds of many international copyright law and policy observers. Some criticisms of DRM in general were misdirected; DRM systems are simply tools that might enable *or* restrict access to information. The Creative Commons, for example, is an access-enabling method of managing digital rights through privacy-respecting rights management information systems and consumer-friendly end-user licensing agreements. The problematic part of DRM strategies is the use of technological protection measures to unilaterally recalibrate copyright laws' delicate balance between private and public rights. Fortunately, however, market forces seem to be moving away from technological protection measures as a tool to lock down content. These issues are still simmering, but their priority has been downgraded as more pressing matters have emerged in the short term.

As this report argues, there are two matters deserving the most urgent attention at the moment. One is the trend toward active-preventative copyright enforcement efforts by online intermediaries to either filter out allegedly infringing content from their networks or, worse, block alleged infringers from accessing information on the internet altogether. The other is a path-breaking development at WIPO, where for the first time it seems plausible that some agreement on copyright limitations and exceptions will be seriously discussed as a strategy to facilitate access to information. ■

2 Hugenholtz, B. and Okediji, R. (2008) *Conceiving an International Instrument on Limitations and Exceptions to Copyright.* www.ivir.nl/publicaties/hugenholtz/finalreport2008.pdf

3 Rens, A. (2009) Implementing WIPO's Development Agenda: Treaty Provisions on Minimum Exceptions and Limitations for Education, in de Beer, J. (ed.) *Implementing the World Intellectual Property Organization's Development Agenda*, WLUP-CIGI-IDRC. www.idrc.ca/en/ev-139311-201-1-DO_TOPIC.html

4 African Copyright and Access to Knowledge (2009) *Copyright & A2K in Africa: Research Findings on Limitations & Exceptions from an Eight-Country Study.* www.aca2k.org/attachments/180_ACA2K%20Briefing%20Paper%202%20-%20May%202009.pdf

5 Proposal by Brazil, Ecuador and Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union. www.wipo.int/meetings/en/doc_details.jsp?doc_id=122732

Information and democracy: Accessing the law

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Not so long ago, to gain access to information about the law, one had to go to a specialised law library, to a courthouse, or to a legislature. In many parts of Europe and the United States (US), today, the primary law is published online. If you want to know about legislation recently passed in the US Congress, the answer is a Google search away. The same is true of a new opinion handed down from the Supreme Court. Publication tends to be prompt; access is nearly instantaneous and free.[1] And efforts such as the World Digital Library[2] have sought to pull together key primary legal materials from jurisdictions around the world.[3] But this general state of affairs applies only to a very few places around the world. We remain a long way from achieving a vision of universal, free, easy access to basic legal materials on a global basis.

In most countries, primary legal information is broadly accessible in one format or another, but it is rarely made accessible online in a stable and reliable format. Typically a citizen cannot open a web browser, search for a topic, statute, or judicial opinion, and access the current state of the law. Even in places where the law is published online, it is often too hard to find or navigate for average users and is provided out of context. In China, the law is published in a variety of formats: it can be searched in online databases, but they are proprietary for which libraries and businesses have to pay.[4] From the perspective of an average citizen, the law is hard enough to understand when it is accessible – and in an era of near-ubiquitous information, we should not be introducing additional roadblocks to the use of legal information for democratic purposes by failing to render it accessible to non-specialists.

The importance of ordinary citizens being able to access the law that governs their behaviour is obvious. Practicality and fairness are reasons for prioritising legal information as against other forms of information. In many jurisdictions, including the US, ignorance of the law is no excuse for wrongdoing.

The theoretical reasons for making the law broadly accessible online are even more important. In democratic regimes, we believe that there is a direct connection between having access to legal information and to the full and free exercise of rights such as free expression, freedom of assembly, and freedom of association. We consider robust debate about the law to be essential to the proper functioning of the rule of law. In common law jurisdictions, we embrace the adversary system as a means of refining what the law in fact means. We believe also that the rule of law is necessary bedrock in a system of governance in which human rights and democracies are to flourish. For each of these reasons, it is essential that citizens can access the primary law that governs their behaviour.

Our first step should be to envision what a global legal information ecosystem should look like over the next decade. We need to describe a stable, open ecosystem that allows for widespread access to legal information at a low cost. In designing this ecosystem, we ought to consider three essential attributes: the process of creation of legal materials; provision of access; and reliable preservation.

Consider the process by which legal information comes into being. In most cases, a legislature drafts, considers and passes a new law relating to any given topic. This rule takes its form in a digital format; it is born digital, as a document on a computer somewhere. Most of the time, the law is also published in hard copy format by a state's official printer. The same is true of many other forms of the basic law of a jurisdiction or of multiple jurisdictions: the decisions of courts, the treaties into which they enter, the directives that they need to implement.

One key switch that we ought to make is to commit to making the official version of primary law anywhere in the world to be the digital version, published online, and then mirrored in various secondary locations. The law should be made available directly by the body that created it in this stable, open version – on which policy makers need to agree, if possible at a global level. Those of us in law schools will continue to pay for access to these materials through proprietary systems which serve professionals and cater for their needs (such as Lexis and Westlaw). But the public would have direct access through the internet to these free and open repositories (which require no payment or special expertise to navigate).

The goal should be that basic legal materials are provided to everyone, regardless of class, gender, or other potential dividing lines, online, for free and by the state. Those in the private sector can then build applications (such as search engines, social networks, and so forth) to sort and to access it. We should allow citizens to create the data about the data – metadata – that will help others to find particular things within this online commons when they search for the

1 Even in the United States, though, the online version is not considered "official". It can take years, through the printing process, for the official version of US law to be published in its formal, hard copy format.

2 www.worlddigitallibrary.org

3 For a discussion of this effort in the context of the changing world of legal information, see Germain, C. (2007) Legal Information Management in a Global and Digital Age: Revolution and Tradition, *International Journal of Legal Information* 35 (1), p. 134-163.

4 www.chinalaw.gov.cn

information the next time through any search engine. We can together help to build links between laws, ideas, and works of scholarship in ways that we never have before (think of a system by which we can work together to link a statute, the case law, the article that critiques it, the treatise that comments on it, the foreign law that copies it, the treaties that drive it). We discuss it in public, in the "talk" or "discuss" modes we see in Wikipedia. We can show updates and share "playlists" together as laws change, as case law builds out, and scholarship develops.

In addition to making the data freely available online, the presumption should be that the data are publicly available, subject to no intellectual property restrictions, and maintained by each state that publishes them. In some cases the intellectual property rules relating to primary law are clear. In the US, for instance, the federal law itself is by statute not subject to copyright.[5] Other systems are not so clear, and should be, if we are to realise this vision of broadly accessible primary legal material.[6]

Several stumbling blocks stand between our current place and the accomplishment of this vision for universal access to legal information. The first is the opportunity cost and literal financial costs: for many states, the up-front cost of setting up this publishing system for legal material – even in a simple, open format – may seem prohibitive. The process, however, of online publication of new laws in a standardised format should be no greater, and in fact may be less, than the current mode of publishing legal materials today in print formats, for those states that do so. Over the long term, this publishing method will be cheaper, not more expensive, than the print method for most states.

A more fundamental problem is that the leaders of some states may not wish for their citizens to have greater access to legal information. The rule of law is not universal around the world, nor is the norm of publishing all relevant rules and decisions handed down by courts. Certain states take steps to obscure, rather than to render transparent, political and other information online.[7] The issue relates to power relations: some states, such as Iran and Uzbekistan, fear the power that a more open information ecosystem may afford citizens as against the state. These states seem to fear the freedom of expression and collective action that networked technologies make cheap and easy. The notion that all citizens – of any race, gender, class, or relative power within the system – might have equal access online to the set of rules that govern their activities (not to mention the ability to comment on those rules publicly) may seem too radical to be embraced. Other states prefer systems of law that rely upon custom and norms which are not often translated into written form.

There are technical stumbling blocks to clear as well. As suggested, the data should also be made accessible in online formats that are standardised and which allow for others not just to view them but also to build upon them. A common extensible markup language (XML) schema, for instance, would allow for presentation and searching of basic legal materials on a wide range of devices, from personal computers to mobile devices.[8] The standards we adopt should be open standards.

This vision for what information citizens should be able to access, such as the primary law in all jurisdictions, should be established in clear and normative terms. Information technologies today make possible a much more open system of supporting the creation, access and preservation of legal information worldwide than we are realising. The benefits for human rights and democracy of realising this vision would repay the upfront investment many times over. ■

5 17 USC Section 105.

6 Consider the fight in Oregon state last year in the US, described by the Citizen Media Law Project at: www.citmedialaw.org/blog/2008/update-oregon-statutes-copyright-spat

7 See www.opennet.net for studies of internet filtering, whereby more than three dozen states censor the information that citizens can come to see on the internet.

8 Examples of this sort of schema can be found at: www.it.ojp.gov/default.aspx?area=implementationAssistance&page=1017

Information and livelihoods

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Introduction

We live in a divided world where far too many people live in abject poverty. To help these people get out of poverty is good for the world as a whole, for great disparities in wealth will lead to violence and terrorism and no one can live in peace and harmony. None of the Millennium Development Goals (MDGs) can be achieved if we fail to address the problem of poverty and ensure livelihood security for the majority of the poor.

A vast majority of the poor live in the rural areas of developing countries and are dependent on agriculture or fishing for a living. They need information directly relevant to their livelihoods. Agriculture-related information is often one of the most immediate needs, since small-scale agriculture is very important to household incomes in rural areas. Information on current crop prices, fertiliser and pesticide costs, and the availability of improved seeds and low-cost improvements in farm technology can help farmers buy farm inputs and equipment of good quality at the right price, or help them successfully obtain credit.[1] Information on government entitlements and training programmes, opportunities for developing new products, and markets for environmental goods[2] is also useful. Without such information, poor families find it hard to take advantage of new opportunities for generating income and increasing their assets.

Many asset-less poor migrate to cities far and near and are constantly on the lookout for opportunities to work in construction sites, ports, factories and wherever they can be employed. They are often exploited and work in conditions far from satisfactory. They will be happy to have information on where work is available and wages are good.

This report looks at a few examples of how access to information helps improve the lives of people and how new technologies are being used in getting information to those who need it.

Small catch but big impact

About twelve years ago scientists at the M S Swaminathan Research Foundation (MSSRF) started working with fishing communities in coastal villages of southern India. The major thrust of the project, funded by the International Development Research Centre (IDRC), was to look at how emerging information and communications technologies (ICTs) could be used to make a difference to these people's lives. But the project managers took a holistic perspective and put people and their needs before technology: they went beyond merely providing online access to information through their internet-enabled Village Knowledge Centres (VKCs). They were concerned about fisherpeople losing their catches, nets, boats and even their lives on days when the sea turned rough. Lives could be saved if only one could have advance knowledge of weather conditions. After some investigation, the MSSRF researchers found that United States (US) Navy satellites were collecting weather and wave height information for the Bay of Bengal, and the Navy website released forecasts based on these data twice daily. The VKC volunteers started downloading this information and made it available to the fisherpeople in their local language through notice boards and a public address system. Ever since this service commenced not a single death in mid-sea has been reported from these villages.

The need for innovation

Suddenly, the US Navy stopped providing this information and something needed to be done. MSSRF joined hands with Qualcomm, Tata Teleservices and Astute Systems Technology,[3] and these companies came up with an innovative mobile application called Fisher Friend based on third-generation code division multiple access (3G CDMA) technology. With Fisher Friend, the VKCs provide fisherpeople with real-time information on things like fish prices in different markets, weather, wave heights, satellite scan data on the location of fish shoals, and news flashes while they are at mid-sea. Access to these, as well as other information such as relevant government schemes, has improved market transparency and the earnings of smaller fisherpeople. Qualcomm is working on incorporating global positioning system (GPS) capability in the phones, so their exact location can be tracked. This would make rescue operations much easier.

Timely access to relevant information can not only improve the standards of living of a community, but also save lives.

Real evidence, not just anecdotal

Much of the evidence of the benefits of access to information and the use of technology to facilitate access so far has been anecdotal. In a recent paper in the *Quarterly Journal of*

1 Chapman, R., Slaymaker, T. and Young, J. (2003) *Livelihoods Approaches to Information and Communication in Support of Rural Poverty Elimination and Food Security*, Overseas Development Institute, London.

2 Good examples of environmental goods are handicrafts made from locally available material (plant or mineral-based material) and organic products.

3 Qualcomm is a US-based multinational that designs and make chips for telecom equipment. Tata Teleservices is a leading mobile service provider, and Astute Systems Technology is a software company writing applications for the chips.

Economics Robert Jensen of Harvard University has quantified the benefits.[4] He showed that the adoption of mobile phones by fisherpeople and wholesalers in Kerala in southern India had led to a dramatic reduction in price dispersion (the mean coefficient of variation of price across markets over a stretch of 150 kilometres came down from 60%-70% to less than 15%); the complete elimination of waste (from 5%-8% to virtually nil); and near perfect adherence to the Law of One Price.[5] In addition, fisherpeople's profits increased by 8%, while consumer prices declined by 4% (directly driving a 20 rupee/person/month consumer surplus, the equivalent of a 2% increase in per capita GDP from this one market alone). Sardine consumption increased by 6%. The advent of mobile phones also led to a 6% increase in school enrolment and a 5% increase in the probability of using healthcare when sick. All this with no government programmes, and no new funding requirements.[6]

Several other initiatives involve mobile technology. Nokia recently launched Life Tools in India, a fee-based service, with a view to impacting on the daily lives of people, especially farmers. Life Tools offers timely online access to information that will be of great relevance to farmers, students and the lay public. Nokia has partnered with the Maharashtra State Agricultural Marketing Board (to gather commodity prices from 291 markets), Reuters Market Light, Syngenta and Skymet,[7] among others. It has plans to introduce Life Tools to other developing countries before the end of the year.

Online access to information through mobile phones and through telecentres has also helped shop owners, traders and the self-employed increase their earnings in many countries. The mobile phone is becoming the primary connectivity tool. With significant computing power, it will soon be the primary internet connection, providing information in a portable, well-connected form at a relatively low price, pushing aside the personal computer.

Conclusion

Today the "bottom" three-quarters of the world's population accounts for at least 50% of all people with internet access, says a Pew report.[8] As Turner pointed out in 2007, investment in telecom, which facilitates easy access to information, is more productive than investment in other kinds of infrastructure.[9] The impact is particularly noticeable in developing nations.

ICTs are not a technical solution on their own but are enablers in a process of local prioritisation and problem solving. This report has highlighted initiatives that use mobile technology. But mobile solutions are obviously not the only useful ones. For instance, LabourNet in Bangalore connects employers and casual labourers through an online database that is updated constantly.[10] Thanks to LabourNet, workers, especially at construction sites, get decent pay, training, insurance and safety measures at the workplace. However, the information supplied is more at the administrative level than the grassroots level.

The success lies in embedding ICTs in a holistic approach encompassing a diverse range of development initiatives. The trick is not to emphasise technology but to put people and their needs before technology. Sustainable livelihood approaches need to be people-centred, recognising the capital assets of the poor and the influence of policies and institutions on their livelihood strategies.[11]

Also, the mere ability to access information cannot take one far. What is important is what one can do with that information. Often one would need to have additional skills and capital to take advantage of the information. That is why efforts to provide improved access to information should go hand in hand with efforts to enhance skills through training programmes, and efforts to enhance access to finance through microfinance and the formation of self-help groups.

Rural livelihoods involve a wide range of strategies both within and outside the farming sector. Often farming communities need to augment their income through non-farming enterprises, and here the women and youth could play a role in enhancing household income.

It will be good to remember that a large number of ICT-enabled development pilot projects have remained just that – pilot projects that did not scale up. ■

4 Jensen, R. (2007) The digital provide: Information (technology), market performance, and welfare in the South Indian fisheries sector, *Quarterly Journal of Economics*, 122 (August), p. 879-924.

5 An economic law which states that in an efficient market, all identical goods must have only one price. In other words, variations in fish prices caused by differences in demand and supply at different locations disappeared once both buyers and sellers started using mobile phones.

6 Turner, B. (2007) Cellphones & Development — Evidence, not anecdotes. blogs.nmss.com/communications/2007/02/cellphones_deve.html

7 Syngenta is a multinational company. One of its corporate goals is to help farmers maximise the potential of their resources. Towards this end it provides technological solutions, as well as information relating to agronomy, land use, etc. Skymet provides weather-related services that allow clients to adapt to a changing environment.

8 Quitney Anderson, J. and Rainie, L. (2008) *The Future of the Internet III*, Pew Internet and American Life Project, Washington. www.future-internet.eu/fileadmin/documents/prague_documents/oc-meetings/PIP_FutureInternet3.pdf

9 Turner (2007) op. cit.

10 LabourNet matches the skills sets of people available for work with the needs of those who use their services, similar to headhunters who match the skills of executives and managers and place them in the right companies at the right levels, only LabourNet deals with the poor.

11 Chapman et al. (2003) op. cit.

References

Chapman, R., Slaymaker, T. and Young, J. (2003) *Livelihoods Approaches to Information and Communication in Support of Rural Poverty Elimination and Food Security*, Overseas Development Institute, London.

Chapman, R. (2005) ICT enabled knowledge centres and learning in the global village, in *The Third MSSRF South-South Exchange Travelling Workshop* (MSSRF/PR/05/59), M S Swaminathan Research Foundation, Chennai.

Jensen, R. (2007) The digital provide: Information (technology), market performance, and welfare in the South Indian fisheries sector, *Quarterly Journal of Economics*, 122 (August), p. 879-924.

Quitney Anderson, J. and Rainie, L. (2008) *The Future of the Internet III*, Pew Internet and American Life Project, Washington. www.future-internet.eu/fileadmin/documents/prague_documents/oc-meetings/PIP_FutureInternet3.pdf

Knowledge rights

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Overall, 2008-2009 has seen a remarkable forward momentum in the adoption of policies and interventions for access to knowledge at all levels – among international agencies, national governments and institutions in the developed and developing world.[1]

Access to medical research

Some of the most important activity around access to knowledge in the last year has been seen in the public health sector, where an awareness of the importance of open access to taxpayer-funded research and the price paid in human lives as the result of high prices for proprietary systems has driven the push towards more open approaches to health information, particularly for developing countries.

In mid-2009, the World Health Organization (WHO), after a long debate, adopted the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property[2] which aims to "secure... an enhanced and sustainable basis for needs-driven, essential health research and development relevant to diseases that disproportionately affect developing countries, proposing clear objectives and priorities for research and development." Among its provisions are the use of open-source software, open access to research publications and data, voluntary provision of access to drug leads,[3] open licensing, and voluntary patent pools.

Towards the end of 2007, the United States (US) Congress voted for the US National Institutes of Health (NIH) to adopt an open access mandate for NIH-funded research. The NIH, which has a budget of USD 29.2 billion, is the world's largest funder of non-classified research,[4] and its research grants result in 80,000 peer-reviewed articles per year. Under the new model, material is embargoed for up to twelve months, but grantees are obliged to comply with the open access mandate when publishing research results, submitting an electronic copy of the final manuscripts of their research papers into PubMed Central, a free digital archive of biomedical and life sciences journal literature.

This follows the model established in 2006 by the Wellcome Trust, the largest private biomedical research funder in the United Kingdom (UK).

Moves by national governments

In January of 2008, the European Research Council (ERC) became the first European Union (EU)-wide funding agency to adopt an open access mandate, which applies to data files as well as peer-reviewed articles. The ERC disburses about EUR 7.5 billion per year, or 15% of the EU research budget for its research programme called FP7 (2007-2013).[5] This follows an increasing willingness of EU states to support access to knowledge policies, as witnessed by a vote of the 27 EU prime ministers.

Twelve other public funding agencies in Europe and Canada also adopted open access mandates in 2008. In Canada, Ireland, Australia, France and Hong Kong, to name but a few, there were moves towards policies for access to publicly funded research. Awareness and usage of open access mandates among private funders has also increased: Autism Speaks, the MacArthur Foundation and the Moore Foundation have all adopted open access as their publishing model.

These developments show an acceptance by the major research-funding agencies that taxpayers underwrite billions of dollars of public research each year, and the widespread sharing of the results is an essential component of investment in science. Faster and wider sharing of knowledge fuels the advancement of science and, accordingly, the return of health, economic and social benefits back to the public.[6] While the twelve-month embargo applied by the NIH is less than perfect, and the no-embargo policy used by the Wellcome Trust and others would be more in the spirit of open access, the fact that essential information, like the NIH's research, is being shared at all is an important step.

Universities

The most high-profile and influential response to access to research, which created a stir in the university world and triggered copycat responses, was from Harvard's Faculty of Arts and Sciences (FAS), which adopted an open access mandate in February 2008, at a time when there were already twelve university-level open access mandates worldwide.

1 Peter Suber's annual review of open access developments in his January edition of the Open Access Newsletter was invaluable in providing information for this overview. See: www.earlham.edu/~peters/fos/newsletter/01-02-09.htm

2 apps.who.int/gb/ebwha/pdf_files/A61/A61_R21-en.pdf

3 When new drugs are being designed or discovered, drug leads refer to the chemical compounds whose chemical structures are used as a starting point for chemical modifications in order to improve potency, selectivity or pharmacokinetic parameters. Lead compounds are often found in high-throughput screenings ("hits") or are secondary metabolites from natural sources.

4 Non-classified, in this case, refers to research that can be shared, and is not embargoed.

5 The Seventh Framework Programme (FP7) bundles all research-related EU initiatives together under a common programme.

6 Terry, S. (2009) The public's right to research, *Open Access Scholarly Information Sourcebook*, 8 June. www.openoasis.org/index.php?option=com_content&view=article&id=547&Itemid=265

Three months later, Harvard Law School voted unanimously for its own open access mandate. In response to the Harvard mandate, the School of Education at Stanford accepted a proposal for a mandate and voted it through immediately.

Since Harvard's announcement at the beginning of 2008, thirteen more universities, including Southampton, the University of Glasgow, the University of Helsinki and the University of Tasmania have also announced open access mandates, more than the number of all previous years combined.

In South Africa, the University of Pretoria announced in early 2009 that it had adopted a mandate, voted unanimously by its senate, for the open access deposit of publications by all academics in its institutional repository. This makes it the first African university to adopt such a mandate.

These events are evidence of the fact that leading universities all over the world are taking seriously the strategic opportunities offered by open access communications. Underpinning this is recognition for a wider communications mission than that offered by conventional scholarly publication, not least the potential for the university to deliver on its public mission and not just its scholarly reputation. As Catherine Candee, the executive director of Strategic Publishing and Broadcast Initiatives at the University of California, put it:

Publishing and communication enhance knowledge, not just scholar-to-scholar but scholar-to-student as well as to the public. In the digital realm, there is no reason to plan to enhance scholar-to-scholar communication without considering how to improve the knowledge… creation and scientific output of the university to the public. This is not just for the individual public interest and good – universities must aim to meet the challenges of modern society. How better than to ensure that we have an adequate publication and communication system?[7]

Scholarly publishing

Traditionally, scholarly publication has been dominated by a globalised commercial publishing industry that has consolidated control of research publishing in fewer and fewer hands outside of universities, and which has control over the dominant evaluation system for scholarly excellence.[8]

The value of most of the scientific researchers in the world is measured by the number of publications they publish in and how brilliant the publications are held to be as measured by citations – the number of times academic work is cited by peers. Papers in top journals are more likely to be cited, and so scientific life becomes geared to chasing publication in elite journals with the highest impact factor, and high performances as measured by a complex array of journal metrics. The so-called Journal Impact Factor is calculated by dividing the number of citations a journal receives in any particular year by the number of articles deemed to be citable in the previous two.[9]

A knock-on consequence has been the consolidation of the dominance of research from the global North, as a result of the "core journal" principle that underpinned the creation of the ISI (Information Sciences Institute) citation index.[10] This core journal principle meant that libraries were informed that they need only subscribe to a limited number of journals. Naturally these core journals were the ones that reflected the most powerful information communities – not the 80% of the world that the developing countries constitute. The prestige system (outlined above) which developed, naturally entrenched this bias even further. In this commercially dominated system, high subscription prices and closed copyright models have restricted access to this knowledge, particularly in the countries in the global South.

However, in reaction to this, scholarly publishing has also seen enormous growth in the adoption of open access in 2008: open access journals and repositories proliferated faster than in any previous year. The Directory of Open Access Journals grew by 812 peer-reviewed journals, or 27%, in 2008. In 2007, it added 1.4 titles per day, but in 2008 the rate jumped to 2.2 titles per day.

A striking event was the purchase of the open access journal publisher, Biomed Central, by Springer, an acknowledgement by a large commercial scholarly publisher of the viability of running a profitable open access journal enterprise.

Open access publishing is also enhancing the potential for regional South-South collaboration in open access journal development, which has taken a significant step forward with the Scientific Electronic Library Online (SciELO) in Brazil, a virtual library covering a selected collection of Latin American scientific journals, joining in a venture with the Academy of Science of South Africa. South African open access journals will be hosted on the SciELO platform using the meta-tagging system developed by SciELO to track regional and national citation levels.

For scholarly books, 2008 was the year that open access publishing moved to the mainstream: Amsterdam, Athabasca,

7 www.arl.org/sparc/meetings/ala08/index.shtml

8 Guédon, J-C. (2007) Open Access and the Divide Between "Mainstream" and "Peripheral" Science, in Ferreira, S. and Targino, M. (eds.) *Como gerir e qualificar revistas cientificas.* eprints.rclis.org/12156

9 Corbyn, Z. (2009) A threat to scientific communication, *Times Higher Education*, 13 August. www.timeshighereducation.co.uk/story.asp?sectioncode=26&storycode=407705&c=1

10 Guédon (2007) op. cit.

Caltech, Columbia, the Universidad Católica Argentina, the American Veterinary Medical Association, the Forum for Public Health in South Eastern Europe and the Institut français du Proche-Orient are just some of the presses to launch open access imprints. India's Goa1556 Press, launched in 2007, published its first open access books in 2008, along with a number of university press consortia across the world.

For a number of years, the Human Sciences Research Council (HSRC) Press in South Africa has been a very successful pioneer of open access dual stream book publishing and now sees its books downloaded in every country in the world. It is telling that a leading UK trade publisher, Bloomsbury, the publisher of the Harry Potter books, has now emulated this model with the launch of Bloomsbury Academic, a signal that access to knowledge is indeed going mainstream.

Finally, US President Barack Obama looks likely to support a more open approach to access to knowledge, after a powerful speech to the National Academies of Science[11] and with open access supporters in key agency positions, as well as in the new President's Council of Advisors on Science and Technology. The signs are good for a period of greater responsiveness to the rights of access to publicly funded knowledge in the world.

Backlash

There has been some backlash against the open access movement, especially in the US. In September 2008, US Congressman John Conyers, supported by the publishing lobby, introduced a bill to overturn the open access mandate at the NIH, and bar all other federal agencies from adopting similar policies. The Fair Copyright in Research Works Act suggests that the NIH policy violates copyright law. The bill died without a vote at the end of the last session of Congress, but is expected to be re-introduced in the new session. Among the friends of open access who weighed in against the bill were Rockefeller University Press, the AIDS Vaccine Advocacy Coalition, seven major library associations, 46 law professors, and 33 US Nobel laureates in science. This was the third time since 2004 that 25 or more US Nobel laureates wrote a joint letter to Congress in support of the NIH policy.[12] ■

11 Revkin, A. (2009) Obama's Call to Create, Not Just Consume, *The New York Times*, 27 April. dotearth.blogs.nytimes.com/2009/04/27/obamas-call-to-create-not-just-consume

12 Suber, P. (2009) SPARC Open Access Newsletter (129), 2 January. www.earlham.edu/~peters/fos/newsletter/01-02-09.htm

Access to libraries

International policy influences on online access to information in public libraries

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With over one million libraries and nearly 700,000 librarians worldwide, the library sector is an established part of many people's lives.[1] Since large-scale roll-out of internet access began in the 1990s, the way public libraries provide information to their users has been revolutionised. Librarians have changed their day-to-day work, and library users have migrated from print-only materials to a hybrid of print, electronic and online access to information via the internet. Today technologies continue to develop, and new methods of information delivery are constantly being implemented.

Librarians have shown great ability to move with the times, but the perception of libraries has sometimes been hard to change.[2] During the World Summit on the Information Society (WSIS), policy makers proved difficult to reach. The longstanding role that libraries have played in offering public access to information in both developed and developing countries was not fully recognised during the WSIS process, and the Summit's outcome documents downplayed established and functioning library networks by placing libraries' public access credentials on the same level as health institutions, post offices and community centres.[3]

Post-WSIS, libraries are stepping up efforts to stake their rightful place in the information society and become more engaged in the development of policies promoting public access to technology.[4] The International Federation of Library Associations and Institutions (IFLA), for example, has strengthened existing alliances with international organisations such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), and has started to work with new partners in the information and communications technology for development (ICT4D) community. A shared commitment to libraries as core providers of public access to online information has led to more coordinated advocacy and a new focus on libraries as the engines behind access to knowledge.[5]

Investment in internet access has slowly narrowed the digital divide across libraries worldwide since 2003.[6] Significant, hard-to-eradicate inequalities still exist, especially in developing countries; but success stories have emerged like the Biblioredes network in Chile[7] or the Aotearoa People's Network in New Zealand,[8] which offer free access to the internet in libraries. Coordinated action undertaken by foundations like Global Libraries has seen library public access programmes rolled out across countries such as Mexico, Latvia and Bulgaria, while governments in Brazil and Russia have also begun to systematically equip public libraries with internet terminals.[9] Both the public and private sectors are realising that library networks are existing points of public access, and that telecentres and other access providers can benefit from partnerships with libraries.

Librarians are also using emerging technologies to provide new services. Social networking tools help libraries in Brazil and the United States (US) to connect with users, while African librarians have researched information transfer via mobile phone.[10] New technologies are found in existing library premises, but also in newer, purpose-built libraries from Seattle to Brasilia, where hundreds of computer terminals sit alongside bookshelves. Wi-Fi networks and remote query services extend beyond premises and opening hours and make the library a 24/7 institution. Increasingly these new services are backed up with new skills for library workers – being proficient in online search is not enough.[11] Information literacy skills[12] are now key to optimum user service, and UNESCO and IFLA are providing training in this area.[13] IFLA has also given policy guidance through its *Internet Manifesto*, and related training workshops have reached over 1,000 library staff worldwide. The *Internet Manifesto* is grounded in Article 19 of the Universal Declaration of Human

1 OCLC (2003) Libraries: *How They Stack Up*, OCLC, Dublin. www5.oclc.org/downloads/community/librariesstackup.pdf

2 De Rosa, C. et al. (2005) *Perceptions of Libraries and Information Resources*, OCLC, Dublin. www.oclc.org/reports/pdfs/Percept_all.pdf

3 WSIS (2003) *Geneva Plan of Action*. www.itu.int/wsis/outcome/booklet/plan_action_C2.html

4 Havisto, T. and Mincio, M. (2007) *Libraries and the WSIS Action Lines*. www.ifla.org/files/wsis/Documents/libraries-and-the-wsis-action-lines-en.pdf

5 Tise, E., Raju, R. and Massango, C. (2009) Libraries Driving Access to Knowledge: A Discussion Paper, *IFLA Journal*, 34 (4), p. 341-346.

6 IFLA (2008) *IFLA/FAIFE World Report 2007*, IFLA, The Hague. www.ifla.org/files/faife/ifla-faife_world_report_series_vii.pdf

7 APEC (2008) *BiblioRedes: Abre tu Mundo Overview*. www.apecdoc.org/alliance/chile/biblio_redes/overview

8 National Library of New Zealand (2008) *Aotearoa People's Network Impact Evaluation 2008*. www.peoplesnetworknz.org.nz/APN_Impact_Report.pdf

9 Murilo, J. (2009) *Bibliotecas Públicas Digitais e Redes Sociais – uma proposta para democratizar a informação* (unpublished); Bill and Melinda Gates Foundation (2009) Libraries. www.gatesfoundation.org/topics/Pages/libraries.aspx

10 Farkas, M. (2007) *Social Software in Libraries: Building Collaboration, Communication, and Community Online*, Medford, New Jersey.

11 Rich, M. (2009) In web age, library job gets an update, *New York Times*, 16 February. www.nytimes.com/2009/02/16/books/16libr.html

12 Information literacy can be defined as a means to "empower people in all walks of life to seek, evaluate, use and create information effectively to achieve their personal, social, occupational and educational goals." IFLA/UNESCO (2005) Beacons of the Information Society: *The Alexandria Proclamation on Information Literacy and Lifelong Learning*. www.infolit.org/International_Colloquium/alexproceng.doc

13 For more information on information literacy see: www.infolitglobal.info

Rights, and reminds librarians of their commitment to provide freedom of access to information to all their users.[14]

However, newer services can bring problems too. In developed countries, balancing user demand with supply is difficult if computer terminals are overbooked and equipment overused. All over the world librarians wrestle with the consequences of increased access to information: the use of the internet by children and the installation of filtering software on library computers is a very contentious issue, and many different approaches to the problem are taken.[15] Increased internet access in libraries demands strong policies to guarantee users' rights, but unfortunately decisions about general content filtering are often out of librarians' hands. In this regard, many governments' suspicion of free and equal internet access does little to benefit library users.

If censorship is an age-old concern for libraries, then copyright is not far behind. Copyright legislation in the digital age is outdated and obstructs libraries from fulfilling core functions like the preservation of material. While the rights of copyright owners have been harmonised at an international level, exceptions and limitations for institutions such as libraries have not.[16] This leads to varying practices regarding digital information provision, with many countries lacking legislation to protect libraries.[17] The rights of marginalised groups, such as the visually impaired, are impeded and the full benefits of digital technologies are unable to be reaped.[18] Libraries have stepped up lobbying and advocacy at the World Intellectual Property Organization (WIPO) to remedy the imbalance, but face great resistance to change from developed countries.[19]

Overall, the move into the digital era has refocused librarians on their role as information providers. Engagement in the WSIS and Internet Governance Forum (IGF) processes, or advocating at WIPO, has raised awareness of libraries' position in ICT regulatory frameworks. The fallout from the events of 11 September 2001 has also contributed to this, as librarians realised that user privacy could be sacrificed in pursuit of the war against terror.[20] Everything being done by libraries in terms of user training, provision of online services or information transfer through emerging technologies needs to be protected by concerted advocacy work by the library community.

Through the provision of guidelines and policy, organisations such as IFLA can frame access in a human rights context, but very often the best way to show the value of libraries is to let them innovate. The Google Book Search project in particular is a massive moment in the history of libraries. Google's mass digitisation of in- and out-of-copyright books has the potential to provide unprecedented access to an online library containing millions of titles, increasing access to information dramatically. However, the fact that Google is likely the only organisation with enough resources to attempt such a feat means many in the library community are worried that an absence of competition in the market could compromise the libraries' mission to provide equitable access to information, user privacy and intellectual freedom.[21] The end result is not yet in sight, but through involvement in the Google project, and through other innovative projects like the giant online databases of Europeana[22] and the World Digital Library,[23] libraries demonstrate their value as key providers of access to information through technology, existing to serve all members of a community whether they are physically in a library or thousands of miles away on a laptop. ■

14 IFLA (2002) *The IFLA Internet Manifesto*. www.ifla.org/publications/the-ifla-internet-manifesto

15 Hamilton, S. (2004) *To What Extent Can Libraries Ensure Free, Equal and Unhampered Access to Internet Accessible Information Resources on a Global Scale?* IFLA/FAIFE, Copenhagen. www.ifla.org.sg/faife/report/StuartHamiltonPhD.pdf

16 IFLA, eIFL and LCA (2009) *Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives*. www.ifla.org/files/clm/statements/StatementofPrinciplesSCCR20.pdf

17 Crews, K. (2008) *Study on Copyright Limitations and Exceptions for Libraries and Archives*, WIPO, Geneva. www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_2.pdf

18 Sullivan, J. (2007) *WIPO Study on Copyright Exceptions and Limitations for the Visually Impaired*, WIPO, Geneva. www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_www_111453.pdf

19 Love, J. (2009) Obama joins group to block treaty for blind and other reading disabilities, *Huffington Post*, 28 May. www.huffingtonpost.com/james-love/obama-joins-group-to-bloc_b_208693.html

20 Hamilton, S. (2008) Freedom of Information versus War on Terror, paper presented at the European Social Forum in Malmö, Sweden, 18 September. openesf.net/projects/librarians-for-informational-commons-and-another-europe/libraries-and-the-war-on-terror

21 Band, J. (2008) *A Guide for the Perplexed: Libraries and the Google Book Settlement*. wo.ala.org/gbs/wp-content/uploads/2008/12/a-guide-for-the-perplexed.pdf

22 www.europeana.eu/portal

23 www.wdl.org/en

Access to educational materials

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Introduction

There are many factors affecting access to online educational materials, such as the cost of the materials, the cost of access, restrictive copyright licences, language, and local relevance of the content. These are broad and ongoing issues, with gains slowly being made to allow more access for more school and university students around the world. In developed countries, affordable broadband is creating a truly information-rich learning environment for students. It is possible to find information on most topics very easily and quickly. In this environment, skills such as information literacy, critical reading and problem solving become important.

For too many students in the developing world, access remains limited. In the 21st century, where being networked is essential to learning, working and playing in the information society, the lack of access directly undermines the universal right to education. One emerging trend could play a part in changing this: the rise of the mobile phone. Of course, the physical platform of access – the phone – is only one piece of a complex puzzle, but it is of such a disruptive nature that it could significantly move access to information a few steps closer to being a universally enjoyed right.

The mobile revolution

The staggering uptake of mobile phones – in terms of speed of adoption and number of users – has surprised even the greatest of techno-optimists. While universally accepted figures are difficult to obtain, it was reported that by the end of 2008, worldwide mobile cellular subscribers would reach the four billion mark.[1] A full 1.3 billion of those subscribers would come from the BRIC countries (Brazil, Russia, India and China), which were driving the bulk of the growth in adoption. In the same year it was also reported that Africa was the world's fastest growing mobile market.[2]

The International Telecommunication Union (ITU) cautions that these figures need to be "carefully interpreted" (which is outside the scope of this paper), but the overall gist is understood: the mobile revolution has happened, and is here to stay. When understood in the context of around one billion people accessing the internet, the revolution becomes even more significant.

What is m-learning?

What does it mean for education and access to online educational materials when it is claimed that for every personal computer (PC) there are four mobile phones?[3] The emergent field of mobile learning, or m-learning, has been trying to answer that question (even while struggling to define itself in a field that is constantly evolving). Initial definitions focused exclusively on the device itself, presenting m-learning as any learning that happened through a personal digital assistant (PDA) or mobile phone. This view is problematic; it is the equivalent of focussing on the physical object of a book, and not the content it holds. Over the years, more mature definitions have emerged that focus on issues such as mobility, and on how "personal mobile and wireless devices can enhance, transform and extend learning, teaching, assessment and administration."[4] Added to that are opportunities for creative expression, social networking and identity development, to name but a few.

M-learning offers characteristics of "ownership, informality, mobility, and context that will always be inaccessible to conventional tethered e-learning".[5] Clearly m-learning is not just e-learning that has gone for a walk, but something rather different. Mobile phones are personal, part of our emotional lives and almost always with us. Through mobile phones, access begins to be conceived in terms of "just-in-time" and "just-for-me" learning. For this reason, Traxler posits that "it is entirely possible that the emergence of mobile learning in developing countries will take the evolution of e-learning along a trajectory that is very different from that in developed countries, where it has been predicated on massive, static, and stable resources"[6] – an exciting prospect.

Opportunities of m-learning

Many opportunities exist for m-learning to increase the reach and depth of access to online educational materials – too many to cover here. Four key issues stand out and are worth mentioning: mobility, or being able to access and

1 International Telecommunication Union (ITU) (2008) Worldwide mobile cellular subscribers to reach 4 billion mark late 2008. www.itu.int/newsroom/press_releases/2008/29.html

2 Reed, M. (2008) Africa, World's Fastest Growing Mobile Market. allafrica.com/stories/200804280943.html

3 Ahonen, T. (2008) *Mobile as 7th of the Mass Media: Cellphone, cameraphone, iPhone, smartphone*, Futuretext, London.

4 Roberts, C. (n.d.), cited in Traxler, J. and Sugden, D. (2007) *Why Go Mobile? An Overview of Mobile and Wireless Learning*. www.jisc.ac.uk/media/documents/programmes/elearninginnovation/session1_jtds_whygomobile.pdf

5 Traxler, J. (2009) Current State of Mobile Learning, in Ally, M. (ed.) *Mobile Learning: Transforming the delivery of education and training*, Athabasca University Press, Edmonton, p. 9-24.

6 Ibid.

share information from anywhere (where there is coverage, of course) and at any time; the pervasiveness of the device (for example, compared to the number of PCs in telecentres or schools); the ability to access not only materials but people, fully exploiting the communication feature of phones in the service of education; and the potential of the phone as a device for content creation.

In addition to the texting that happens on phones, many phones today have cameras that can take still images as well as video. Many phones can also play audio files and have radio. Increasingly, even lower-end handsets have general packet radio service (GPRS) capability, allowing for internet access and web browsing. Mobile instant messaging (MIM), through services such as MXit or mig33, is becoming popular with the youth on phones such as these. In South Africa alone, MXit claims a user base of 14 million.[7]

One project that has captured the learning opportunities provided by mobile phones is Dr Math, which is set up on the MXit platform in South Africa. This service provides maths tutoring – from live tutors – via MIM to anybody about any school maths question, from 14:00 to 22:00 on Sunday to Thursday. Using chat, learners can be tutored at night in their rooms. It is a very affordable and effective learning service (one tutor can help up to 50 learners in an hour), providing just-in-time support.

Challenges of m-learning

While the educational potential of m-learning is enormous, a number of key challenges need to be overcome.

Poor user experience and un-optimised content

For someone who has access to the internet only through their mobile phone, the experience is hugely empowering. But the small screen and non-QWERTY keyboard interface of most phones limits that interaction. Certain content types – bite-sized and just-in-time – favour this interface. However, much of the existing online educational materials will need to be reformatted or repurposed to make them mobile friendly.

Language and localisation of content

The perennial issues of too much English learning material and not enough in other languages, as well as a lack of local content – or locally adapted content – still pervade the access debate. The mobile phone alone cannot rectify this imbalance. But when viewing the phone as a content-creation device, it can empower users to generate and share local content. Furthermore, because phones are ideally suited to accessing locally relevant and timely information, the incentive to generate this content – for content providers and local citizens – is increased.

Costs

Mobile tariffs are still too high in developing countries, especially because most citizens pre-pay for their usage, which is more expensive than contract rates. There is even some research that suggests that "mobiles are doing more economic harm than good, and sometimes making poor people poorer,"[8] because they spend too much of their income on mobile communication. There is much work to be done to lobby network operators throughout Africa to reduce tariffs, and for handsets to become cheaper. As an interim measure, network operators could zero-rate data costs for access to educational sites, and reduce short message service (SMS) costs for educational purposes.

Conclusion

The discussion of access to educational materials within the context of mobile phones is very broad in scope, and we have touched on only some of the issues. While the field of m-learning is still emergent, there are enough innovative examples that have demonstrated the potential that mobile phones have for increasing not only access to educational materials, but also the power to create and share these materials in the developing world. Going forward, we should think carefully about how to exploit the pervasiveness of mobile phones, and about how their features – their unique content and services – provide new ways to educate and learn. ■

References

Ahonen, T. (2008) *Mobile as 7th of the Mass Media: Cellphone, cameraphone, iPhone, smartphone*, Futuretext, London.

Traxler, J. (2009) Current State of Mobile Learning, in Ally, M. (ed.) *Mobile Learning: Transforming the delivery of education and training*, Athabasca University Press, Edmonton, p. 9-24.

Traxler, J. and Sugden, D. (2007) *Why Go Mobile? An Overview of Mobile and Wireless Learning.* www.jisc.ac.uk/media/documents/programmes/elearninginnovation/session1_jtds_whygomobile.pdf

7 IT News Africa (2009) MXit users exceed 14 million. www.itnewsafrica.com/?p=2881

8 Heeks, R. (2009) Mobiles for Impoverishment? povertyblog.wordpress.com/2009/01/15/mobiles-for-impoverishment

Open standards

Opening standards, opening human liberty

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Introduction

Information and communications technology (ICT) standards are a critical component of global knowledge policy. Standards are not hardware or software products but are the "blueprints" or specifications necessary for developing products that are compatible with other ICT products. Familiar standards include Wi-Fi, Bluetooth, MP3, motion picture experts group (MPEG), hypertext transfer protocol (HTTP), and the transmission control protocol/internet protocol (TCP/IP) standards underlying the internet.[1] But the vast majority of standards are invisible to end-users because they are deeply embedded in the design of software and hardware. These specifications establish universal rules for formatting, compressing, transmitting, accessing, securing and displaying information. Although these are highly technical functions, the design and implementation of standards also have significant economic and political implications.

This report will describe how the degree of openness in standards affects global knowledge policy in four ways. First, standards are directly linked to innovation policy, market competition, and global trade. Second, standards design decisions sometimes determine civil liberties online (e.g., user privacy) and the ability of citizens to share and access knowledge or engage in electronic political processes. Third, lack of openness in standards can disproportionately affect developing countries. Finally, standards have distributive justice effects when they create finite resources (e.g., spectrum, bandwidth, internet addresses) necessary for participation in the information society. This report concludes by recommending a definition of open standards that promotes universal access to knowledge, provides a level playing field for innovation, and maximises the legitimacy of standards-setting institutions to make decisions with direct public policy implications.[2]

Standards as global knowledge policy

Jack Balkin has described access to knowledge as a demand of justice. It is both an issue of economic development and one of individual participation and liberty; and while it is about intellectual property, it is more than intellectual property.[3] This is a useful framework for understanding the knowledge policy implications of open standards. Standards are an example of "information-embedded tools", and allow hardware and software innovation, similar to the tools necessary for developing medical technologies or agricultural resources.[4] If these tools include proprietary information and underlying intellectual property rights, any new innovation may require permissions and royalties. The internet's underlying standards, such as TCP/IP and hypertext markup language (HTML), have historically been developed in a relatively open process. They have been openly published and freely available for citizens and entrepreneurs to use to create new technologies and new modes of information exchange. Accordingly, the availability of open standards has contributed to the democratisation of online culture, political dissent, and internet innovation. However, many standards do not exhibit this same degree of openness, including the standards underlying emerging forms of internet video. The following describes the implications of the degree of openness in standards on various aspects of global knowledge policy.

Innovation policy

Because technical standards are the blueprints that competing companies or individual citizens use to develop new products that are interoperable with other products based on the standard, they can promote innovation. But this freedom to innovate is possible only if the standard is openly published and can be used without significant intellectual property restrictions on its use. This degree of openness contributes to the possibility of a level playing field on which innovation and competition can occur. Unfortunately, in the 21st century, standards-based intellectual property rights are increasingly emerging as non-tariff barriers to global trade in ICT markets (for example, see the case of China's WAPI standard).[5] They have the potential to drive up the cost of broadband access technologies like WiMAX that could otherwise help close the global access gap in the developing world. The degree of participatory openness of a standards-setting process itself also has direct linkages to innovation. It is well understood how new forms of open and distributed collaboration have produced innovations in information

1 The IEEE 802.11 wireless local area network (LAN) standards are collectively referred to as "Wi-Fi"; Bluetooth is a protocol for short-range wireless transmission; MP3 stands for MPEG Audio Layer 3 and is a format for encoding and compressing audio files; MPEG is a set of video compression standards; the HTTP standard is the standard for exchanging information between web browsers and web servers; TCP/IP is a central family of standards underlying internet communications.

2 For a detailed framework of best practices for openness in standards, see DeNardis, L. (2009) *Protocol Politics: The Globalization of Internet Governance*, The MIT Press, Cambridge.

3 Jack Balkin (2006) Opening remarks in the Plenary Session of the Access to Knowledge (A2K) Conference at Yale Law School, 21 April. balkin.blogspot.com/2006/04/what-is-access-to-knowledge.html

4 Benkler, Y. (2006) *The Wealth of Networks: How Social Production Transforms Markets and Freedom*, Yale University Press, New Haven.

5 WAPI is a Chinese national standard for wireless local area networks. See Gibson, C. (2007) Technology Standards—New Technical Barriers to Trade?, in Bolin, S. (ed.) *The Standards Edge: Golden Mean*. ssrn.com/abstract=960059

production and software development. Similarly, the most innovative standards historically have emerged from the most open standards-setting organisations, such as the Internet Engineering Task Force (IETF) and World Wide Web Consortium (W3C), which welcome the participation of any interested participants.

Access to knowledge and human rights

Standards bodies directly make decisions about human rights when they make design decisions that implicate core political processes, such as electronic voting, access to electronic government archives and the availability of government services online. The design decisions underlying standards also structure technologies, whether social networking tools, digital education systems, or Web 2.0 platforms, that create the more informal conditions within which citizens engage in the public sphere. Furthermore, choices made in technical standards development, whether for encryption standards, addressing standards,[6] or cellular standards, can determine the extent of user privacy and the right to be free from unwarranted government surveillance or censorship.

Development[7]

The extent of openness in standards can have pronounced implications for developing countries. The International Telecommunication Union (ITU) is currently leading a project called Bridging the Standardisation Gap[8] in order to make recommendations for closing the standardisation gap between developed and developing countries. Standards disparities can occur in several areas. For example, the institutional processes of standards setting do not necessarily reflect the interests of developing countries. Businesses in emerging markets may also be disadvantaged in the area of intellectual property rights if they are later entrants in standards processes in certain markets – they usually do not have large patent portfolios, large legal staffs, or cross-licensing agreements inherent in developed countries.

The allocation of scarce resources

Standards sometimes create scarce resources necessary for access and political, cultural and economic participation in the information society. Some standards structure and allocate radio frequency spectrum (e.g., broadcast standards, Wi-Fi and cellular standards); some prioritise information flows based on application type (e.g., voice versus video); others create resources necessary for access, such as IP, which creates a finite pool of internet addresses. The creation of these resources and how they are distributed, and by whom, can create inequalities of access, quality, and the freedom to use these resources to create new systems of communication.

Opening standards

The technical rationale for open standards is the interoperability that enables the universal exchange of information, which in turn provides opportunities for universal political and creative expression. The economic incentive for promoting open standards is to provide a level playing field for innovation, whether for competing businesses or for an individual citizen. The political rationale for open standards is to create legitimacy for standards institutions to make design decisions that implicate civil liberties online or core governmental functions. To achieve these objectives, this report advocates for the promotion of open standards that are open in their development, implementation and use.

Standards development processes should reflect participatory and informational openness. The process should be open to any interested party; include well-defined procedures for standards selection and appeals processes; and include disclosure of membership (if applicable), funding sources, affiliations, process, intellectual property rights, meeting minutes and proceedings, and electronic deliberations. To promote innovation and also public oversight, the standard itself – the tool necessary to develop products – should be publicly available. An unpublished specification is proprietary and, by definition, not a standard. Ideally, there should be no fee associated with accessing the standard and the standard should be available to implement in products on an irrevocable royalty-free basis. While different levels of openness are appropriate in different contexts, these characteristics promote the greatest public oversight and equal opportunities for innovation. Open standards development and implementation criteria result in a standard that is open in its use, meaning that it results in multiple, competing products based on the standard, avoids single vendor lock-in, and enables individual citizens to use the standard for any reason.

To promote the public interest, governments have many incentives to encourage open ICT standards. Governments, particularly in the developing world, are significant parts of technology markets. Recognising the significant public interest implications of open standards, governments are increasingly establishing interoperability frameworks and government technology procurement policies that favour open technical standards. ■

6 An addressing standard includes numerical information, such as a binary internet address, that is necessary for routing information to and from a sender and a destination.

7 A development agenda for open standards is presented in DeNardis, L. (2009) Open Standards and Global Politics, *International Journal of Communications Law and Policy*, Issue 13, Special Internet Governance Edition, Winter 2008-2009.

8 www.itu.int/ITU-T/gap

Open culture

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Introduction

At the end of every year, since 1927, the United States (US) news magazine *TIME* does a profile on the person or persons who the editors believe "most affected the news and our lives, for good or ill." In 2006, in a change from past features on presidents to scientists and judges, *TIME* editors chose "You" as the person of the year. In 2006, "the World Wide Web," according to *TIME*, "became a tool for bringing together the small contributions of millions of people and making them matter."[1]

What *TIME* editors recognised was that a seismic shift in access to technology has meant that millions of people across the globe now have a voice and an audience for their ideas. This is revolutionary because, unlike previous media such as television and radio, access to the means of producing messages – of having an active voice on the network – has extended to everyone with access to a computer or mobile phone connected to the web.

Perhaps unlike ever before in history we have seen a major democratisation of the means of producing and distributing information. We are no longer limited to being mere consumers of information, but now have the potential to become active producers of information. This power is no small thing. According to *TIME*, "It's about the many wresting power from the few and helping one another for nothing and how that will not only change the world, but also change the way the world changes."

This revolution has had a major impact on the way that we produce culture and media. With millions joining the marketplace for producing information, ideas and entertainment, all with very different incentives to create than the established media, we have seen a major realignment in the power of the many versus the few.

Computation, storage and communications capacity – increasingly the basic physical capital means necessary for producing information, knowledge and culture in the 21st century – are in the hands of practically everyone connected: some 600 million to a billion people around the planet.

The rise of the amateur

In recent history, the term "amateur" became negatively associated with "someone who is unqualified or insufficiently skillful",[2] but originally the term came from the French to mean a "lover of something". Today, the world's greatest free encyclopaedia (Wikipedia), the million-channel YouTube network, and the millions of blogs around the world are all fuelled by amateurs: people who create, not primarily for money, but for the love of it.

This has not gone unnoticed by those who previously had the monopoly over information and entertainment publishing. As with any revolution, there are always victims of the new age – as powers realign themselves, business models become defunct and grand industries, incapable of keeping up with change, topple to make way for the new.

One of the major "issues" in which this struggle is being played out is in the debate between what has been called "citizen media" versus the established media.

Citizen media versus traditional media

According to many from the traditional media, people who produce news and analysis outside of traditional media organisations ("citizen media") cannot produce the same quality of news as professional journalists. They often point to the lack of gatekeepers who are able to edit and fact-check their work, as well as the fact that amateurs who are not being paid a salary for their writing are not able to spend the time necessary for doing the in-depth investigative reporting and analysis that paid journalists are able to.

Others have recognised the power of citizen journalists (including bloggers, Twitterers and podcasters, to name a few) to give voice to news and opinions that are often ignored by the mainstream media. Without relationships with advertisers (and sometimes governments) and operating outside of the economies of scale that might prevent them from covering less mainstream or time-consuming, niche, investigative subject matter, citizen journalists have been able to produce raw feeds that have surpassed the mainstream media's often pre-digested reporting.

Citizen journalism by the Iranian people in the aftermath of the recent election has kept the world informed of the repressive regime. According to *The Washington Times*, "Well-developed Twitter lists showed a constant stream of situation updates and links to photos and videos, all of which painted a portrait of the developing turmoil. Digital photos and videos proliferated and were picked up and reported in countless external sources safe from the regime's Net crackdown."[3]

It is clear that there are a host of good and poor quality news sources out there, both from the traditional and citizen media fields. As users and participants of such information, we are quickly recognising the value of consuming diverse

1 TIME (2008) TIME's Person of the Year 1927-2008. www.time.com/time/coverspoy

2 Wiktionary definition of "amateur": en.wiktionary.org/wiki/amateur

3 Washington Times Editorial (2009) Iran's Twitter Revolution, *The Washington Times*, 16 June. www.washingtontimes.com/news/2009/jun/16/irans-twitter-revolution

viewpoints in order to make up our own minds – especially in a society where we are often called to present our own opinion on blogs, Twitter lists, forums and other networked channels.

Open and remixable versus closed and proprietary

As people started producing and connecting with one another online, a number of projects were formed out of loose affiliations between those with similar interests and passions.

Arguably the most productive of these affiliations are driven by people who share the intellectual property of their contributions with one another. In coding this phenomenon has been called "open source" – with the term "open content" a more recent extension to describe any kind of creative work, or content, published in a format that explicitly allows copying and modifying of its information by anyone.[4] The largest open content project is Wikipedia, where anyone reading the resource has the ability and permission to also edit (or remix) it.

Lawrence Lessig is the founder of Creative Commons, an organisation that was started to develop a set of copyright licences available to creators to choose the freedoms under which they can release their work. Lessig believes that systems like Creative Commons are necessary because copyright law criminalises the kind of remixes that amateur producers are creating today.

Today there are more than 150 million objects marked with Creative Commons licences. From the 35,000-plus songs on Jamendo, a music-sharing platform that enables artists to share their music using Creative Commons licences, to Flickr's 60,000-plus images that are available for others to remix and share, to Connexions, an open learning platform that enables educators and learners to build courses out of modular learning elements, people around the world are building an alternative to proprietary culture that enables them to co-create that culture, rather than being told to "look but not touch".

Creative Commons has not evaded criticism. Some have criticised it for aligning itself with the privatisation of culture by using the framework of copyright law to develop a complicated system of semi-private cultural "goods" that are often incompatible with one another.[5] According to David Berry and Giles Moss, "We need political awareness and struggle, not lawyers exercising their legal vernacular and skills on complicated licences, court cases and precedents."[6]

Others have argued that, unlike the free software and open source movements, there is no standard of freedom for Creative Commons licences, and that the Attribution-Share Alike licence is the only true "copyleft" licence.[7] In an effort to define a standard of freedom, Benjamin Mako Hill developed a "Definition of Free Cultural Works"[8] that applies to only two of Creative Commons' six licence combinations: Attribution and Attribution-Share Alike.

The future?

It is no longer controversial to say that the future of cultural production will be open. The fact that open models that rely on the unpaid contributions of users are surpassing proprietary models in terms of usage and even quality, means that industries that rely on proprietary business models are feeling increasingly threatened. As Wikipedia surpasses Encyclopaedia Britannica and Linux outperforms Microsoft on servers around the world, these industries are struggling to adapt.

The two strategies that have been employed by proprietary industries in the face of this threat have been to lobby for greater enforcement in what has been called the "copyright wars",[9] and to adopt open source principles for parts of their business. In early 2009 Encyclopaedia Britannica invited members of the public to write articles for its online edition,[10] and Microsoft has been experimenting with open source since 2004.[11] Although members of the proprietary music, film, software and publishing industries continue to fight distributed ownership of intellectual property, it is becoming clear that we are moving closer to open rather than closed models.

Charles Leadbeater, in a 2005 Technology Education and Design (TED) conference talk, explains: "The reason why – despite all the efforts to cut it down, to constrain it, to hold it back – why these open models will still start emerging with tremendous force, is that they multiply our productive resources. And one of the reasons they do that is that they turn users into producers; consumers into designers."[12]

Open models will prevail because they are a more efficient way of producing and creating cultural and scientific works. But they are not only more efficient. They also respond to a deep need in us to connect with one another – not for economic gain, but to meet very human needs such as the need for recognition, respect and the joy of co-creation.

If the future of cultural production is open (in its many forms), then the new debates will certainly be around the levels of openness adopted by different producers and communities of producers, and their effect on productivity, democracy and scientific and cultural advancement. ■

4 Wikipedia definition of "open content": en.wikipedia.org/wiki/Open_content

5 Creative Commons-licensed "goods" are licensed under different terms and so often cannot be shared and "remixed" with one another. They are still private in some sense because they use copyright law to enable copyright holders to retain rights.

6 Berry, D. and Moss, G. (2005) On the "Creative Commons": a critique of the commons without commonalty, *Free Software Magazine*, Issue 5, 15 July. fsmsh.com/115

7 Myers, R. (2008) Noncommercial Sharealike Is Not Copyleft, 24 February. robmyers.org/weblog/2008/02/noncommercial-sharealike-is-not-copyleft.html

8 Mako Hill, B. (2005) *Towards a Standard of Freedom: Creative Commons and the Free Software Movement*. mako.cc/writing/toward_a_standard_of_freedom.html

9 Stephey, M. J. (2008) Lawrence Lessig: Decriminalizing the Remix, *TIME.com*, 17 October. www.time.com/time/business/article/0,8599,1851241,00.html

10 Moore, M. (2009) Encyclopaedia Britannica fights back against Wikipedia, *Telegraph*, 23 January. www.telegraph.co.uk/culture/books/booknews/4318176/Encyclopaedia-Britannica-fights-back-against-Wikipedia.html

11 Bean, J. (2009) A Brief History of Microsoft Open Source, 9 February. www.everyjoe.com/articles/a-brief-history-of-microsoft-open-source-59

12 Leadbeater, C. (2005) TED Talk: Charles Leadbeater on innovation. www.ted.com/index.php/talks/charles_leadbeater_on_innovation.html

Institutional overview

Institutional overview

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Introduction

Access to information and knowledge is a governance domain involving a broad range of stakeholders at different levels. As will be apparent from some of the thematic reports in this volume, this results from the diversity of the issues it subsumes, including intellectual property rights, access to public information, open standards, broader communications rights such as freedom of expression, and issues around ownership of and participation in the media.

Over the last six years, new links have begun to develop between these diverse issue areas and the actors who inhabit them, largely under the umbrella of the growing civil society movement on access to knowledge (A2K). Teachers, scientists, journalists and "hacktivists" are amongst those who have found a commonality of interest in the broadening of public access to information and knowledge – as too have a diverse range of other actors at the penumbra of the A2K movement, such as farmers concerned about rights to seeds, indigenous rights activists interested in bio-piracy, and doctors and aid workers interested in access to medicines.

One of the catalysts for the emergence of this cooperative front was the World Summit on the Information Society (WSIS), which in 2003 and 2005 brought together civil society and private sector actors to observe (and to a limited extent, influence) the development of an intergovernmental accord on the principles and actions necessary for building an inclusive information society.

The form in which the theme of access to information and knowledge was addressed in the WSIS output documents was as one of eleven main action lines in the Geneva Plan of Action, in which it was declared in 2003 that "ICTs [information and communications technologies] allow people, anywhere in the world, to access information and knowledge almost instantaneously. Individuals, organizations and communities should benefit from access to knowledge and information."[1]

The force and specificity of the recommendations flowing from this principle were in many respects diluted by the imperative to agree them by intergovernmental consensus. For example, while an earlier negotiating text had lauded the benefits of free and open source software (FOSS) to promote access to information, objections from the United States (US) and European Union (EU) saw this reference removed from the Geneva text in favour of a direction that a variety of software models, including proprietary software, should be promoted.

Frustrated with the limitations of the official WSIS output documents, civil society produced its own alternative summit paper, with stronger recommendations on the promotion of access to information and knowledge.[2] Since then, further declarations and other texts on access to knowledge have been drafted by a variety of civil society and private sector coalitions. These include the Geneva Declaration on the Future of the World Intellectual Property Organization,[3] the Adelphi Charter on Creativity, Innovation and Intellectual Property,[4] a draft Treaty on Access to Knowledge,[5] the Paris Accord (an agreement between consumers and creative and inventive communities),[6] and the Munich Declaration on copyright limitations and exceptions.[7]

Although space does not permit for the content of these documents and initiatives to be described directly, a number of the institutions responsible for implementing them will be considered below, with a focus on the activities those institutions have undertaken during the year 2008-2009.

This review considers the following broad issue areas in turn:

- Intellectual property rights, the public domain and open standards
- Democratic public media and access to government information
- Online civil rights.

Intellectual property rights, the public domain and open standards

The World Intellectual Property Organization (WIPO), an intergovernmental organisation, administers the principal intellectual property conventions, which include the Berne Convention on copyright, the Paris Convention on patents, trademarks and registered designs, and the Rome Convention on copyright and related rights. The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), both of which came into force in 2002, extend these earlier instruments in light of new digital technologies including the internet.

1 www.itu.int/wsis/docs/geneva/official/poa.html#c3

2 www.worldsummit2003.de/download_en/WSIS-CS-summit-statement-rev1-23-12-2005-en.pdf

3 www.cptech.org/ip/wipo/futureofwipodeclaration.pdf

4 www.sitoc.biz/adelphicharter/pdfs/adelphi_charter2.pdf

5 www.cptech.org/a2k/a2k_treaty_may9.pdf

6 www.cptech.org/a2k/pa/ParisAccord-june17draft.pdf

7 www.ip.mpg.de/shared/data/pdf/declaration_three_step_test_final_english.pdf

Since 1995 the other main intergovernmental organisation involved in the global intellectual property system has been the World Trade Organization (WTO), whose Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement largely incorporates the substantive content of the WIPO-administered conventions, but with the important difference that it treats non-compliance as a barrier to trade, and enables the WTO to impose sanctions on member countries in breach. It also provides for the resolution of disputes between nations through the WTO.

During this decade, both WIPO and the WTO became venues for the development of a counter-movement against the expansion of intellectual property laws and enforcement practices, which, together with the stand taken at WSIS, eventually developed into the A2K movement of today. A watershed in this process was the adoption in September 2007 of a "Development Agenda" for WIPO, in response to a proposal originally made by Brazil and Argentina in 2004.[8] Civil society groups quickly rallied around this proposal, drafting their Geneva Declaration on the Future of the World Intellectual Property Organization that year, followed by the draft Treaty on Access to Knowledge in 2005, and participating in the first international conference on Access to Knowledge at Yale University in 2006.

The Development Agenda itself contains 45 recommendations in six clusters, which include the promotion of a development-oriented intellectual property culture, the preservation of the public domain, and the exchange of experiences on open collaborative projects. To date three meetings of WIPO's Committee on Development and Intellectual Property (CDIP) have been held, and at the latest meeting in April and May 2009, the WIPO Secretariat presented a progress report on the steps taken towards the implementation of nineteen of the recommendations.[9]

The most significant outcome of WIPO's Development Agenda so far has been the discussion of new minimum copyright limitations and exceptions by its Standing Committee on Copyright and Related Rights (SCCR). The addition of this initiative to the committee's agenda was moved by Chile, Brazil, Uruguay and Nicaragua in 2008, elaborating on an earlier Chilean proposal. The limitations and exceptions to be studied by the SCCR include those for education, libraries, archives, innovative services and persons with disabilities. The first concrete proposal in this area is a Treaty for Blind, Visually Impaired and Other Reading Disabled Persons, tabled by Brazil, Ecuador and Paraguay in May 2009.[10]

Another important transnational actor in this issue area is Google, which in October 2008 reached a USD 125 million settlement agreement with publishers over its Google Book Search service, for which Google partnered with libraries to scan millions of books into a full-text index.[11] Final approval of the settlement is presently scheduled for October 2009, but this remains contingent upon the resolution of objections raised by certain groups, amongst them the US-based Consumer Watchdog, that the terms of the settlement unduly favour Google over other information intermediaries in its access to digitised books.

Also not to be overlooked is the transition in June 2009 of the world's largest encyclopaedia, Wikipedia, to a dual-licensing model. This was facilitated by the agreement of the Free Software Foundation to include a clause tailored for this purpose in version 1.3 of the GNU Free Documentation Licence, under which Wikipedia was originally licensed. As a result all content previously written for Wikipedia, and all future articles, will also be licensed under the more flexible Creative Commons Attribution-Share Alike Licence. This will enable content to be more easily shared between Wikipedia and any other publication that uses the same Creative Commons licence.

Finally, brief mention should be made of open standards that impact upon access to knowledge and information. One notable development made this year in the war of competing document standards, between the OpenDocument Format (ISO 26300:2006) and the Microsoft-sponsored Office Open XML (ISO/IEC 29500:2008), was Microsoft's inclusion of an OpenDocument Format (ODF) filter in Microsoft Office 2007 Service Pack 2. However, this filter, although mostly compliant with the ODF standard, is not fully interoperable with other implementations of that standard – in part due to limitations of the ODF specification.[12] The upcoming ODF version 1.2, expected for release within a year, should address these limitations.

Democratic public media and access to government information

Access to information and knowledge is dependent upon the existence of a democratic public sphere where discourse and debate can take place. This in turn depends upon free and pluralistic public media, as well as access to basic public information such as laws and parliamentary discussions. These will briefly be addressed in turn.

8 www.wipo.int/documents/en/document/govbody/wo_gb_ga/pdf/wo_ga_31_11.pdf

9 www.wipo.int/edocs/mdocs/mdocs/en/cdip_3/cdip_3_5.pdf

10 www.wipo.int/edocs/mdocs/copyright/en/sccr_18/sccr_18_5.pdf

11 books.google.com

12 www.odfalliance.org/blog/index.php/site/microsofts_odf_support_falls_short

Historically, one of the most important international institutions for the promotion of media diversity has been the United Nations Educational, Scientific and Cultural Organization (UNESCO). UNESCO is noted for the 1980 MacBride report,[13] which aimed to establish what was dubbed a New World Information and Communications Order (NWICO) that would provide more balanced coverage of the developing world by the mass media. This report was seen as advocating for interference with the freedom of the press by the US, the United Kingdom and Singapore, which temporarily withdrew from UNESCO in protest – a blow from which the organisation is still recovering.

Nonetheless, "Communication and information" is today one of five major UNESCO programmes,[14] and its International Programme for the Development of Communication (IPDC) is an enduring outcome of the MacBride report.

A second UNESCO programme with more particular relevance to this chapter is its Information For All Project (IFAP), established in 2000, which aims to promote access to information through ICTs. The International Federation of Library Associations and Institutions (IFLA) and its member Electronic Information for Libraries (eIFL) are other international institutions that promote this vision.

Another of the WSIS recommendations on access to information and knowledge was that governments should "provide adequate access through various communication resources, notably the Internet, to public official information." The most important recent development in this area was the signature in June 2009 of a Convention on Access to Official Documents by twelve of the 47 members of the Council of Europe, which for the first time laid down an intergovernmental benchmark for access to official documents held by public authorities.[15]

Online civil rights

The Council of Europe separately resolved in May 2009 that access to the internet is a fundamental right, and that "fundamental rights and Council of Europe standards and values apply to online information and communication services as much as they do to the offline world."[16] Concern was also expressed in the resolution about the breadth of anti-terrorism legislation restricting freedom of expression. These are messages that the Council has repeated in other forums, such as the Internet Governance Forum (IGF).

The IGF, an open multi-stakeholder body convened by the UN in 2006 as one of the outcomes of WSIS, provides a venue where internet policy issues can be discussed and debated, with the objective that these discussions (and, in appropriate cases, recommendations) would be brought to the attention of the appropriate international institutions for further action.

While the IGF has been slow to develop concrete modalities to fulfil this mandate, one experimental mechanism it has tried to use to do so has been through forming self-organised "dynamic coalitions", one of which is the Dynamic Coalition on Internet Rights and Principles. This group was formed following the third meeting of the IGF in Hyderabad, India in December 2008, from the merger of the former Framework of Principles for the Internet and Internet Bill of Rights dynamic coalitions. One of its current activities is to review the APC Internet Rights Charter that was last revised in 2006.[17]

Another new institution in this arena, though less multi-stakeholder in composition given that it lacks governmental membership, is the Global Network Initiative (GNI).[18] The GNI, which includes Microsoft, Google and Yahoo from the private sector, alongside civil society groups such as the Electronic Frontiers Foundation (EFF) and Centre for Democracy and Technology (CDT), released a set of Principles on Freedom of Expression and Privacy in October 2008. The principles are intended to delineate the degree to which the private sector will cooperate with governments that seek its assistance in interfering with the freedom of expression or privacy of their customers.

Conclusion

It has only been possible in this report to sketch the broadest outline of the institutional framework for access to information and knowledge. Moreover, this chapter has not even attempted to consider access to printed materials (which is particularly important in ensuring adequate access to educational materials, and especially in the developing world). Neither were the activities of regional and local non-governmental organisations considered here, or those of national governments – though many of these will be covered in the country reports to follow in this volume.

Even so, it is clear that initiatives in this area have emerged from all sectors: public, private and civil society. Within each of the three broad issue areas considered in this report – concisely labelled intellectual property rights, democratic public media and online civil rights – stakeholders from all sectors have formed productive alliances and begun to make gains that could not have been accomplished

13 unesdoc.unesco.org/images/0004/000400/040066eb.pdf

14 www.unesco.org/webworld

15 wcd.coe.int/ViewDoc.jsp?id=1377737&Site=CM

16 www.coe.int/t/dghl/standardsetting/media/MCM(2009)011_en_final_web.pdf

17 rights.apc.org/charter.shtml

18 www.globalnetworkinitiative.org

in isolation. For example, civil society has worked together with governments to support the WIPO Development Agenda, and with the private sector to promote online civil rights within the GNI.

What is lacking are efforts to realise similar gains from the collaboration of institutions and other actors *between* these broad issue areas. As yet, there is little coordinated engagement between, for example, WIPO and UNESCO (even within a forum such as the IGF, which was intended to foster such linkages), or between human rights groups and the open source software community. A comprehensive approach to narrowing the information divide through the use of ICTs will require stakeholders to develop a shared holistic view of the issue areas constituting this field, as complementary elements of a framework for the promotion of access to knowledge and information for all. ■

References

CRIS Campaign (2005) *Assessing Communications Rights: A Handbook*. www.crisinfo.org/pdf/ggpen.pdf

Hugenholtz, P. and Okediji, R. (2008) *Conceiving an International Instrument on Limitations and Exceptions to Copyright*. www.soros.org/initiatives/information/articles_publications/publications/copyright_20080506/copyright_20080506.pdf

Kapczynski, A. (2008) The New Politics of Intellectual Property, *Yale Law Journal*, 117, p. 804-885. papers.ssrn.com/sol3/papers.cfm?abstract_id=1323525

Malcolm, J. (2008) *Multi-Stakeholder Governance and the Internet Governance Forum*, Terminus Press, Perth.

Measuring progress

Measuring progress

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Introduction

This report will review indicators to assess the extent to which they include human rights concerns around the freedom to access, use, share and transfer content, as well as legal and administrative environments that govern intellectual property (IP) enforcement.

Indicators are used for quantifying trends and developments. These can be single indicators – such as gross domestic product (GDP) or literacy levels – or clusters of indicators used to form a ranking. These are designed for providing insight into specific developments and particularly for benchmarking territories or geographic areas (countries, regions, etc.), but also to monitor progress over time. The focus here will be on the rankings in which individual indicators are clustered to indicate specific developments (e.g., the development of the information society). The reason for this is to take advantage of the work that has been done in developing these rankings and the broad coverage of the rankings of different individual indicators. When referring to "indicators", this report is referring to individual indicators such as internet use or penetration of broadband, and when referring to "rankings" or "indices" it is referring to the clustered indicators.

There are a number of factors relevant for access to online information. First is *access to the equipment and infrastructure* necessary for accessing information (e.g., computers, internet, mobile phones, broadband, wireless). This includes both availability and affordability. Second is the *ability to use* the equipment and infrastructure to access the information. For example, do people have the necessary skills and education to use the equipment? This includes digital and, recently, media literacy. Third is *access to and accessibility of the information itself.* For example, is government information available online? This also refers to how freely accessible and easily available information is (e.g., is the internet filtered?), as well as appropriate content in terms of aspects like literacy levels, language and disabilities. Fourth, access to information not only relies on being able to access the information, but also the *environment* in which this takes place. For example, is the political environment stable enough to actually access and use information, and can the available information be trusted? This also involves media freedoms, and the extent to which citizens have access to public-interest documents. It is important to also take these indicators into account to fully assess accessibility and use of information.

The discussion of indices below is not exhaustive; it is a work in progress, identifying some of the rankings or indicators that are relevant to the general theme of "access to information".[1]

ICT Development Index[2]

This index, developed by the International Telecommunication Union (ITU), captures the level of advancement of information and communications technologies (ICTs) in more than 150 countries worldwide. It compares progress made between 2002 and 2007. The index comprises a number of indices that were developed by ITU in earlier years, including the Digital Access Index (2003), the ICT Opportunity Index (2005) and the Digital Opportunity Index (2007). The index is a tool to benchmark and assess information society developments and to monitor progress that has been made globally to close the digital divide. The index consists of three sub-indices measuring access to ICTs, use of ICTs and skills in using ICTs. "Access" is measured in terms of the penetration of infrastructure (such as fixed and mobile phones), access to services (e.g., internet) and equipment (e.g., computers). "Use" shows how the internet is accessed, and the number of fixed and mobile broadband subscribers. "Skills" are measured by literacy and secondary and tertiary enrolment statistics. Combined, the index provides detailed insight into the preconditions for access to online information. Data are collected directly from governments by means of an annual questionnaire. This is complemented by collecting missing values from government websites and operators' annual reports. Market research data are also used to cross-check and complement missing values.

The Networked Readiness Index[3]

The Networked Readiness Index (NRI), compiled by the World Economic Forum, is one of the most comprehensive discussed here, both in terms of geographic coverage (134 countries) as well as the number of indicators used in the index (68). The index is composed of three sub-indices measuring the extent to which the environment in a country is advantageous to the adoption of ICTs (the market, political and regulatory environment, and the infrastructure environment); the extent to which the main stakeholders are interested and prepared to use technology in their

1 In selecting the rankings, three factors have been taken into account: relevance to the subject of access to information, accessibility of the data in terms of costs (all are available either free of charge or at low cost), and the relative independence of the source of the information.

2 www.itu.int/ITU-D/ict/publications/idi/2009/index.html

3 World Economic Forum (2009) *The Global Information Technology Report 2008-2009*. www.weforum.org/en/initiatives/gcp/Global%20Information%20Technology%20Report/index.htm

daily activities (individuals, businesses and government); and the extent to which the technology is actually used (by individuals, businesses and government). In terms of access to information, a number of indicators in this index are especially relevant. For instance, "freedom of press", "accessibility of digital content", "intellectual property protection", "tertiary education" and "education expenditure" all indicate how beneficial the environment is regarding the social and legal factors that help to exploit the potential of ICTs. Actual usage is described by indicators such as those showing subscriber data, ownership of or access to computers, use by governments, and availability of government online services. For the latter, the United Nations (UN) e-Government Readiness Index[4] and e-Participation Index[5] are incorporated. Similar to the e-government benchmark published by the European Commission,[6] these measure the availability and sophistication of public services online. The data for the NRI is collected via various organisations such as the World Bank, ITU, United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Monetary Fund (IMF) and the UN.

Open Source Index[7]

This index has been developed by Red Hat and Georgia Tech University and measures the open source *activity* and *environment* in 75 countries. Each country is given a score based on its policies, practices and other data in the fields of government, industry and community. Although the index focuses on open source software, it also provides useful information for open standards and technologies. For "activity", the index includes indicators such as development and use of open source by companies, open source installed and used by households, open source courses in education, and open source funding by government. For environment, the index takes government software policy (support for open source and procurement of open source), e-government and IP legislation into account.

The Human Freedom Index[8]

This index was developed for the United Nations Development Programme (UNDP) and published in 1991 in the Human Development Report. The index was designed by examining UN conventions and international treaties, and distilling 40 indicators for assessing freedom. These include relevant indicators such as the right to teach ideas and receive information; freedom from such things as compulsory organisational membership, compulsory religion or state ideology in schools, and the monitoring of postal mail and telecommunications; and the independence of the media (i.e., newspapers, publishing, and radio and television). This index is interesting as it serves not only as an instrument for measuring freedom, but also provides an overview of rights and freedoms that are part of international treaties.

Press Freedom Index[9]

Reporters Without Borders compiles and publishes an annual ranking of countries based upon the organisation's assessment of their press freedom records. This is done by surveys with questions about direct attacks on journalists and the media as well as other indirect sources of pressure against the free press. Although it does not take into account the quality of the press, it does provide a useful clue as to the environment in which an important source of information is produced. Although the press will also be part of information provisioning via the internet, it is a specifically important source of information in those areas where people might not be able to access online sources.

Freedom in the World[10]

Freedom House produces a comparative assessment of global political rights and civil liberties in its Freedom in the World report. This has been published annually since 1972 and covers 193 countries. The report uses indicators to report on political rights and civil liberties. The indicators used to determine civil liberties, particularly freedom of expression and belief, are most relevant to this discussion as they measure the presence of free and independent media; freedom for religious institutions and communities to practise their faith and express themselves in public and private; academic freedom and the extent to which an educational system is free of extensive political indoctrination; and whether there are open civil society discussions. The indicators are ratings that are provided by analysts and senior-level academic advisors.

4 Based on the UN e-Government Survey 2008. The e-Government Index is based on website assessment, telecommunications infrastructure and human resource endowment.

5 Based on the UN e-Government Survey 2008. The e-Participation Index assesses the quality, relevance, usefulness and willingness of government websites for providing online information and participatory tools and services to people.

6 Capgemini (2007) *The User Challenge: Benchmarking the Supply of Online Public Services*, commissioned by the European Commission. ec.europa.eu/information_society/eeurope/i2010/benchmarking/index_en.htm

7 www.redhat.com/about/where-is-open-source/activity

8 UNDP (1991) *Human Development Report 1991*. hdr.undp.org/en/reports/global/hdr1991/chapters

9 www.rsf.org/en-classement794-2008.html

10 www.freedomhouse.org

The Boston Indicators Project[11]

This project reports on change in ten sectors: civic vitality, cultural life and the arts, the economy, education, the environment, health, housing, public safety, technology, and transportation. It aims to "democratize access to information, foster informed public discourse and track progress on shared civic goals."[12] In this project a number of indicators are available that are relevant for access to information, including those that measure access to information and workforce skills, several education indicators, and indicators regarding access to and use of technology. The data are drawn from public agencies, civic institutions, think tanks and community-based organisations. The data are geared towards a very specific geographic area, but can provide inspiration for applying similar methodologies to other areas.

World Values Survey[13]

The World Values Survey (WVS) is a global network of social scientists who have surveyed the basic values and beliefs of the publics of more than 80 societies, on all six inhabited continents. This survey focuses on people and their values. Although there is no data describing actual access to information, this indicator does provide interesting insights into the environment in which access to information takes place and the attitude of people towards sources of information (and their receptiveness to different sources of information). For example, the participation of people in societal organisations is measured as well as confidence in the education system, press and media. Although not specifically aimed at online information, it has added value in terms of identifying the receptiveness of citizens to information online or offline.

A piece of the puzzle

Overall, each index on its own provides partial insight regarding the freedom to access and use online content as a democratic and human right in the countries covered. In general, most indices have indicators dealing with access to and use of information and content. Although the indices do not specifically address the right to share and transfer content, indicators such as freedom of expression and the freedom and availability of the press do indirectly provide insight into these factors. Some indices contain information regarding IP enforcement. However, in order to create a full and detailed view including all human rights concerns, the indices would need to be combined.

Currently, one of the most extensive rankings covering a broad area of topics is the NRI. Although it is geared towards ICT development, it does cover a broad range of topics that are relevant to accessing online information; besides the availability and use of technology it includes the environment (freedom of the press, accessibility of digital content, IP protection and education enrolment), quality of education (and thereby access to educational material), and access to public information (e-government and e-inclusion). The downside to the indicators used is that they do not take into account topics such as open standards and open data. (These topics are to some extent covered by the Open Source Index). With the exception of freedom of the press, the NRI ranking also does not include any indicators assessing the environment in terms of open culture and society. For describing the latter, other rankings provide better indicators. In particular, the Freedom in the World project provides a good assessment of political rights and civil liberties. In doing so, it takes into account freedom of expression in terms of, for example, government influence on media (via censorship or indirect measures), self-censorship, the financial dependence of media on public funds, and the censorship of cultural expression (such as art or literature). Moreover, it takes into account the degree of freedom in the educational system. A downside to these indicators is that they are subjective: countries are rated by analysts and experts. This does, nevertheless, raise the question of how far quantitative data can go in measuring access to online information, particularly when it comes to more qualitative criteria such as the quality, accuracy, trustworthiness or value of the content to communities, citizens or users generally.

The rankings and surveys that have been discussed cover a broad range of indicators on the four levels of access to information outlined at the beginning of this report. They range from hard data on access to technologies and the number of users of specific services, to more qualitative assessments by experts or citizens. However, having indicators is one thing, but actually producing data is another. Hard, up-to-date data might be difficult to come by in some countries and methodologies to collect data might differ. Moreover, one should be aware that specific indicators can be rendered obsolete by new social, economic or technological developments. For example, the importance of the internet or mobile phones, and the growing importance of social computing (peer-to-peer), should be taken into account as alternatives to traditional (producer-consumer) sources of information. ■

11 www.bostonindicators.org

12 www.bostonindicators.org/IndicatorsProject/Content.aspx?id=602

13 www.worldvaluessurvey.org

Mapping democracy

Mapping democracy

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Introduction

The rise of digital communication technologies has placed new emphasis on an old problem: that of information overload. Information overload refers to an amount of information in excess of what individuals are able to process and absorb.[1] Different strategies are deployed to counter this trend, including the use of search engines to filter information.[2] Where engines look to create ordered lists of relevant sources, the strategy of visualising information aims to give an overview of a particular data set, or make certain relationships visible. In this way, mapping and visualising data sets are means by which information can be made more accessible and useful.

Communication and information dissemination are important aspects of networking, advocacy capacity, and the reach and impact of civil society organisations. Mapping and visualising information provides a way for civil society organisations to enable individuals, communities, networks and governments to process and absorb information easily. Important information disseminated in this way can become more accessible for more people. Therefore mapping and visualising information can be used as a communication, advocacy[3] and research[4] tool.

This chapter will demonstrate how information can be visualised on the basis of two research examples from the Digital Methods Initiative (DMI), "The Nationalities of Issues: Rights Types" and "For the ppl of Iran - #iranelection RT". The first looks at the most significant rights types per country according to local Google results when entering "rights" in the local language. The latter looks at Twitter during the 2009 Iran election crisis.

DMI Amsterdam is a collaboration of the New Media programme, Media Studies, University of Amsterdam and the Govcom.org Foundation. The initiative is dedicated to reworking methodologies for internet research, and in particular to learning and developing techniques for studying societal conditions and cultural change using the web.

1 Yang, C.C., Chen, H. and Honga, K. (2003) Visualization of large category map for Internet browsing, *Decision Support Systems* 35 (1), p. 89-102.

2 Google's mission statement is "to organize the world's information and make it universally accessible and useful." www.google.com/corporate

3 A good example is Ushahidi, a Kenyan organisation that has its origin in the mapping of reports of violence in Kenya after the post-election fallout at the beginning of 2008. www.ushahidi.com

4 For example, Govcom.org is dedicated to creating and hosting political tools on the web. Much of the work involves mapping issue networks on the web. www.govcom.org

Social research with the web

We look at Google results and see society, instead of Google. That is a shorthand way of saying that we see institutions and issues in the ranked lists that are returned in the search results. Query the word "rights" in Google.com and you are returned with the top websites in the English-language space dealing with rights, in a variety of ways. You can also see which rights types are higher than others. For example, lesbian, gay, bisexual and transgender (LGBT) rights appear in the top ten in Google.com, but not in Google.fr, where youth rights are much higher.

But the question that is often asked is, where does social research end, and "Google studies" begin? Isn't it Google that determines the rankings? Surely Google has more to do with the hierarchies than societal dynamics? Can Google ever be removed from the picture when one is using it to perform research? These questions are classic ones in social research, as they concern the possibility of being able to isolate phenomena dependent on a context for them to exist. However, this question should also be put to web studies more generally: Does one only study the web when you use the web?

The two research projects presented are attempts at web studies where the tool used (e.g., Google or Twitter) is part of the analysis. In doing this, one is always aware of the significance of the question of where Google studies end, and social research using Google begins.

What kinds of findings may be made by interpreting search engine results, especially the rankings of sites for particular queries? What kinds of findings can be made by comparing results across the many local versions of Google, such as the new Palestinian one, Google.ps? In the project "The Nationalities of Issues: Rights Types", we entered the word "rights" in various languages into the local Googles in order to obtain hierarchies of rights types per country. Are there distinctive rights that rise to the top in Finland, the Netherlands, France, Italy, Switzerland, Germany, Austria, Sweden, Russia, Japan, Canada, the United Kingdom, Australia, the Philippines, Ivory Coast and other countries? As the results show, the answer is yes. From "cultural rights" in Mexico, "pollution victims' rights" in Switzerland, the "right to education in a native sign language" in Finland, to "rights of the over-indebted" in Ivory Coast, countries could be said to have distinctive concerns, compared to other countries, as read from local Google results.

Twitter, generally, but also during the Iran election crisis (June 2009 and beyond), has been described as banal. The question is, could the hundreds of thousands of tweets about the Iran election crisis be made into a comprehensible

account of what has been happening on the ground as well as online? The project, "For the ppl of Iran - #iranelection RT", is such an attempt. In order to filter the most significant tweets, and order them so as to recount the crisis, the digital methods researchers chose to assemble the top three "retweets" per day, and order them chronologically, from 10 June to 30 June. The resulting output is a capsule account of the crisis, which the researchers also subsequently edited, and made into sub-storylines, on arrests, violence, the death of Neda Agha Soltan,[5] censorship as well as the internet. The entire set of the top three retweets with the #iranelection hash tag from 10-30 June 2009 is printed. The sub-threads are online at www.rettiwt.net (requires issuecrawler.net login).

The Nationalities of Issues: Rights Types

Most significant rights types per country according to local Google results of the query for "rights" in the local languages.

RESEARCH STRATEGY: Employ Google to show most prominent types of rights per country.

METHOD: Query the term "rights" in the local languages in the local Google versions (e.g., "oigused" in Google.ee and "direitos" in Google.pt). Manually read the results and make lists of the top ten distinctive rights types, leaving them in the order that Google provided.

Google.se with query "rattigheter" (13.07.09)
Google.fi with query "oikeudet" (13.07.09)
Google.ee with query "oigused" (15.07.09)
Google.lv with query "tiesibas" (16.07.09)
Google.co.uk with query "rights" (13.07.09)
Google.nl with query "rechten" (13.07.09)
Google.be with query "rechten van" (15.07.09)
Google.be with query "droits" (14.07.09)
Google.lu with query "rechte" (15.07.09)
Google.de with query "rechte" (15.07.09)
Google.at with query "rechte" (15.07.09)
Google.ch with query "rechte" (15.07.09)
Google.fr with query "droits" (14.07.09)
Google.pt with query "direitos" (14.07.09)
Google.es with query "derechos" (13.07.09)
Google.it with query "diritto al"
OR "diritto all" OR "diritto alla" (13.07.09)
Google.ro with query "drepturile" (13.07.09)
Google.mo with query "drepturile" (13.07.09)
Google.ru with query "prava" (13.07.09)
Google.com.tr with query "haklari" (17.07.09)
Google.jp with query "[illegible]" (16.07.09)
Google.hk with query "[illegible]" (17.07.09)
Google.com.ph with query "karapatang" (16.07.09)
Google.ci with query "droits" (17.07.09)
Google.com.au with query "rights" (14.07.09)
Google.ca with query "rights" (15.07.09)
Google.ca with query "droits" (15.07.09)
Google.com with query "rights" (14.07.09)
Google.com with query "derechos" (15.07.09)
Google.com.mx with query "derechos" (15.07.09)
Google.com.br with query "direitos" (15.07.09)
Google.ar with query "derechos" (15.07.09)
Google.pe with query "derechos" (15.07.09)

Note that the local Google versions were chosen on the basis of the language skills of the participants of the Digital Methods Summer School, 2009. At the same time, when faced with a large quantity of Google versions for a single language, a further selection was made (e.g., the top three Spanish-speaking countries according to population).

For those local Google versions where multiple languages are spoken, the two dominant languages were queried (e.g., we queried google.be [Belgium] in Flemish and French, and queried google.ca [Canada] in English and French).

DATA STORAGE: The top 100 results per query are stored for validation purposes. (In Firefox, "save page as", "web page, complete".) Data sets are available at wiki.digitalmethods.net/Dmi/NationalityofIssues.

FINDINGS: Countries could be said to have distinctive concerns, compared to other countries, as read from Google results. For example, "everyman's right" (freedom to roam) in Finland, "prostitutes' rights" in the Netherlands, "computer programmers' rights" in Japan and the "right to oblivion" (the right to have personal data deleted) in Italy are unique to the respective countries.[6] Given the limited sample of countries and the method for selection, the most widely shared rights across countries are not the subject of analysis.

DESIGN: Vera Bekema and Anne Helmond.

ANALYSIS: Vera Bekema, Liliana Bounegru, Andrea Fiore, Anne Helmond, Simon Marschall, Sabine Niederer, Bram Nijhof, Richard Rogers and Elena Tiis.

Right type

Right type unique to the country (in this sample)

5 Shot to death on 20 June 2009 by security forces during a protest.

6 Given our commitment to reading society on the web, as well as to preserving the cultural distinctiveness of the rights found, classic social science methods (such as categorising findings for easier comparison) as well as attempts to rephrase or correct the language of rights types were resisted (e.g., translating "jokamiehenoikeus", which the Finnish translate as "everyman's right", to "every person's right", or regarding lesbian, gay, bisexual and transgender [LGBT] rights in the United States and homosexual rights in Hong Kong as equivalents).

ROMANIA	MOLDAVIA	RUSSIA	TURKEY	JAPAN	HONG KONG	PHILLIPPINES	IVORY COAST
 human rights	 human rights	 human rights	 human rights	 children's rights	 taxpayers' rights	 copyright	 human rights
 children's rights	 children's rights	 children's rights	 women's rights	 right to defend yourself in court	 children's rights	 human rights	 youth rights
 citizens' rights	 author's rights	 intellectual property rights	 children's rights	 patients' rights	 labour rights	 civil and political rights	 consumer rights
 author's rights	 patients' rights	 animal rights	 consumer rights	 computer program-mers' rights	 human rights	 student's rights	 workers' rights
 intellectual property rights	 women's rights	 freedom of the press rights	 patients' rights	 environmental rights	 copyright	 children's rights	 rights of the overindebted
 women's rights	 disability rights	 consumer rights	 author's rights	 performers' rights	 right to demonstrate	 rights of street vendors	 health care rights
 pedestrians' rights	 pregnancy and maternity rights	 citizen's rights	 animal rights	 disability rights	 homosexual rights	 the right to vote for a president	 women's rights
 homosexuals' rights	 intellectual property rights	 workers' rights	 citizen's rights	 freedom of speech	 animal rights	 the right to vacation	 children's rights
 pregnancy and maternity rights	 personal information rights	 housing rights	 taxpayers' rights	 the right to information	 consumer rights	 rights of indigenous people	 author's rights
 mental disability rights	 pedestrians' rights	 author's rights	 intellectual property rights	 music copyright	 migrant workers' rights	 intellectual property rights	 fundamental rights

AUSTRALIA	CANADA (French)	CANADA (English)	USA (English)	MEXICO	BRAZIL	ARGENTINA	PERU
 human rights	 human rights	 human rights	 human rights	 human rights	 human rights	 human rights	 human rights
 artists' rights	 children's rights	 women's rights	 artists' rights	 children's rights	 children's rights	 school pupils' rights	 children's rights
 men's rights	 immigrants' rights	 housing rights	 privacy rights	 workers' rights	 author's rights	 author's rights	 women's rights
 welfare rights	 author's rights	 online rights	 LGBT rights	 women's rights	 disability rights	 civil rights	 rights of indigenous people
 activists' rights	 civil and political rights	 children's rights	 publicity rights	 labour rights	 animal rights	 rights of indigenous people	 author's rights
 plant breeders' rights	 human rights at work	 publicity rights	 medicare rights	 animal rights	 fair use of copyrighted material	 women's rights	 reproductive rights
 workers' rights	 women's rights	 media usage rights	 children's rights	 reproductive rights	 infants' and adoles-cents' rights	 animal rights	 school pupils' rights
 digital rights	 non-smokers' rights	 workers' rights	 digital rights	 intellectual property rights	 minorities' rights	 environmental human rights	 animal rights
 gay and lesbian rights	 fundamental rights	 non-smokers' rights	 disability rights	 rights of indigenous peoples	 consumer rights	 children's rights	 environmental rights
 aboriginal rights	 intellectual property rights	 equality rights in housing	 civil rights	 cultural rights	 sexual rights and reproductive rights	 citizen's rights	 workers' rights

LUXEMBOURG	GERMANY	AUSTRIA	SWITZERLAND	FRANCE	PORTUGAL	SPAIN	ITALY
 children's rights	 children's rights	 apprentice & trainee rights	 citizen's rights	 youth rights	 human rights	 human rights	 privacy rights
 personal information rights	 youth rights	 youth rights	 journalists' rights	 human rights	 children's rights	 author's rights	 labour rights
 human rights	 rights of disabled children	 children's rights	 children's rights	 women's rights	 animal rights	 digital rights	 right to nationality
 author's rights	 rights of future generations	 creators' rights	 pollution victims' rights	 children's rights	 women's rights	 women's rights	 right to oblivion
 european citizens' rights	 phishing victims' rights	 civil service rights	 athletes' rights in doping cases	 internet and ICTs rights	 artists' rights	 reproductive rights	 right to information
 youth rights	 homosexuals' rights	 disability rights	 maternity rights	 freedom of speech	 citizens' rights	 children's rights	 health care rights
 political rights	 civil rights of institutionalised persons	 work inspectors' rights	 student's parents' rights	 patients' rights	 disability rights	 intellectual property rights	 right to a fair trial
 shareholders' rights	 apprentice & trainee rights	 shareholders' rights	 right to a fair trial	 air passengers' rights	 pedestrians' rights	 audiovisual producers' rights	 environmental rights
 digital rights	 human rights	 athletes' rights in doping cases	 equal rights	 animal rights	 patients' rights	 rights of indigenous people	 right to exercise religion
 rights of future generations	 crime victims' rights	 patients' rights	 apprentice & trainee rights	 citizen's rights	 passengers' rights	 environmental human rights	 medical self-determination

SWEDEN	FINLAND	ESTONIA	LATVIA	UNITED KINGDOM	NETHERLANDS	BELGIUM (Flemish)	BELGIUM (French)
 human rights	 children's rights	 citizen's rights	 animal rights	 human rights	 works council rights	 human rights	 human rights
 patients' rights	 everyman's right (freedom to roam)	 children's rights	 human rights	 author's rights	 air passengers' rights	 disability rights	 internet rights
 children's rights	 animal rights	 environmental rights	 air passengers' rights	 digital rights	 children's rights	 cyclists' rights	 youth rights
 air passengers' rights	 consumer rights	 air passengers' rights	 pension rights for non-citizens	 minorities' rights	 human rights	 volunteers' rights	 citizen's rights
 creator's rights	 women's rights	 author's rights	 immigrants' rights	 citizen's rights	 minorities' rights	 air passengers' rights	 intellectual property rights
 equal rights	 air passengers' rights	 patients' rights	 copyright	 employment rights	 prostitutes' rights	 works council rights	 patients' rights
 citizen's rights	 renter's rights	 property rights	 children's rights	 publicity rights	 taxpayers' rights	 children's rights	 women's rights
 women's rights	 patients' rights	 landowners' rights	 social rights	 abortion rights	 youth rights	 job applicant's rights	 children's rights
 right of collective bargaining	 youth rights	 workers' rights	 teachers' rights	 photographers' rights	 islam and women's rights	 immigrants' rights	 workers' rights
 food rights	 right to education in native sign language	 sexual and health rights	 consumer rights	 children's rights	 author's rights	 patients' rights	 the right to defend yourself in court

For the ppl of Iran - #iranelection RT

#iranelection RT tells the story of the day-to-day unfolding of the Iran election crisis as seen through Twitter. #iranelection RT is a collection of all the tweets that have been tagged #iranelection, from the first one on 10 June up to 30 June 2009, some 650,000 in all. The most retweeted tweets (RTs) have been filtered and organised chronologically, as opposed to the reverse chronology that Twitter uses. In "reversed realtime", the most significant #iranelection retweets show the urgency and the emotion of those twenty days in June, when the tensions on the streets and the coverage in the media were at their height. The crisis unfolds on Twitter with the discovery of the value of the #iranelection hash tag, and tweeters both in and outside Iran begin using it to mark all tweets about the events there: the opposition candidate Mir-Hossein Mousavi holds an emergency press conference; the voter turn-out is 80%; Mousavi's website and Facebook page are blocked; police using pepper spray; Mousavi is under house arrest, and declares he is prepared for martyrdom; Neda is dead; there is a riot in Baharestan Square; Bon Jovi sings "Stand by Me" in support; Ahmadinejad confirmed the winner, and so on.

The collection of tweets also shows how tweeters respond to what is happening online and on the ground. Tweets reporting important websites that have been blocked are followed up by proxies being offered. Accounts of police using pepper spray are followed up by links to websites with first aid information.

DATA BREAKDOWN (10-30 June 2009):

Tweets tagged with #iranelection: 653,883

Unique number of Twitter users using #iranelection tag: 99,811

Number of Twitter users using #iranelection with multiple tweets: 46,702

Number of Twitter users using #iranelection with greater than 20 tweets: 6,000

Number of Twitter users using #iranelection with 1 tweet: 53,109

Number of Twitter users using #iranelection who were retweeted: 36,913

Number of Twitter users using #iranelection who were retweeted multiple times: 16,336

Number of Twitter users using #iranelection who were retweeted 10 times or more: 2,829

Number of Twitter users using #iranelection who were retweeted 1 time: 20,577

Number of languages used in #iranelection: 26

Number of tweets in #iranelection in English: 612,373

Number of tweets in #iranelection in Farsi: 6,248

DESIGN AND ANALYSIS: Programming by Erik Borra, design by Marieke van Dijk and editorial by Richard Rogers, Kimberley Spreeuwenberg and Esther Weltevrede.

FURTHER INFORMATION: #iranelection RT is online at www.rettiwt.net (requires issuecrawler.net login). ■

#iranelection RT Top 3 retweets per day

Jun 10 Wow - Twitter search can let you see all the Iran election tweets coming out of Tehran http://bit.ly/x5C8P #IranElection 3 retweets Prosecutor General declares unequal airtime given to candidates is against the law http://bit.ly/1bhCHk #IranElection 2 retweets Mousavi boycotts TV debate due to unfair time allocation: 20 min to Ahmadinejad, 1:41 to Mosuavi #IranElection 2 retweets Jun 11 RT@LaraABCNewsAhmedinejad = Bush, Mousavi = #Obama? Sadjadpour's neat analysis of #iranelection http://bit.ly/14jy0Y 4 retweets Marc Lynch asks "Could there be a Mousavi Effect?" http://bit.ly/12hkAW #IranElection #retweet_thursday 4 retweets RT: @alexlobov: RT @keyvan Expect internet connection problems and new wave of filtering in Iran within next 72 hours. #IranElection 3 retweets Jun 12 Mousavi will hold emergency press conference in 15 mins in Tehran http://havadaran.net/archive/00309.php #IranElection 6 retweets My conclusions after seeing 100s of #IranElection photos: Tehran looks a lot like Tel-Aviv and ALL Iranian girls are beautiful 5 retweets Reports says more that 80% are electing. This is very high, first time in the history of islamic republic #iranelection 5 retweets Jun 13 Latest photos from Tehran: www.flickr.com/mousavi1388/ (updated every minute) #IranElection 11 retweets Mousavi has been arrested!!!!!! http://tr.im/oopK #iranelection 11 retweets SMS is down, Moussavi's websites and Facebook are filtered, state TV is celebrating and people are in the streets. #IranElection 10 retweets Jun 14 PLEASE RT (ReTweet) these pictures http://twitpic.com/7c85l AND http://ow.ly/e11H and this hashtag 348 retweets Dear Iranian People, Mousavi has not left you, he has been put under house arrest by Ministry of Intelligence #IranElection 80 retweets #iranelection We witnessed police spraying pepper gas into the eyes of peaceful female protesters 36 retweets Jun 15 Functioning Iran proxies 218.128.112.18:8080 218.206.94.132:808 218.253.65.99:808 219.50.16.70:8080 #iranelection 410 retweets Our Iranian friends can access Twitter from 148.233.239.24 Port:80 in Tehran. Can avoid govt filters from here. #iranelection 131 retweets to other sources: this isn't the police! police is still outside! we're under attack by Ansar-Hezbolah. #iranelection 67 retweets Jun 16 Twitter Reschedules Maintenance Around #IranElection Controversy http://bit.ly/2xWNy (via 223 retweets RT From Iran: CONFIRMED!! Army moving into Tehran against protesters! PLEASE RT! URGENT! #IranElection 222 retweets RT Open Letter to the World from the People of Iran: http://tinyurl.com/nw95ev Please RT. 129 retweets Jun 17 Simple ways to help Iranian free speech: http://is.gd/13U0V #IranElection #gr88 Pls RT 536 retweets RT from Iran: #IranElection Regime still pretending there's no protest outside Tehran RT this HUGE demo pic NOW- http://twitpic.com/7ki6e 250 retweets U.S. Government Asks Twitter to Stay Up for #IranElection Crisis _ http://bit.ly/5Cade 116 retweets Jun 18 RT Add your username to the Green Wall to show support for #iranelection http://iran.greenthumbnails.com 272 retweets Mindblowing #IranElection Stats: 221,744 Tweets Per Hour at Peak http://bit.ly/3xmvpE 209 retweets to protect us all followers pls change your twt location to IRAN GMT+3.30 - #Iranelection RT RT RT 69 retweets Jun 19 MOUSAVI APPEALS TO THE WORLD TO PARTICIPATE IN SEA OF GREEN IN IN ALL CAPITAL CITIES THIS SUNDAY #Iranelection RT RT RT - confirmed 108 retweets RT From Iran: "I have one vote. I gave it to Moussavi. I have one life. I will give it for Freedom." #IranElection 59 retweets RT from Iran: The

situation in Iran is now CRITICAL - the nation is heartbroken - suppression is iminent - #Iranelection 52 retweets

Jun 20

I am prepared For martyrdom, go on strike if I am arrested #IranElection 174 retweets Courage! Please, please, read this short piece & RT: http://bit.ly/lQUI5 #IranElection 70 retweets STOP supporting US backed coup in Iran. #IranElection #IranElection 64 retweets

Jun 21

RT If an innocent girl gets shot halfway across the world, does she make a sound? Yes, and the whole world hears her. #IranElection 117 retweets RT "On 9/11, the world said we were all Americans. Tonight, we're all Iranian" #IranElection #Neda 79 retweets RT RT WIDELY FIRST AID INFO IN FARSI :ی‌کش‌زپ‌لکشم http://gr88.tumblr.com/ #IranElection 68 retweets

Jun 22

PLEASE RT: THIS IS WHY WE PROTEST. @ http://digg.com/d1uPU9 #iran #iranelection 462 retweets Anonymous secure blog RT bypass govt. blocks Free Select Canada to auto-download http://tinyurl.com/nzxco5 #iranelection 188 retweets Help Iran free speech. RT. Anonymous web tool. Free. Select country Canada http://tinyurl.com/nzxco5 #iranelection 119 retweets

Jun 23

RT MOUSAVI Declares ALL IRAN STRIKE TUESDAY & Rest of Week! Do NOT WORK! STAY HOME OR PROTEST! Close ALL Bazaars! #IranElection #N 64 retweets #iranelection RT http://iran.greenthumbnails.com/ learn, understand, support 57 retweets FREE SPEECH! DO NOT SUPPORT BLOODY COUP IN IRAN! #IranElection Tehran http://tinyurl.com/m7w4pg 56 retweets

Jun 24

New pictures of Neda along with a profile of her life http://bit.ly/14ebTK #neda 64 retweets in Baharestan we saw militia with axe choping ppl like meat - blood everywhere - like butcher - Allah Akbar - #Iranelection 62 retweets they pull away the dead into trucks - like factory - no human can do this - we beg Allah for save us - #Iranelection 61 retweets

Jun 25

RT URGENT FOR WOUNDED!! English & FARSI FIRST AID INFO: (http://gr88.tumblr.com/) #Iranelection 102 retweets RT Please RT Video June 24th Riot in Baharestan Sq. posted today http://bit.ly/Hrh71 #iranelection 87 retweets Plz send your videos to for media, esp CNN. When filming show newspaper to prove date. Very Imp RT RT RT #iranelection 36 retweets

Jun 26

RT - natarsim natarsim ma hame ba ham hastim - Don't be afraid, don't be afraid. We are all in this together #IranElection #iran 40 retweets Doctor who was with Neda in her last moments took a risk to speak to BBC: http://tinyurl.com/nrrg63 30 retweets Statistical analysis suggests fraud in #iranelection http://bit.ly/63MKI 22 retweets

Jun 27

God is Great #Iranelection #revolution #neda RT RT RT everybody 70 retweets RT Please RT Video June 24th Riot in Baharestan Sq. http://bit.ly/Hrh71 #iranelection #gr88 32 retweets Check out the new tribute video for #iranelection. Dedicated to those protesting in Iran. Amazing video.RT RT RT http://tinyurl.com/lqpxvv 28 retweets

Jun 28

British embassy staff arrested in Iran, Foreign Office confirms http://bit.ly/6jjnP #iranelection 66 retweets Iran government TV: Eight local British embassy staffers arrested http://bit.ly/13hAZ8 #iranelection 28 retweets has been arrested. Some solidarity might not go amiss. RT! #iranele 20 retweets

Jun 29

Bon Jovi, Andy Madadian & Richie S. sing "Stand By Me" 2 support #iranelection http://tr.im/q3hj 88 retweets #Neda (You Will Not Defeat The People) #music video 4 neda and the ppl of Iran 50 retweets Bon Jovi & Iranian Superstar Andy M. sing "Stand By Me" 2 support #iranelection http://tr.im/q3hj RT 47 retweets

Jun 30

RT Support your local Iranians! Only shop at 7-11. FREE IRAN!! ... with purchase of any medium size slurpee... #iranelection 75 retweets RT Ahmadinejad WINS!!! Everyone else can SUCK IT!!!! #iranelection 25 retweets RT Please LIGHT a CANDLE for those who have DIED! PLZ RT! #iranelection Iran #Neda 6 retweets

Regional and country reports

Introduction

Unsettling the "information society"…

Alan Finlay

Most of the country reports that follow, from countries as diverse as Mexico, Cameroon, Iraq, Japan and the Netherlands, have one thing in common: they show that the "information society" – especially conceived of as a democratic space of engagement – is never really secured. Instead it involves what the Foundation for Media Alternatives (Philippines) describes as a "continuing tug-of-war between the forces of authoritarianism and democratisation."

This "tug-of-war" is seen on several fronts, whether in the cultural and religious censorship of more conservative states, the curtailing of basic freedoms in the "war on global terrorism", or the "copyright wars", where restrictive global copyright regimes and trade practices override the nuances of local copyright freedoms and access to information rights.

It is generally felt in the reactionary backlash to what has been the more open territory of the online sphere. For instance, Pangea (Spain) describes "a growing perception among several social sectors that while the internet revolution was initially positive… the online world is becoming a wild territory that needs to be drastically limited to protect everyone." Depending where you are coming from, this "wild territory" has a number of inhabitants: terrorists, pirates and propagandists, stalkers and child abductors, paedophiles and pornographers, even activists. A kind of virtual soapbox, it permits the problematic: hate speech, blasphemy, character assassination, copyright theft, and the darker dealings of fraud, do-it-yourself bomb kits, and (for some) rap, disco, and dance. Which means that while it provokes legitimate concerns about rights and safeties that any society faces, it also provides ample cannon fodder that can be used to shut society down.

One of the ways that society is being shut down is through copyright regimes – and these reports suggest that it is uncertain who, in the end, is winning the copyright wars. Despite moves towards open access licensing, Wolf Ludwig (Switzerland) points out that there are worrying counter-actions:

> Initiatives launched in neighbouring Germany, such as the Heidelberg Appeal, [encourage] scientists to abuse their author's rights and to exclude their work from search engines like Google, thereby undermining open and public access.

Asia holds a light on many issues the rest of the world will confront in the future, and shows that vigilance from the civil society advocate is crucial. The Institute for InfoSocionomics at Tama University (Japan) describes how concerns such as the safety of children online can impact negatively on content freedoms generally. Meanwhile, the Korean Progressive Network Jinbonet (South Korea) finds that control of the internet can have "a seriously chilling effect on the general public."

Where the will to implement freedom of information policies does not exist, the capacity to restrict access to information seems in abundance. LaNeta shows that in Mexico the inhibitors of the information society are perennial: "…political control, market monopolies in communication media and [information and communications technologies], and pressures exerted by the country's powerful organised crime syndicates." At the same time, Anat Ben-David and Sam Bahour describe how in the occupied Palestinian territory, a divided society means a divided information society:

> Although PalTel is the same company that provides internet connectivity both in Gaza and the West Bank… websites with content related to pornography, dating, sex education, gay and lesbian information and other religions [besides Islam] remain accessible in the West Bank, but are inaccessible from Gaza.

One of the lessons of these reports is that e-government does not mean democracy. As reports such as those by Diplo-Foundation (Morocco) and Colnodo (Colombia) suggest, e-government implies *efficiency*, and some e-government initiatives are primarily about "doing business" with the "citizen-as-client". This to the extent that the Swiss government portal ch.ch is described as the country's "electronic business card". An e-government programme might entail accountability, transparency and citizen voice; however, it might also mask the absence of these.

Cooperative Sulá Batsú (Costa Rica) captures what seems to be a phenomenon in many countries: the "institutionalisation" of the online citizen. This is a phenomenon that goes beyond e-government programmes, and points to the *expectations* of the public regarding the ability to access online services, the increasing efficacy of online advocacy (compared to, for instance, street protests or doorstopping), and online political campaigning during elections. Bytes for All (Pakistan) tells us that: "[m]ore than any formal platform or organisation, the blogosphere has probably amounted to the strongest form of global activism." Meanwhile the Institute for InfoSocionomics says that Japan's policy on the "advanced use of ICTs" aims to get "80% of the population to appreciate the role of ICTs in resolving social problems by 2010."

But this has a dark side. KICTANet points out how the same ICT platforms were used in Kenya's recent elections

to "spread messages of ethnic hatred, intimidation and calls to violence." Bureaucratic alienation can also be felt at the other end of a government call centre line as much as in the echoing corridors of administrative power.

Overall the reports show that building an information society based on human rights is dependent on (at least) access to infrastructure, political will, solid legislation, participation, political and economic stability, and the availability of skills (see, for instance, the report by Alaa Aldin Jawad Kadhem Al-Radhi on Iraq's reconstruction, and the need for the "return of Iraqi expats and displaced intellectuals"). Not one of these factors alone will suffice.

While Ahmad El Sharif (Syria) describes a thirst for self-expression, social networking, and accessing information online – discussion forums in Syria "cover topics as diverse as society, religion, science, politics, and health and beauty" – Bytes for All (Pakistan) stresses the need for *reliable* local content. An informed citizen is a properly informed one, and beyond the benefits of local content (which it calls "kosher" content), how does one develop a sense of trust in information? Wikipedia is one way. However, as Bytes for All puts it:

> The fundamental brilliance of user-generated content is also its most troubling flaw: if you have poor quality data being used to generate content, the resultant quality of the published content will be just as poor.

A case is also made for mobile phones. Over 90% of Colombians own a mobile phone. Despite this, mobile phones have not been used to spread public information, such as crop prices and weather warnings. Instead, what is called a "disruptive technology" earlier on in this publication has been "colonised" by advertisers and other commercial interests. Given the ubiquity of mobile phones, any access initiative has to consider the potential of a mobile strategy.

ZaMirNET (Croatia) builds a convincing argument for the differently abled. Its perspective is unequivocal: "Information access is even more important for people with disabilities because most have mobility impairments and are more dependent on the use of ICTs… If web accessibility is not achieved, many people are at risk of being partially or totally excluded from the information society." One could just as easily say "excluded from society." It prompts the need for more projects and funding to be geared towards the differently abled. Few reports addressed this crucial area, and few projects are widely visible in the field.

Ironically, the terrain of "access to information" has knowledge barriers in itself: it has pockets of specialisation beyond the everyday discussions of most people. This has the unfortunate consequence that while we are talking about fundamental rights (such as freedom of expression, the right to participate, the freedom to learn and to know), these discussions are often hidden from the purview of the person in the street. They are, for instance, seldom brought succinctly to the public's attention by the mainstream media.

This is a challenge for civil society activists – both in terms of getting a workable knowledge of the issues at hand for themselves, but also when engaging others, whether to raise awareness, to demand, or to persuade. It is hoped that at least some of the advocacy work that lies ahead is demystified in these reports.

As was the case in last year's GISWatch, the country reports are framed by regional reports: from North America, Latin America and the Caribbean, Africa, the Middle East and North Africa, Europe, and South Asia. Rich regional comparisons are invited, and a context for country-level concerns and tensions suggested.

The value of a publication like this – to cast shadows, illuminate differences, pockets of challenges and changes – is once again highlighted in the reports collected here. Thank you to the authors for their time and, in a number of instances, courage in writing them.

Read them and be informed. ■

REGIONAL REPORT

North America

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Introduction

Within North America,[1] Canada and the United States (US) present a picture in contrasts in key policy areas crucial to safeguarding the internet as an open, equitable and democratic platform for citizen participation and empowerment.

The US and Canada are the largest trading partners, and share the longest undefended border, of any two countries in the world. While the US is known for its military and capitalist might, Canada is recognised for its role as an international peacekeeper, and envied for its universal healthcare and strong social safety net. Relations between the two countries have generally been amicable, though the tone has fluctuated in recent decades.

Under the Bush administration (2000-2008), the US government saw significant setbacks in transparency provisions, freedom of information, and privacy protection as a result of its preoccupation with the "war on terrorism". During that same period, the Canadian government was heralded as the standard bearer in digital transparency and privacy initiatives. But since re-election in late 2008, Canadian Prime Minister Steven Harper's embattled minority Conservative government has battened down the hatches at the Prime Minister's Office and has scaled back access to information initiatives.[2]

The historic 2008 election of Barack Obama as the president of the US, and his huge popularity in Canada, may signal a new chapter in US-Canada relations.[3] Many Canadians are hopeful that Obama's open-government initiatives, his pledge for transparency, his savvy with social media, and his strong support for net neutrality[4] will spill over to Canada.

As both countries grapple with the fallout of the 2008 economic crisis, it is interesting to compare the policy initiatives of their administrations, particularly those directed at telecommunications and media reform. This report therefore focuses on the stimulus plans and broadband access, copyright reforms, and access to knowledge policies in both countries.

Stimulus spending and net neutrality

Obama began his presidency with the enormous task of restoring confidence to the badly stricken financial sector and bailing the US economy out of its worst downturn in decades. One of his first acts as president was to pass a USD 787 billion economic stimulus package known as the American Recovery and Reinvestment Act of 2009.[5]

The plan included USD 7.2 billion for broadband development and access programmes. Of this, USD 4.7 billion is allotted to the Broadband Technology Opportunities Program (BTOP). The BTOP "provides grants to support the deployment of broadband infrastructure in unserved and underserved areas, to enhance broadband capacity at public computer centers, and to encourage sustainable adoption of broadband service."[6] The programme underscores the close connection between the internet, job creation and economic recovery.

The BTOP embodies the key principles of net neutrality. All grant recipients must observe "non-discrimination and network interconnection obligations."[7] In other words, broadband providers must ensure that users can connect to anyone, anywhere on the internet. In addition, they may not block or filter content based on bandwidth, origins or protocols as long as the content and protocols are legal.

While supporters of open internet praise the provision,[8] big telecommunication operators decry the added regulation as unnecessary interference. To ensure monopolistic operators also adhere to net neutrality, Congressman Edward Markey and Congresswoman Anna Eshoo introduced the Internet Freedom and Preservation Act in August 2009.[9] The bill is designed to ensure that the internet remains an open

1 For reasons of space and comparison, only Canada and the United States are discussed in this report.

2 Rubin, K. (2009) Transparency bar in troubled times: U.S. wants to open up, Canada wants delays, *The Hill Times*, 2 February. www.thehilltimes.ca/html/cover_index.php?display=story&full_path=/2009/february/2/rubin

3 The Canadian Press (2008) Obama would win in Canada: Poll, *Toronto Star*, 7 March. www.thestar.com/article/310541
Gilles, C. (2009) Canada's love affair with Barack Obama, *Maclean's*, 13 February. www2.macleans.ca/2009/02/13/canadas-love-affair-with-barack-obama

4 Broache, A. (2007) Obama pledges net neutrality laws if elected president, *cnet news*, 29 October. news.cnet.com/8301-10784_3-9806707-7.html

5 en.wikipedia.org/wiki/American_Recovery_and_Reinvestment_Act_of_2009 and www.recovery.gov

6 The Broadband Initiatives Program and Broadband Technology Opportunities Program homepage: broadbandusa.sc.egov.usda.gov and www.ntia.doc.gov/broadbandgrants/index.html

7 isoc-dc.org/wordpress/?p=165

8 See for example the postings here: www.savetheinternet.com. The over 2,000 applications to the BTOP from highly diverse applicants attest to the fact that ample content and access providers do not see net neutrality requirements as a hindrance but as an opportunity. Applicants include "state, local, and tribal governments; nonprofits; industry; anchor institutions, such as libraries, universities, community colleges, and hospitals; public safety organizations; and other entities in rural, suburban, and urban areas."

9 The bill is numbered H.R. 3458. The full text of the bill can be downloaded here: www.publicknowledge.org/pdf/111-hr3458-20090731.pdf (Unlike elsewhere in the world, although not yet passed, the bill is called an "Act".)

and non-discriminatory platform. It also enforces transparency by internet service providers (ISPs) so that consumers are fully aware of what they are paying for.

If passed, the bill will likely influence Canadian policy. In the summer of 2009, the Canadian Radio-television and Telecommunications Commission (CRTC) was engaged in Network Management Hearings.[10] While Canadian policy makers will not simply follow the US lead, US policy does have implications for Canadian decisions, and in the case of net neutrality, the Internet Freedom and Preservation Act may well be worth emulating.[11]

Social media coming of age in politics

That the Internet Freedom and Preservation Act should be introduced early in Obama's presidency is perhaps not surprising, given that Obama was an outspoken promoter of net neutrality during his presidential campaign. As Karen Tumult of *TIME Magazine* notes:

> It's a buzz that Obama is finding new and creative ways to fuel, adapting to a world in which the concept of community has grown to include MySpace and Facebook. No campaign has been more aggressive in tapping into social networks and leveraging the financial power of hundreds of thousands of small donors. Nor has any other campaign found such innovative ways to extend its reach by using the Internet.[12]

Once in office, Obama continued to employ digital media to foster a return to openness in the US federal government. The Open Government Initiative[13] has been central to this strategy. It was mandated to create recommendations for an Open Government Directive responsible for ensuring transparency in government. New federal Chief Technology Officer Aneesh Chopra has been engaging in public consultations via mail, email, town hall meetings and electronic forums.[14]

In the meantime the official White House website[15] has been radically transformed to reflect the policy directives of the new leader. The site is focused on providing greater transparency and citizen engagement. Moreover, Obama's new Chief Information Officer Vivek Kundra has begun a radical initiative to make all government information available through a single online clearing house[16] driven by Web 2.0 technologies. In effect the site operationalises the Freedom of Information Act requirement that agencies make public their most requested information. Kundra and Obama's Director of Citizen Participation Katie Stanton argue that this "context-driven government" will improve accessibility of information and better protect privacy.[17]

Examples of how various US government agencies are using social media to harness input from employees and from the public are growing, from the Office of Science and Technology Policy blog and the space agency NASA's Clickworkers,[18] to the IdeaFactory of the Transportation Security Administration, and Regulations.gov by the Office of Information and Regulatory Affairs and the Environmental Protection Agency.[19]

Declining democracy in Canada?

While open government initiatives are growing in the US, the contrast with Canada could not be more marked. Harper came to power at the head of a young, inexperienced, coalition party with a minority government, in the wake of a federal corruption scandal[20] that removed a long-standing Liberal majority from power. This has had an important impact on his approach to transparency.

He has used party and cabinet discipline extensively to prevent any embarrassing slip-ups that might undermine the legitimacy of his government.[21] The Prime Minister's Office is on lockdown, conservative members of parliament are strictly muzzled,[22] and the prime minister's website has become much more oriented towards promoting the government's legitimacy than opening a dialogue with citizens.[23]

Given this situation, the government has shifted the bureaucracy's approach to transparency in important ways. Having campaigned on the importance of government accountability, Harper introduced a Federal Accountability Act,[24] and has prioritised greater transparency in federal contracting.[25] But in 2008, the Treasury Board of Canada

10 www.crtc.gc.ca/ENG/archive/2008/pt2008-19.htm

11 Geist, M. (2009) US Net Neutrality Bill a Big Leap Over Canadian Law, 12 August. www.michaelgeist.ca/content/view/4266/125/

12 Tumult, K. (2007) Obama's Viral Marketing Campaign, *TIME Magazine*, 5 July. www.time.com/time/magazine/article/0,9171,1640402,00.html

13 www.whitehouse.gov/open

14 Sternstein, A. (2009) White House launches open government initiative, *Nextgov*, 21 May. www.nextgov.com/nextgov/ng_20090521_4542.php

15 www.whitehouse.gov

16 www.data.gov

17 See their blog posting on "New Technologies and Participation" at: www.whitehouse.gov/blog/New-Technologies-and-Participation

18 clickworkers.arc.nasa.gov/hirise

19 Regulations.gov collects public comment on agency rulemakings. See: www.whitehouse.gov/open/innovations/Regulations-gov-Exchange

20 Known as the Sponsorship Scandal.

21 In the Canadian system, the legislature can demand an election in the event they lose confidence in government.

22 Globe and Mail (2006) Harper restricts ministers' message, 17 March.

23 canada.gc.ca/home.html

24 www.faa-lfi.gc.ca/index-eng.asp

25 news.gc.ca/web/article-eng.do?crtr.sj1D=&mthd=advSrch&crtr.mnthndVl=12&nid=275569

Secretariat quietly eliminated the Coordination of Access to Information Requests System (CAIRS), a system used to track access to information requests,[26] and in February of 2009, the federal Access to Information Commissioner published a damning report charging the prime minister and his cabinet with dragging their feet on public information requests.[27] These moves have led to a chorus of voices lamenting declining democracy in Canada.[28]

Dissatisfied with waning government transparency, various citizen groups have begun to monitor government initiatives. For example, Visible Government[29] has launched disclosed.ca, a tool for searching federal contract disclosures across government departments over the past few years. A coalition called savethenet.ca is ensuring that citizen concerns for net neutrality are addressed by lawmakers, while SpeakOutOnCopyright.ca seeks to inform the public about ongoing reforms to copyright.[30]

At the local level, groups such as civicaccess.ca have been urging their municipal governments to adopt open government practices. After considerable input from local citizens, the City of Vancouver[31] became the first municipality in Canada to adopt a resolution in May 2009 that endorsed open and accessible data for citizens, the use of open standards, and the procurement of open source software. Other Canadian cities are following suit. The City of Calgary is considering a resolution on opening its data to the public, while Toronto Mayor David Miller promised an open city initiative[32] to be launched in late 2009.[33]

Copyright and citizen participation

Transparency and consultation have not been a hallmark of the Canadian government's recent attempts to update domestic copyright policy either. Both the US and Canada signed on to the World Intellectual Property Organization (WIPO) internet treaties that update copyright protection in the digital environment. But while the US implemented the treaties in 1998 through the Digital Millennium Copyright Act (DMCA), they were never ratified in Canada. The US has been pressuring Canada to implement DMCA-like legislation that would see heavy penalties for file sharing of copyrighted materials, criminalise the circumvention of digital locks, set the terms of ISP liability in terms of notice and takedown, and see limited fair dealing expansion, among others. So far attempts by the government to pass Bill C-61, the Copyright Amendment Act, have failed.[34]

The changes proposed in C-61 followed the DMCA closely, effectively blurring the distinction between criminal counterfeiting activities and legitimate uses or sharing of digital contents. These unjustly harsh laws reflect the influence of copyright lobbyists representing the entertainment industry. They serve to protect outmoded business models that are increasingly losing market share in the digital environment to the detriment of creative production and educational activities.

For example, under the DMCA, the Recording Industry Association of America (RIAA) sued thousands of music file sharers, resulting in hundreds of out of court settlements of undisclosed financial penalties. In the most recent case, Capitol Records, a member of RIAA, successfully sued a single mother for distributing 24 songs over peer-to-peer networks and was awarded a whopping USD 1.92 million in damages.[35] Lawsuits such as these have a chilling effect on legitimate peer-to-peer activities such as the production of open and free software, or sharing of educational resources. This is because educators and programmers tend to err on the side of caution for fear of "breaking the law", even though it is within their rights to do so.

It is not surprising then that citizens and copyright stakeholders in Canada have expressed strong objections to the DMCA-like content of Bill C-61. Citizens also objected to heavy corporate influence and lack of public consultation in earlier attempts to pass the bill. Perhaps in response to these concerns, the latest attempt at reform has included online consultations[36] and town hall meetings across the country. By August 2009, the government had received over 3,000 submissions, with an overwhelming number expressing objection to Bill C-61, support for expanded fair use/fair dealing protections, a desire for a less draconian approach

26 CBC News (2008) Tories kill access to information database, 2 May. www.cbc.ca/canada/story/2008/05/02/cairs.html

27 The report comes in the wake of growing animosity between the Access to Information Commissioner and the Prime Minister's Office. In 2006 the Commissioner published a report (www.infocom.gc.ca/specialreports/2006special-e.asp#Introduction) condemning government proposals to reform the ATI Act and Commission.

28 Woods, A. (2009) Our MPs' spending secrets, *Toronto Star*, 20 June. www.thestar.com/article/654005

29 www.visiblegovernment.ca

30 This initiative was set up by University of Ottawa law professor Michael Geist.

31 CBC News (2009) City of Vancouver embraces open data, standards and source, 22 May. www.cbc.ca/technology/story/2009/05/22/tech-vancouver-open-source-standards-software-city.html

32 toronto.ca/open

33 The Mayor says that "[i]ndividuals will find new ways to apply this data, improve city services, and expand their reach. By sharing our information, the public can help us to improve services and create a more liveable city. And as an open government, sharing data increases our transparency and accountability." For details see: visiblegovernment.ca/blog/2009/04/13/toronto-announces-open-data-plan-at-mesh09

34 In June 2008, a Copyright Amendment Act (Bill C-61) was introduced in the House of Commons, but it did not move forward due to an election call later that year. A second attempt by the re-elected Conservative government to introduce Bill-C61 in early 2009 also failed.

35 en.wikipedia.org/wiki/Capitol_v._Thomas

36 copyright.econsultation.ca

to dealing with alleged copyright violators, and stronger personal use copy and back-up protections.[37]

The public's right to access public knowledge

While Canada considers Bill C-61, the US is facing a battle over public access to public knowledge. The year 2009 saw the reintroduction of the Federal Research Public Access Act (FRPAA) by Senators John Cornyn and Joe Lieberman. This bill would require federal agencies with an annual research budget of USD 100 million to provide the public with online access to peer-reviewed research publications stemming from public funding. The senators believe access to publicly funded research will speed up discoveries and innovations, enable new business and social opportunities, and maximise returns on publicly invested funds.

The bill met with strong resistance by publishers of academic journals when it was first introduced in 2006. These companies profit from the sale of peer-reviewed journal subscriptions to wealthy institutions, and in this way make use of copyright barriers to protect their market. This prevents the efficient and equitable flow of publicly funded knowledge, and results in a highly inefficient and highly inequitable system of research dissemination.

The FRPAA reflects a growing worldwide trend among funding agencies, research institutions and universities, to leverage their investment in research by maximising the dissemination of results.[38] The passage of this bill would make a huge amount of research available to the public. The benefits extend beyond research, as patients would be able to learn more about their conditions from medical publications, students and teachers would be able to access authoritative resources without added permission, while policy makers could make better decisions based on most recent evidence.

In Canada, the Canadian Institute of Health Research put in place a public access policy in 2007,[39] while other major funding agencies in Canada are deliberating on the appropriate policy. However, political leaders in Canada have yet to address open access to publicly funded research, and no Canadian university has taken the lead on this front.

Conclusion

While open access to publicly funded knowledge may not appear to be a pressing political issue, a government's approach to the issue reflects its understanding of the importance of the internet as the engine of innovation and the changing nature of knowledge production and dissemination in the digital environment. In a networked society, knowledge production is shifting from central and proprietary modes to highly decentralised and participatory practices. Yet copyright laws and public policy for knowledge access have not kept pace with these fundamental changes. The US and Canadian lawmakers are in a position to bring in the appropriate balance of commercial interests with the public's needs and rights to participate and benefit from the knowledge society. It remains to be seen whether stimulus programmes such as the BTOP will lead not only to improved broadband access for the underserved, but to more innovative services and business models by a greater diversity of players in the marketplace, something that is lacking at the moment. If passed, the FRPAA and the Internet Freedom and Preservation Act would certainly have a domino effect on Canada and the rest of the world – and so their development is being watched with eager anticipation. ■

37 Geist, M. (2009) Government May Be Altering Copyright Submissions Without Consent, 27 August. www.michaelgeist.ca/content/view/4328/125

38 The FRPAA follows the successful path already taken by the National Institute of Health with its Public Access Policy (www.nature.com/news/2009/090407/full/458690a.html), as well as by private funders like the Wellcome Trust in the United Kingdom, and universities such as Harvard and Massachusetts Institute of Technology (MIT). See also Groen, F., Chan, L. and Guédon, J.-C. (2007) *Open Access in an International Perspective: A Review of Open Access Policies in Selected Countries.* www.sshrc.ca/site/about-crsh/publications/international_open_access_e.pdf

39 Canadian Institute of Health Research, Policy on Access to Research Output: www.cihr-irsc.gc.ca/e/34846.html

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Introduction

In a region where the experience of dictatorships is still fresh, access to information is seen as a tool for the fight for democracy and against corruption, for improved development and increased security, as well as good governance, better health, education and quality of life, and other essential rights.

After years of concerted efforts to advance the right of access to information, half the countries in the Latin American and Caribbean (LAC) region have passed legislation, while almost all of the remaining countries are discussing draft bills or are close to promulgating enabling laws. The greater obstacles in the LAC region revolve around implementation. In the face of national security interests – from foreign agents or internal crime – and pressure from economic crises, countries with once vibrant laws are now in retreat, as the primacy of these laws is challenged by the perception that security and economic concerns cannot coexist with openness.

At present, Mexico, Peru and Panama have functioning, comprehensive national access to information laws, with Uruguay, Guatemala and Chile implementing theirs in 2009. Brazil is on the verge of creating its law.

But it is remarkable to note the failure to address the specificity and the potential of the online world of access in the context of access to information more generally. Technological changes are occurring faster than policy can respond, and if not harnessed properly, they may impede rather than promote access to information and knowledge.

Regional trends

The right of access to information has been largely supported by the Organization of American States (OAS), non-governmental organisations (NGOs) – mainly funded with project grants from the Ford Foundation, Carter Center and Open Society Initiative – and smaller, local NGOs, which have a strong relationship with journalist and human rights associations.

The Americas Regional Conference on the Right of Access to Information (Lima, April 2009)[1] marked a point of maturity in the development and discussion of the issue of access to information.[2] It marked the consolidation of a multi-stakeholder group on access to information, with a clear predominance of NGOs advocating human rights issues, such as freedom of expression and good governance,[3] intergovernmental organisations (IGOs)[4] and governments.

Online access was not considered an issue in its own right, but was fleetingly represented in the findings and plan of action for the conference:

> Although technology can assist access to information, it is not a panacea. States' use of websites and new technologies is but one avenue for dissemination rather than a substitute for meaningful access to information whereby all persons have the right to seek and receive information regardless of the medium.[5]

This is a technologically neutral position. Nevertheless, in the Regional Plan of Action of the meeting the use of technology "where appropriate" is mentioned, as well as the adaptation of official documents into clear language and translation into indigenous languages. The Plan of Action also encourages the use of technology to ensure the integrity of public records (they should be in both paper and electronic format) and has recommended that countries request technical assistance for the digitising of records.

On the other hand, the movement that promotes online access to information, culture and knowledge does not have the same focus and motivations as the freedom of information advocates. There are, for instance, political, economic, social and technological causes behind the problem of access to online information, and these realms seem to have been considered by different stakeholders.

The problem of access to online resources is underscored by the digital divide, which inhibits access to online information. While 34%[6] of the population in the region has internet access, this is not broadband nor household access. Therefore addressing the issue of the digital divide has been, and still is, one of the most important development objectives.

1 Organised by the Carter Center in collaboration with the Organization of American States, the Comisión Andina de Juristas and the Knight Center for Journalism in the Americas. www.cartercenter.org/peace/americas/ati_conference/2009/index.html

2 The Atlanta Declaration of 2008 was the background document that provided the framework from which this conference discussed the regions' specific needs in this topic. www.cartercenter.org/resources/pdfs/peace/americas/ati_atlanta_declaration_en.pdf

3 Some of them were: Open Democracy Advice Center, Open Society, Ford Foundation, Instituto de Prensa y Sociedad, Asociación por los Derechos Civiles, Transparency International, Asociación de la Prensa de Bolivia, and Fundación Violeta Barrios de Chamorro, amongst some of the 30 organisations of this type. Of these, ten are journalist associations.

4 For example, the Inter-American Development Bank, World Bank, Organization of American States, United Nations.

5 Finding Nº9 of the Americas Regional Conference on the Right of Access to Information.

6 Data for March 2009. See: www.internetworldstats.com/stats15.htm

A significant trend of accessing online information in the LAC region is its collective and public nature: the internet is accessed in public points, whether schools or cybercafés. Access from home to online content is a privilege of the most well-off, and although an internet connection is not considered a luxury anymore, it is still not an option for most.

The digital divide has been addressed by some countries at the educational level through the One Laptop per Child (OLPC) initiative, or Classmate, the Intel version of this initiative, using both proprietary software and open source. In 2009 Uruguay will finish distribution of XO computers to all of its public school students under the OLPC programme. Peru has also embarked on the project, and by the end of 2008 provided 25,000 XO computers to children and teachers in 2,000 schools. The province of San Luis in Argentina has introduced the Classmate version of the computer. These programmes support access to knowledge by eliminating the economic barrier of access to a computer and the internet – a key dimension is school connectivity, including in rural areas. The results are tangible: children are seen on weekends at school where they enjoy free internet access.

These early digital literacy programmes also promote a culture of peer production, which is a social dimension of access. These computers are designed to work in an interconnected way, and children produce their assignments collaboratively with their peers. They can even share their work with children in other schools.

Besides schools, the LAC region has a number of initiatives that have been dealing with public access to online information for some time. One such programme is the Committee for Democracy in Information Technology (CDI), with nearly 600 schools in six countries in the region.[7] The schools, called Information Technology and Citizens Rights Schools, have a horizontal organisational structure and provide infrastructure and teaching skills for people of all ages, but mainly children, in urban and rural settings. Founded in 1993 in Brazil, it is one of the few organisations with a regional presence providing digital literacy. Its programme is mainly geared towards providing access to computers with an internet connection, but also towards raising awareness about online citizen-oriented information (such as educational resources, government websites, and transport schedules). Another initiative is the Chilean Biblioredes programme, which offers free internet access in 400 libraries situated across 90% of the country, with a computer usage rate of 93% to 95%. It is one of the success stories of the country's information society scheme. There are myriad examples of public telecentres[8] in both urban and rural settings on the continent which have flourished, thanks to technologies such as WiMAX. Colombia, for example, is one of the first countries in the world where WiMAX has been deployed commercially, achieving a 5% share of the broadband market.[9]

A very strong future trend for the region is access through mobile devices. Corporations such as Telefónica and Nokia are already adapting their services to this upcoming reality. Although more than 300 million Latin Americans owned a mobile phone in 2009, access costs, such as for mobile internet, are still very high. Mobile phones are mainly used for calling in the region, although patterns differ in countries where literacy rates are higher (the Southern Cone countries of Argentina, Uruguay and the south of Brazil) and mobile phones are used more for short message service (SMS) than for making calls, compared to countries like Mexico or Colombia. Nevertheless, the illiteracy rate on the continent (11%) poses a challenge to developing online content for mobile phones, with most people relying on voice- or image-based interactions.

Regional trends in online intellectual property rights

The Consumers International Access to Knowledge (A2K) Project has developed a global Intellectual Property (IP) Watch List, a world ranking of sixteen countries,[10] where Argentina, Chile and Brazil are three of the worst when it comes to digital rights management (DRM). This kind of research provides a contribution from a consumer perspective into the global debates on intellectual property rights in the digital age, in a region where consumer associations have very short histories.

This Watch List notes the following things:

- Regarding the freedom to access and reuse content for content creators, none of the countries surveyed adequately supported consumers' interests in expressing their creativity through blogs, wikis, online video sharing or mash-ups.

- The freedom to share and transfer files is not represented in domestic law and policy. None of the countries in the region have enabling legislation, which might include purchasing content at a fair price, and renting or downloading non-commercial content freely. Yet these practices are found on social networking sites (from local versions such as Orkut and Sonico to global platforms like Facebook and MySpace) and other content-sharing platforms. In the past two years these sites have been among the top five visited in the region.

- The administration and enforcement of intellectual property rights is becoming more intrusive. As in other regions, the music industry has incorporated technological protection measures, but internet service providers (ISPs) are still relatively free compared to Europe. Nevertheless, ISPs are beginning to devise strategies to control the download of online material from certain sites to punish their heaviest users, going against the

7 Argentina, Chile, Brazil, Uruguay, Ecuador, Colombia and Mexico, as well as the UK and the US.

8 For more information on these initiatives in the region, see: lanic.utexas.edu/la/region/digitaldivide

9 www.budde.com.au/Research/2008-Latin-American-Convergence-Broadband-and-Internet-Market.html

10 Consumers International IP Watch List 2009. The sixteen countries covered by the survey were Argentina, Australia, Brazil, Chile, China, India, Indonesia, Israel, Malaysia, Pakistan, the Philippines, South Korea, Spain, Thailand, the United Kingdom and the United States. See: a2knetwork.org/watchlist

Table 1: **Freedom to access and use content**

	Scope and duration of copyright	By home users	For education	On line	By content creators	By the press	By libraries	By disabled users	In public affairs	Freedom to share and transfer	Admin and enforcement	Overall
Argentina	C	F	F	D	D	D	F	C	B	C	C	D
Brazil	F	D	F	D	C	B	F	A	A	C	D	D
Chile	D	C	D	B	D	C	F	F	F	C	C	D

Source: **Adapted from Consumers International IP Watch List 2009, based a survey conducted in sixteen countries. A is the highest score and F the lowest.**

net neutrality principle, which is completely absent in all but a few examples of legislation in the region (Peru is one of these exceptions).

The work by Consumers International also highlights the legislative deficiencies in several LAC countries. For example, the Argentine copyright system is very restrictive, and does not include exceptions for the reproduction of music or movies for personal use, including back-up, or for educational purposes, but in practice these restrictions are never exercised. Instead, in court judges do make a distinction between personal use and for-profit purposes in penalising infringement. There is not much awareness within Argentina about intellectual property alternatives, such as open source and open access licensing. The Argentine Congress has resisted the introduction of new legislation that would have strengthened criminal enforcement of intellectual property rights.

The Brazilian copyright law dates back to 1996 and has not been updated to reflect the potential of the internet. However, at the moment the country is at the end of a major debating process around amendments to its Copyright Act, led by the Ministry of Culture, the results of which will be presented to Congress in 2009. The outcome is still unknown, but given the tone of government under current President Luiz Inacio Lula da Silva, it should be no surprise if there are major improvements in the direction of a more citizen-centred and open environment.

A new Chilean bill intended to modify and update its Intellectual Property Law will regulate matters that are not currently part of its legislation. One of its main purposes is to make the proper protection of copyright and its related rights compatible with the community's legitimate right to access new creations, including the arts and knowledge generally.

Consumers International also organised a workshop in Santiago in 2009 with consumer associations from Argentina, Brazil, Chile, Mexico and Peru. One of its objectives was to raise awareness on knowledge for the public interest. To this end, there are plans to develop a Regional Observatory on Access to Knowledge, as a counteraction to the blacklist promoted by the United States government which highlights those countries deemed as having inappropriate protection of intellectual property rights.

Conclusion

By way of conclusion, it is worth highlighting some of the data produced by the Consumers International 2009 IP Watch List (see Table 1). The data are presented to illustrate (from a consumers' interest perspective) the effect of national copyright law and enforcement practices in the region.

In a region with strong social and economic divides, access to the internet is still a key dimension to address from multiple perspectives, not just by providing infrastructure. For instance, the mobile internet market might change some of the current perspectives that see online access as the only way forward. Fine tuning the legislation, promoting enforcement and a culture of peer production are some central issues for the region in this respect.

A less tangible, but nevertheless effective policy issue in the promotion of online access is the introduction of the A2K perspective into the access to information dimension. A2K initiatives which are more multi-layered and grassroots-based should be considered in the freedom of expression, transparency and accountability debates that several human rights organisations and government bodies in the region have fostered in the last years.

It is only with a more systemic approach, through joint efforts amongst the different stakeholders, that access to online information can be more fully guaranteed. ■

REGIONAL REPORT

Africa

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Knowledge is essential to human development, as it plays a role in economic progress, cultural growth and individual fulfilment. Because of this, access to knowledge (A2K) in any form must be seen as an essential human right.

A2K and Africa

For the countries of Africa, this right of access to knowledge is particularly important because of African governments' developmental needs and goals. The policy objective of unhindered and affordable access to knowledge material can be seen as essential to the fulfilment of a country's other economic, social and political developmental objectives. This is because many of the areas where developing countries face developmental challenges are in some way or another associated with capacity deficiencies that can be ameliorated to some extent by greater knowledge/education diffusion.

Although printed and other hard-copy materials arguably still form the main sources for information and knowledge on the African continent, the advent and use of digital technologies to access/share information and knowledge present some of the most promising emerging opportunities for African countries to tackle and eventually overcome the most pressing problems that have consolidated their social and economic underdevelopment. One author has rightly noted that "[c]reating digital opportunities is not something that happens after addressing the 'core' development challenges; it is a key component of addressing those challenges in the 21st century."[1]

Currently, however, many countries in Africa lack sufficient information and communications technology (ICT) network infrastructures, including landlines, wireless services and high-speed fibre-optic cable connections. In addition, the cost of internet access[2] in Africa is often prohibitively high: the poorest continent in the world has the highest internet access costs, and data suggest that countries with the lowest income per capita have some of the highest costs for internet access.[3] Africa, the second most-populous continent on earth with almost one billion people, accounted in 2008 for more than 14% of the world's population. At the same time, with roughly 54 million internet users, it only accounted for about 3.4% of the world's internet usage.[4]

Internet penetration in Africa is less than 6% of the continent's population, while the world's average internet penetration is at almost 24%. Internet penetration is just under 49% in Europe, 60.4% in Oceania/Australia and 74.4% in North America.[5] In several countries in Africa – such as Burkina Faso, Burundi, Chad, the Democratic Republic of Congo (DRC), Ethiopia, Mali, Niger and Sierra Leone – internet penetration is still well below 1%.[6] A clear link exists between the wealth of a country (the per capita income of its inhabitants) on the one hand and the internet penetration in the country on the other.[7]

Having said this, there is little doubt that the situation in Africa is going to improve in the mid term as far as network infrastructure and, consequently, internet access costs and internet penetration are concerned. Notably, for instance, a number of additional underwater fibre-optic network cables are currently being laid in both East and West Africa, which will significantly increase broadband capacities.[8] The potential of a cable like Seacom, which has already landed on the East African coast, has created much anticipation and excitement in countries such as Tanzania, Kenya and South Africa.

A2K and copyright in Africa

Network infrastructure, however, is only one of the relevant factors when it comes to online knowledge and information access opportunities in Africa. An enabling telecommunications policy/legal/regulatory environment is also required to ensure fair and affordable access to the infrastructure. Similarly, other legal frameworks can have an impact on the state of access to knowledge materials. In particular, access-enabling national copyright regimes appear to be crucial, because vast amounts of information and knowledge materials are copyright-protected. At the same time, there is a huge gap in knowledge material production between developing countries and developed countries, which causes an immense copyright royalty flow from developing countries into the developed world.

1 G8 Digital Opportunity Task Force (DOT Force) (2001) *Digital Opportunities for All: Meeting the Challenge*, p. 7. www.ictdevlibrary.org/downloads/G8_DOT_Force_Report_V_5.pdf

2 Internet access costs comprise both telecommunication costs and internet service provider (ISP) costs. Telecommunication costs often account for more than 60% of the total internet access costs.

3 Learning Information Networking Knowledge (LINK) Centre and Mike Jensen Consulting (2004) *Fair Access to Internet Report (FAIR)*, study for the Open Society Initiative and International Development Research Centre (IDRC), p. 13. www.ictportal.org.za/documents/d00016/FAIR.pdf

4 As of March 2009; see Internet World Stats website, *Internet Usage Statistics – The Internet Big Picture: World Internet Users and Population Stats*: www.internetworldstats.com/stats.htm

5 Ibid.

6 Internet World Stats website, *Internet Usage Statistics for Africa:* www.internetworldstats.com/stats1.htm

7 Organisation for Economic Co-operation and Development (OECD) (2000) *Understanding the Digital Divide*, p. 18. www.oecd.org/dataoecd/38/57/1888451.pdf

8 At present, many African countries still rely heavily on congested and slower satellite connections for internet access.

It is widely believed that a more balanced copyright system – balancing the rights of rights holders with the rights of users – can promote access to knowledge and support critical public policies such as educational policies in developing countries of Africa. In 2002, the United Kingdom Commission on Intellectual Property Rights aptly summarised the relevance for developing countries of striking a fair balance between enabling copyright protection and enabling access to knowledge material:[9]

> The crucial issue for developing countries is getting the right balance between protecting copyright and ensuring adequate access to knowledge and knowledge-based products. It is the cost of access, and the interpretation of "fair use" or "fair dealing" exemptions that are particularly critical for developing countries, made more so by the extension of copyright to software and to digital material. These issues need to be addressed to ensure developing countries have access to important knowledge-based products as they seek to bring education to all, facilitate research, improve competitiveness, protect their cultural expressions and reduce poverty.

Unsurprisingly, therefore, the Development Agenda adopted by the World Intellectual Property Organization (WIPO) in 2007, which is aimed at ensuring that development considerations form an integral part of WIPO's work, also specifically refers to A2K issues.

The ACA2K research network

Since the beginning of 2008, the pioneering African Copyright and Access to Knowledge (ACA2K) Project[10] has been undertaking research on the continent aimed at furthering the understanding of the relationship between national copyright environments and access to knowledge, specifically access to learning materials. The project engages a network of more than 25 independent experts from law, economics, information sciences and gender studies, based almost exclusively in Africa. The ACA2K project is supported by Canada's International Development Research Centre (IDRC) and South Africa's Shuttleworth Foundation and is managed by the LINK Centre at the University of the Witwatersrand's Graduate School of Public & Development Management (P&DM) in Johannesburg. The ACA2K research nodes are in eight African countries: Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda. ACA2K study countries were selected to represent a diversity of socioeconomic, political, cultural and linguistic contexts.

The work of the ACA2K network is based on the premise that one of the predominant legislative/regulatory mechanisms that can and should be used to facilitate the creation and dissemination of learning materials is copyright. Paradoxically, however, copyright law can often be a constraint on access to learning materials. As a result, in a given country, copyright has the capacity to both promote and hinder access to learning materials, and access to knowledge in general.

Of course, copyright law on its own does not determine the relationship between copyright and access to learning materials. Also relevant are perceptions of the copyright legal framework; interpretations of and practices in relation to the framework; and norms, social conditions and market dynamics that affect how people access and use learning materials. Because of this, the ACA2K network of researchers is seeking to understand the overall copyright "environment" (law and practice) in relation to access to learning materials, through combining the analysis of policies, legislation and case law with the qualitative review of existing literature and impact assessment interviews with stakeholders (state actors, user groups and copyright holders).

In general, ACA2K research indicates that the state of access to knowledge (and learning materials in particular) in Africa is precarious. Creative works are strongly protected by national copyright laws in all the African countries studied. Notably, the duration of copyright protection in Ghana, Mozambique and Morocco significantly exceeds the standard term of protection of 50 years after the death of the author for most creative works – the standard term provided for under the relevant international treaties and agreements such as the Berne Convention, the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the WIPO Copyright Treaty (WCT).

While there are several aspects of national copyright law that are crucial to access to knowledge, the role of copyright limitations and exceptions, including "fair use" and "fair dealing" clauses, is particularly noteworthy. The ACA2K research indicates that in all eight study countries, existing copyright limitations and exceptions are too narrowly and/or vaguely defined to facilitate learning materials access in a balanced and effective manner. For instance, the precise scope of South Africa's crucial fair dealing provisions in the country's Copyright Act are obscure, and no clarifying case law exists on this issue. This is problematic since fair dealing in the Act pertains, among other things, to the reproduction of copyright-protected works, without payment to or

9 Commission on Intellectual Property Rights (2002) *Integrating Intellectual Property Rights and Development Policy*, p. 96. www.iprcommission.org/graphic/documents/final_report.htm

10 www.aca2k.org

permission from the rights holder, for important activities such as private research and study. Meanwhile, Egypt and Uganda, among other countries in the study circle, do not have any copyright exceptions and limitations dealing specifically either with distance learning or access for disabled learners. And in spite of a clear need for better support for libraries and archives to facilitate access to knowledge, it was also found that the provisions for libraries and archives in the copyright laws of most ACA2K study countries are inadequate in that they do not facilitate meaningful access to learning materials.

It appears that there is little awareness or use of copyright flexibilities that could be introduced to facilitate access to knowledge in the countries studied. In Morocco, for instance, no government department outside that which directly deals with copyright showed any awareness of the relationship between copyright and knowledge.

However, ACA2K research also indicates that in all the study countries except South Africa, the effects of copyright law on the ground – however restrictive the law may be – are minimal, due to weak enforcement. Egypt's ACA2K country team, for example, found that in their country there is currently no direct and tangible effect of the current copyright law on access to knowledge. In practical terms, this means that unpunished copyright infringement (with regard to learning materials) is the main channel for access to information and knowledge in the ACA2K study countries. This situation is, however, changing. Copyright holders are systematically beginning to enforce sanctions against (real or perceived) copyright violation and infringement. Because of this, it can be expected that national copyright laws as they are currently formulated, when increasingly enforced, will create significant barriers to learning materials in the ACA2K countries. ACA2K researchers therefore conclude that pro-access copyright laws would go a long way in facilitating/protecting access to knowledge.

In some cases, however, the full effects of a pro-access copyright law might be truly visible only in the near future, particularly in terms of the online sphere. Applied judiciously, copyright law has the potential to further learning through ICTs, but applied over-zealously, copyright law has the potential to restrict access to knowledge. Of particular concern are anti-circumvention provisions in the laws of some African countries: that is, clauses that make it illegal to circumvent technological protection measures (TPMs). The effect of such provisions is that users seeking to exercise their rights under existing copyright exceptions and limitations such as fair dealing could be prevented from exercising these rights where the learning item in question is protected by TPMs. This may, for instance, prevent a visually disabled person from circumventing TPMs on a written work for the purpose of using technical means to hear the written work read aloud – even if format adaptation for the benefit of disabled people is generally permitted under a country's copyright law. Countries such as Morocco, Egypt and Kenya have included TPM anti-circumvention provisions in their copyright laws, and although South Africa has not included such provisions in its Copyright Act, similar provisions can be found in the country's Electronic Communications and Transactions Act of 2002. In Egypt, Kenya and South Africa, no provision has been made to allow circumvention when exercising fair dealing and other copyright exceptions and limitations, in this way jeopardising a whole set of copyright exceptions and limitations in these countries. Moroccan law, on the other hand, allows circumvention in some cases related to educational institutions, archives and libraries, but not generally for private and fair-dealing use. ■

REGIONAL REPORT

Middle East and North Africa

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Introduction

Following the independence of the Arab states, new economic and social strategies have been implemented to guarantee sustainable development. Most countries invested heavily in industry, with states monopolising the management of key public companies. Access to information was limited or non-existent.

Little has changed. The wave of privatisation in Arab countries[1] has prompted the need to have access to economic as well as government data as a prerequisite to market competitiveness. However, few laws have been set up or implemented in the Middle East and North Africa (MENA) region to govern access to information. Jordan is an exception, and is the only country in the region to have adopted a law granting the right to access information (2007).[2]

However, there is growing awareness amongst regional civil society activists working in the field of human rights about the issue of access to information. As a result they are putting pressure on governments in Arab countries to adopt progressive legal mechanisms – even though few concrete steps have been taken by governments so far.

Accessing government information

The lack of transparency in administrative procedures can be considered one of the impediments to developing business opportunities and encouraging local and foreign investment in the Arab countries. While the internet has great potential to disseminate information and to engage the citizen in the policy-making process, countries in the Arab region still lack transparency in terms of facilitating access to governmental political and economic decisions.

Most Arab countries have joined the wave of rolling out the necessary infrastructure to bridge the digital divide in the region, but only a few have effectively launched initiatives to guarantee online access to state information. Instead, most regimes in the region exercise secrecy regarding important decisions directly related to the citizen, even though strengthening relations with citizens through inclusion in the decision-making process is a sound investment in better policy making, and a core element of good governance. It allows governments to tap new sources of policy-relevant ideas, information and resources when making decisions.[3] Equally, transparency in taking decisions contributes to building public trust in government, raising the quality of democracy and strengthening civic capacity.

Jordan, Egypt and Morocco are pioneers in establishing e-government services in the Arab region. In 1999, Jordan became the first Arab country to establish an e-government strategy, called REACH. REACH is an initiative that emerged as an outcome of the country's policy to maximise its ability to compete on various fronts. One of its key objectives is to contribute to Jordan's economic and social development by providing access to e-government services and information to everyone in the kingdom irrespective of location, economic status, computer skills or education.[4] In Morocco, an e-government committee was created by the prime minister in 2003.[5] Its main objective is to set up a strategic plan which encompasses four main sectors: e-finance, e-justice, "e-foncier" (land administration and management), and "e-Wilaya" (e-municipality). Egypt established the Egyptian Reform Structure and Adjustment Program (ERSAP),[6] whose main goal is to deliver efficient services to the citizen and the private sector through new technologies.

Most of the countries in the Arab region are exploring all the options to boost their local economies and to increase competitiveness in order to attract investments. Facilitating access to government information is a key element in this process. However, there are many obstacles facing e-government initiatives in the region that need the immediate attention of policy makers.

Recent research undertaken by the Dubai School of Government[7] discusses the challenges faced in establishing e-government systems in the Arab region. These challenges are linked to the lack of expertise of government officials, the insufficient availability of information and communications technology (ICT) infrastructure in public administrations, lack of financing mechanisms, the absence of an institutional and a regulatory framework to monitor e-transactions, political instability and, finally, not considering e-government initiatives as a core strategy for sustainable development, but only as a tool to follow a global trend.

1 Beginning in the mid-1970s. See: www.fou.uib.no/fd/1996/f/712003/road.htm

2 Cairo Declaration on the Right to Access Information in the Arab World: www.meida.org.il/art_images/files/281/Cairo%20Declaration.PDF

3 UN DESA (2004) *Transparency and Accountability in the Public Sector in the Arab Region.* unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN007714.pdf

4 e-Gov (2008) *Reviewing Jordan's e-Government Development: Seven Years of Promise.* www.egovonline.net/articles/article-details.asp?Title=Reviewing-Jordan%E2%80%99s-e-Government-Development:-Seven-Years-of-Promise&ArticalID=2065&Type=COUNTRY%20PERSPECTIVE

5 www.uneca.org/aisi/nici/Documents/Plan_Strategique.pdf

6 Egypt's Government Services Portal: www.egypt.gov.eg/english/general/about.aspx

7 Salem, F. (2006) *Exploring E-Government Barriers in the Arab States.* www.dsg.ae/PUBLICATIONS/PublicationDetail/tabid/308/language/en-US/Default.aspx?udt_826_param_detail=191

Regional trends in online intellectual property rights (IPR)

The most important open-licensing movement in the Arab region is Creative Commons, which was introduced relatively late in the region. The movement is, however, mostly supported by civil society organisations, while regional governments are developing new policies and legislation influenced by the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), and Free Trade Agreements (FTAs) with the United States (US).

The adoption of Creative Commons is also not widespread, and is still restricted to a few countries[8] – Jordan, Egypt and Tunisia – with various levels of achievement and progress. The first open-licensing initiative was launched by arabcommons,[9] which aims to "promote the Creative Commons culture in the Arab world" with a focus on content in Arabic languages. It also aims to build awareness in the region.

However, a notable event was when the Qatari-based broadcaster Al Jazeera released its broadcast footage during the crisis in Gaza in January 2009[10] under the Creative Commons licence. Web communities have been early adopters of the open licensing framework. Some Arab bloggers have adopted a loose version of the licence, even in the absence of local versions.

FTAs with the US have had a big role in shaping regional legislation, especially in signatory countries[11] like Jordan, Morocco, Bahrain and Oman. Changes in local laws match mostly US interests and result in more copyright protection and restrictions. Moreover, if an Arab country wants to join the WTO, it has to adopt standards like those established by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)[12] or TRIPS-plus, which has a high level of copyright protection not necessarily suitable for developing countries.[13] Such treaties can threaten the development of Arab countries.

A number of Arab countries are also adopting digital rights management (DRM) technologies as a response to copyright infringement. This is the case, for instance, in both Jordan and the United Arab Emirates (UAE), even while there is a lack of skilled human resources such as IPR lawyers who are able to deal with issues that may be raised.[14]

It is important to highlight that there is no common or joint effort to consolidate IPR legislation across Arab countries. The differing IPR legislation and adoption of different treaties and agreements put MENA countries in a weak position to negotiate or adopt laws which may fit their developmental needs.

As far as access to knowledge (A2K) goes, there are some emerging models, such as the work done by the Bibliotheca Alexandrina (Library of Alexandria),[15] which is encouraging many initiatives and organising important events like Wikimania.[16] Like the Creative Commons licence, other open-licensing frameworks such as open source[17] have yet to mature in the region. Their adoption in different Arab countries differs dramatically.

A final important point is the absence of activities from the private sector dealing with IPR issues. This may be explained by a lack of awareness or lack of resources dedicated to defending their interests. However, the important point is that there is cooperation between the Business Software Alliance (BSA), which represents foreign corporate interests, and many Arab governments focusing on curbing the illegal copying of software due to the piracy rate[18] in the MENA region.

Conclusion

Access to information in the MENA region needs to be tackled seriously by governments and civil society. Except for Jordan, the countries in the region have not yet adopted laws to grant access to information as a right. This raises questions regarding the political will to include citizens in decision-making processes and policy implementation. It also reflects negatively on the objectives of linking the region to the global digital economy to improve the lives of the citizens in these countries.

The IPR situation differs between Arab countries. There is a small group of countries which are adopting the latest trends according to WIPO and WTO standards and the US FTA, and then adapting and enhancing local legislation without any real coordination at a regional level. As far as open licensing goes, the MENA region remains behind other regions in the world, and only some countries have initiatives. This means fewer opportunities for economic development, education and A2K. ■

8 creativecommons.org/international

9 arabcommons.org

10 cc.aljazeera.net

11 www.ustr.gov/trade-agreements/free-trade-agreements

12 Musungu, S. F. and Dutfield, G. (2003) *Multilateral Agreements and a TRIPS-plus World*. www.quno.org/geneva/pdf/economic/Issues/Multilateral-Agreements-in-TRIPS-plus-English.pdf

13 Jordan has adopted these standards.

14 Fitzgerald, B. and Olwan, R. (2009) *Copyright and Innovation in the Digital Age: The United Arab Emirates (UAE)*. olwan.org/attachments/293_Copyright%20and%20Innovation%20in%20the%20Digital%20Age.pdf

15 www.bibalex.org/a2k/home/home.aspx

16 wikimania2008.wikimedia.org/wiki/Main_Page

17 freedomdefined.org

18 BSA and IDC (2008) *Global Software Piracy Study 2008*. global.bsa.org/globalpiracy2008/index.html

Europe

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Introduction: What "Europe"?

Generally,[1] when it comes to access to information in "Europe" there are two entities that are most relevant: the European Union (EU) and the Council of Europe (CoE).

The EU is a *supra*national organisation with, currently, 27 member states. While EU member states continue to have divergent laws and practices when it comes to access to information, the EU has itself laid down rules that govern access to documents held by its institutions. Access to such documents has become increasingly important with the expansion of cooperation within the EU, especially in the area of police and judicial cooperation in criminal matters. However, the different understandings of transparency that live within its member states manifest themselves during negotiations about what rules should govern access to EU documents.

The CoE, currently consisting of 47 signatory states, is an *inter*national organisation, which brought about the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR). All of the member states of the EU are also members of the CoE and have signed and ratified the ECHR. The CoE has recently adopted the first international treaty on access to official documents, laying down a number of minimum rules.

Regional trends: Access to online information as a democratic right

The European Union

The EU has been using the internet very actively. Its EUROPA website is an enormous source of information, even though the complexity of the EU makes it difficult to translate it into a user-friendly portal. In 2006, the so-called Transparency Initiative was launched, which centred on increasing the financial accountability of EU funding,[2] the personal integrity and independence of EU institutions and control on lobbying activities. The latter included the adoption of a code of conduct[3] regulating lobbyists' behaviour and the launch of a voluntary online lobbyist register by the European Commission in 2008. It also set up an online register of expert groups helping the Commission when preparing legislative proposals and policy initiatives. Some of the debates of the Council[4] are now filmed and can be followed live on the internet.[5] In 2008, the European Parliament launched its own internet television channel EuroparlTV.[6]

However, while differences among member states remain great, internet accessibility in the EU as a whole remains non-inclusive.[7] Accordingly, programmes have been launched to stimulate online accessibility and inclusiveness. Framed in a mostly economic rationale, in 2003, the so-called e-Europe initiative was launched in order to accelerate Europe's "transition towards a knowledge-based economy,"[8] followed up in 2005 by the i2010 programme aimed at creating a "single European information space."[9] The year 2007 was the first in which more than half of the EU population regularly used the internet.[10] Nonetheless, a staggering 40% of the EU population has still *never* used the internet.[11] Continuing disparities between the overall population and those aged 65-74, the retired and economically inactive, and those with low and high education levels remain a major concern.[12] Facilitating accessibility for persons with disabilities has only recently come onto the agenda, whereas policies among EU member states on this issue remain fragmented.

Since 1993 the right to access documents held by EU institutions has gradually been legally implemented. The main instrument in this regard is Regulation 1049/2001 of the European Parliament and of the Council of 29 May 2001 regarding public access to European Parliament, Council and

1 In 1998 the United Nations Economic Commission for Europe adopted the so-called Åarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which includes special rules for access to environmental information. As a result, this reports does not deal with this specific area.

2 See, for example, the new website: ec.europa.eu/beneficiaries/fts/index_en.htm

3 Communication from the Commission, European Transparency Initiative: A framework for relations with interest representatives (Register and Code of Conduct), COM (2008) 323 final, Brussels, 27 May 2008.

4 While the European Council ("the Council") is an organ of the EU, the Council of Europe is a separate international organisation.

5 See the Council website on legislative transparency: www.consilium.europa.eu/cms3_fo/showPage.asp?id=1281&lang=EN&mode=g

6 www.europarltv.europa.eu

7 For example, in 2005, 57% of individuals living in the EU did not regularly use the internet; in 2006 only 10% of persons over 65 used the internet, against 68% of those aged 16-24; only 24% of persons with low education used the internet, against 73% of those with high education levels; only 32% of unemployed persons used the internet against 54% of employed persons. See: ec.europa.eu/information_society/activities/einclusion/docs/i2010_initiative/rigadashboard.doc

8 See: ec.europa.eu/information_society/eeurope/2002/index_en.htm

9 See: ec.europa.eu/information_society/eeurope/i2010/strategy/index_en.htm Unlike the earlier e-Europe initiative, i2010 also comes with a budget. For more details see: ec.europa.eu/information_society/europe/i2010/financing/index_en.htm

10 Commission of the European Communities (2008) Report from the Commission on the application in 2007 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, COM(2008) 630 final, Brussels, 10 October, p. 33.

11 Ibid., p. 34.

12 Ibid.

Commission documents. The regulation lays down procedural rules for individuals to apply for documents, and stipulates the exceptions to granting access to the documents, such as the protection of public security, privacy, international relations, documents from third parties, documents under discussion, and a number of others that can be overridden by public interest (which to date has only been successfully relied upon by an applicant before the Community courts in one case). Ultimately, the European Court of Justice (ECJ) can review the lawfulness of a refusal to grant access.

The EU regime is not a freedom of information regime in the sense that no general requests for information can be made. Rather, it is based on a public register of documents, in which applicants must locate relevant documents themselves and, if they are not directly accessible (meaning hyper-linked to the full text), apply for them specifically. Accordingly, Article 11 of the regulation provides for an obligation of each institution to make available a register of documents. All three institutions – European Parliament, the Council of the European Union and the European Commission – now have online registers.

In 2006, 90% of the European Parliament and 96% of the Council's public documents were directly accessible on the internet[13] – no precise numbers exist for the Commission.[14] However, major problems remain, and the regulation is now under review. For instance, it is not specified exactly which documents have to be included or "directly accessible" (Art. 12[1]). There is also no obligation to list *all* documents of an institution.

In line with the regulation, documents that are considered sensitive (Art. 9) are excluded from the public register unless the originator consents to the listing. As a consequence, there are documents listed in the registers which are not accessible. Conversely, many documents which *could* be requested are not listed – more than a third of the Council's documents are not accessible on the register.[15]

Making the registers more user-friendly by inserting cross-references to documents in other registers and other stages of a decision-making process has also been a common request.[16]

The above may explain why the majority of those that do take advantage of the possibility to gain access are already specialists in EU affairs.[17] Of the EU institutions, the Commission is the most criticised for the maintenance of its register.[18]

When it comes to the protection of personal data, the last few years have seen a drastic decrease in protection. Shortly after the terrorist attacks in Spain and the United Kingdom, the so-called ePrivacy Directive19 was amended via the Data Retention Directive,20 which requires member states to ensure that communications providers retain, for a minimum of six months and a maximum of two years, data necessary to trace and identify *inter alia* the source, date, time and duration of communication.

Recent proposals concerning the retention and processing of data traffic "for security purposes" in a revised ePrivacy Directive have again sparked major concern that this could result in the collection of yet more traffic data without setting a time limit on its retention.[21] Another topic that has continued to spark controversy is the transfer of personal data beyond the borders of the EU, such as passenger name records, which have been sent to United States (US) authorities.

13 European Parliament (2008a) Transparency and Public Access to Documents: Some Aspects concerning e-Transparency in the EU institutions and the Member States, Briefing Paper (PE 393.285), Brussels, March 2008, p.5.

14 Commission of the European Communities (2008) op. cit.

15 European Parliament (2008b) Working Document No. 2 on 2006 annual report on access to EU documents (art 17 of Regulation (EC) No 1049/2001 and art. 97 p. 7 of the EP rules) Part B, Committee on Civil Liberties, Justice and Home Affairs (PE400.323v01-00), 16 January 2008.

16 European Citizen Action Service (2006) Should there be a Freedom of Information Act for the EU? Report on the application of regulation 1049/2001 on access to documents, Brussels, September 2006. www.ecascitizens.eu/content/view/50/180

17 In 2007, for example, initial applications to Council documents came mainly from students and researchers (40%). Lawyers (8.8%), industry and commerce and pressure groups (14.2%) were also high on the list of social and professional categories represented. Most confirmatory applications also originated from students and researchers (56.2%). Council of Europe (2008) Protecting the right to privacy in the fight against terrorism, Commissioner for Human Rights, CommDH/IssuePaper (2008) 3, Strasbourg, 4 December, p. 13.

18 Bunyan, T. (2002) *Secrecy and Openness in the European Union: The Ongoing Struggle for Freedom of Information*, Statewatch. www.freedominfo.org/features/20020930.htm; Hayes, B. (2005) *The right to know or the right to try and find out? The need for an EU freedom of information law.* www.statewatch.org/news/2005/nov/eu-FOI.pdf; European Parliament (2008a) op. cit.

19 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

20 Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks.

21 Working Group on Data Retention (2009) *Position on the processing of traffic data for "security purposes"*. www.statewatch.org/news/2009/mar/eu-dat-ret-wg-e-security-position-paper.pdf
This represents the latest phase in a steady corrosion of European privacy safeguards since the attacks of 11 September. Until then, EU legislation had prohibited communications providers from retaining data for any longer than necessary to resolve billing disputes (Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector). A narrow exception allowed member states to depart from this standard for the sake of national security and to prosecute criminal offences.

The Council of Europe

In a 2003 declaration on freedom of communication on the internet, the CoE confirmed that Article 10 of the ECHR was clearly applicable to the internet. In 2006, of the then 46 member states of the CoE, 39 had laws in place regulating the right to access information held by public authorities, whereas 32 went beyond merely guaranteeing a right to official documents to include a broader right to information.[22] In the same year, the Court that interprets the ECHR (the ECrtHR) issued a milestone judgment where, for the first time, it ruled Article 10 of the European Convention to be applicable to a case that concerned a refusal of access to administrative documents relating to a nuclear power station in the Czech Republic.[23]

In 2008, the CoE pioneered the first binding international treaty on access to information: the Convention on Access to Official Documents, which is meant to lay down certain minimum requirements of national legal systems regarding access to information.[24] By 18 July, 12 countries had signed the Convention.

In a 2009 resolution, the CoE further pointed out that it considers the standards of the ECHR to "apply to online information and communication services as much as they do to the offline world" and that access to the internet ought to be conceived of as part of public service provision.[25] At the same time, the increasing threat that is posed by counter-terrorism measures to privacy, the freedom of speech and information was underscored yet again.[26]

Regional trends in online intellectual property rights

European Union

Intellectual property rights (IPR) are among the most hotly debated policy issues at the EU level. Since 1988, the EU has harmonised substantial parts of its law concerning copyright and intellectual property for the sake of reducing barriers to transborder trade.[27] An important general instrument was adopted in 2001 with the EU Copyright Directive,[28] which *inter alia* banned so-called circumvention technologies. Since most limitations on copyright are not made mandatory in the Directive, national differences in implementation remain. Another disadvantageous effect has been the relatively weak position of consumers, such as educational institutions, towards powerful rights holders in online transactions.[29]

In 2004, the IPR Enforcement Directive was adopted, which has been criticised for providing broad subpoena powers for rights holders to obtain personal data on consumers.[30] While it merely concerns civil proceedings, a 2005 proposal for a new IPR Enforcement Directive includes criminal sanctions, which may also become the basis for prosecution of search engines or internet service providers (ISPs).[31]

One of the most controversial issues still remains internet "piracy". Large recording companies have been very actively lobbying for stricter European norms and

22 Access Info Europe (2006) Access Information: A Fundamental Right, a Universal Standard, briefing paper, 17 January 2006. www.access-info.org/?id=20

23 *Sdruženi Jihočeské Matky v Czech Republic* (App no 19101/03) 10 July 2006. It notably marks the first recognition of the Court that any restriction on this right would have to meet the requirements of Article 10(2), which means such a restriction must be prescribed by law, have a legitimate aim and must be necessary in a democratic society. Most recently, the Court has reiterated this in *Társaság A Szabadságjogokért v Hungary* (App no 37374/05) 14 April 2009.

24 There has been widespread criticism from non-governmental organisations concerning the Convention (see: www.access-info.org/data/File/Access%20Convention%20-%207%20Main%20Problems%20-%203%20March%202008%20-%20FINAL.pdf). In July 2008, the Parliamentary Assembly of the Council of Europe appointed a rapporteur to draft an opinion on the Convention. Paradoxically, the subsequent adoption process of the Convention has been shrouded in secrecy (see: www.article19.org/pdfs/press/council-of-europe-ignoring-public-opinion-council-of-europe-set-to-adopt-con.pdf).

25 The adopted texts of the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services of 28 and 29 May 2009 in Reykjavik can be found at: www.coe.int/t/dghl/standardsetting/media/MCM(2009)011_en_final_web.pdf
See also: Recommendation CM/Rec(2008)6 of the Committee of Ministers to member states on measures to promote the respect for freedom of expression and information with regard to internet filters, 26 March 2008, available at: tinyurl.com/cna63u?

26 See also a 2008 critical report issued by the CoE Commissioner for Human Rights (op. cit.).

27 The policy started with a Green Paper on Copyright and the Challenge of Technology (COM (88) 172 final). A number of Directives have been adopted, which are implemented by member states in their national law, and which regulate specific areas including computer programmes (Council Directive 91/250/EEC), lending rights and the main neighbouring rights (Council Directive 92/100/EEC), satellite broadcasting and cable retransmission (Council Directive 93/83/EEC), the duration of the protection of the authors' rights and neighbouring rights (Council Directive 93/98/EEC) and the legal protection of databases (Directive 96/9/EC). The EU is also bound by international instruments such as the Berne Convention, the World Intellectual Property Organization (WIPO) Copyright Treaty and the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which have necessitated the EU to adapt its rules. Recently, the proposed Anti-Counterfeiting Trade Agreement (ACTA), which also relates to online copyright protection, has led to concerns about the opaqueness of its negotiations. A leaked proposal indicates that the agreement may result in criminal sanctions against significant willful intellectual property rights infringements even without financial motivation, and enables right holders "to expeditiously obtain information identifying the alleged infringer." See: wikileaks.org/leak/acta-proposal-2007.pdf

28 Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

29 Institute for Information Law (2008) *Response to the Green Paper on Copyright in the Knowledge Economy*. www.ivir.nl/publications/guibault/IViR_Response_to_Green_Paper_on_Copyright_in_Knowledge_Economy.pdf

30 Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

31 Patents have been excluded from the scope of the proposal. However, recently advances have been made in the direction of establishing a Community patent and an EU Patent Court. See: register.consilium.europa.eu/pdf/en/08/st16/st16006.en08.pdf

enforcement, and are pushing for a more active role for ISPs when it comes to monitoring content.[32] Some European governments seem to be sympathetic to this idea. So, for example, France has been seeking to introduce a "graduated response" scheme which would entail monitoring by ISPs, notification of alleged infringers of copyright, and, eventually, the temporary termination of internet service.

In 2008, the Commission published a Green Paper on Copyright in the Knowledge Economy, which was the basis for public consultations. A Communication of the same year hinted at the introduction of more restrictive measures resembling the French model to combat illegal downloading.[33] During the current review of the so-called Telecoms Package,[34] negotiations on renewed rules on online copyright have stalled, and proposals for new legislation have been postponed.[35]

Another controversial issue relates to the temporal protection of copyrighted materials. In 2008 the Commission published a proposal to amend the Copyright Term Extension Directive to extend the term of protection for recorded performances and records from 50 to 95 years.[36]

Council of Europe

Until now, the ECrtHR has generated little case law on issues of copyright since its rights are not usually considered to have horizontal effect (meaning between individuals/citizens), but rather between public authorities and citizens. Since Article 10 of the ECHR is applicable to online content too, clearly any state decision to block certain content would have to fulfil the conditions of the Convention for legitimate interference with the rights it protects. As a result, regimes such as that proposed by France, where an administrative body would be mandated to decide to cut internet connectivity in the case of alleged copyright infringements, would certainly raise issues of proportionality.

The CoE has produced a number of other relevant legal instruments such as, importantly, the Convention on Cybercrime, which entered into force in 2004 and entails provisions on criminal liability for intellectual property violations.[37]

Criticism against the Convention has largely focused on a lack of effective safeguards to protect fundamental rights such as privacy, a lack of a "double criminality" provision, as well as its broad scope.[38]

Conclusion

Over the past fifteen years of incremental EU rule making, there is now a considerable amount of case law and practical experience on institutions' policies to implement what is increasingly seen as a fundamental right of EU citizens to access information.

Since the Regulation on access to documents does not specify which kind of documents have to be entered into the online registers, however, the EU institutions adhere to very different standards. As a result, a large number of documents are excluded from public view. In addition, one must know quite a lot about the workings of the EU, and be able to navigate through the different registers in search of a trail of documents, to reconstruct the decision-making process on a certain issue.

When it comes to national laws in the larger region of the CoE, under certain circumstances, a right to access to information has clearly been recognised by the ECrtHR. This marks an important shift in the Court's interpretation of the Convention, as mirrored in the adoption of the Convention on Access to Official Documents.

32 The issue of whether ISPs can be required to actively monitor potential copyright infringements has been hotly debated. So, while the eCommerce Directive did not entail an active obligation of ISPs to monitor content, injunctions by rights holders against ISPs may be compatible with the Copyright Directive, leaving the issue in legal limbo. Self-regulatory initiatives by ISPs that *inter alia* involve internet filtering to avoid liabilities have been the reaction. Also, some governments want to legislate to require ISPs to filter the internet (e.g., Germany, in order to prevent child pornographic content).

33 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Creative Content Online in the Single Market, Com(2007) 836 final, Brussels, 03 January 2008.

34 This denotes proposals for amendments of a number of directives by the Commission in order to reform the regulatory framework for electronic communications networks and services . It includes a proposal for a directive (COD/2007/0247) that would amend the Access Directive (2002/19/EC), the Authorisation Directive (2002/20/EC) and the Framework Directive (2002/21/EC) as well as a proposal for a directive (COD/2007/0248) that would amend the Universal Service Directive (2002/22/EC) and the Personal Data and Protection of Privacy Directive (2002/58/EC). It also includes a proposal for a Regulation creating a new European Electronic Communications Market Authority (COD/2007/0249).

35 At the same time, the review of the eCommerce Directive in order to clarify the issue of liability is being postponed until the new Commission is sworn in at the end of the year.

36 Proposal for a European Parliament and Council Directive amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights, COM(2008) 464 final, Brussels, 16 July 2008. In March 2009, the proposal was rejected by the body that negotiates agreement before the Council of Ministers takes a vote, which will at least delay a term extension.

37 European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite, Strasbourg, 11 May 1994. It has also issued recommendations on issues relating to intellectual property rights in 2001, when the Council adopted a convention on the legal protection of services based on, or consisting of, conditional access.

38 Double criminality connotes the requirement that a conduct be considered a criminal offence under the law of both the transferring and the receiving country. If you are in country A and hack into a computer located in country B, and if country B subsequently asked country A to extradite you, then the double criminality principle requires that hacking is considered a crime in both countries.

An important caveat in times of ongoing privatisation and liberalisation is the fact that in both regimes, access to information is only recognised in relation to information held by public authorities, not private actors. At the same time, the EU approach to enforcing intellectual property rights has been far-reaching, while national interpretations still vary. Bringing about a more coherent legal environment will require additional EU rules in the future. The music industry is likely to continue putting on the pressure to have ISPs burdened with more responsibility when it comes to copyright infringements. As a result, internet piracy is unlikely to disappear from the agenda in the near future, while copyright extension and a European policy concerning patents and trade agreements on intellectual property rights will remain important issues to be discussed at the regional level. ■

References

Access Info Europe (2006) Access Information: A Fundamental Right, a Universal Standard, briefing paper, 17 January 2006. www.access-info.org/?id=20

Bunyan, T. (2002) *Secrecy and Openness in the European Union: The Ongoing Struggle for Freedom of Information*, Statewatch. www.freedominfo.org/features/20020930.htm

Commission of the European Communities (2008) Report from the Commission on the application in 2007 of Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents, COM(2008) 630 final, Brussels, 10 October.

Council of Europe (2008) Protecting the right to privacy in the fight against terrorism, Commissioner for Human Rights, CommDH/IssuePaper (2008) 3, Strasbourg, 4 December.

European Citizen Action Service (2006) Should there be a Freedom of Information Act for the EU? Report on the application of regulation 1049/2001 on access to documents, Brussels, September 2006. www.ecascitizens.eu/content/view/50/180

European Parliament (2008a) Transparency and Public Access to Documents: Some Aspects concerning e-Transparency in the EU institutions and the Member States, Briefing Paper (PE 393.285), Brussels, March 2008.

European Parliament (2008b) Working Document No. 2 on 2006 annual report on access to EU documents (art 17 of Regulation (EC) No. 1049/2001 and art. 97 p. 7 of the EP rules) Part B, Committee on Civil Liberties, Justice and Home Affairs (PE400.323v01-00), 16 January 2008.

Hayes, B. (2005) *The right to know or the right to try and find out? The need for an EU freedom of information law*. www.statewatch.org/news/2005/nov/eu-FOI.pdf

Institute for Information Law (2008) *Response to the Green Paper on Copyright in the Knowledge Economy*. www.ivir.nl/publications/guibault/IViR_Response_to_Green_Paper_on_Copyright_in_Knowledge_Economy.pdf

Working Group on Data Retention (2009) *Position on the processing of traffic data for "security purposes"*. www.statewatch.org/news/2009/mar/eu-dat-ret-wg-e-security-position-paper.pdf

REGIONAL REPORT

South Asia

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Introduction

South Asia, one of the most populous regions in the world, is also home to half of the world's poor population. In the last decade some of the countries in South Asia have experienced impressive economic growth; but that growth was not inclusive and did not make any significant impact in reducing the number of poor people in those countries. Income and distribution inequalities in the region are putting the brakes on future growth and poverty reduction. Many academics tend to argue that the lack of access to information has a direct relationship with these inequalities.[1]

Countries in the region stand at different points, both in terms of performance and legislative arrangement, in relation to the issue of access to information. Despite all variances in online access to information between countries, one trend is common: governments in general have been slow to take up the regulatory challenges inherent in this process. For the most part, they have been more reactive than proactive and have responded only when civil society, media and other interest groups make up a convincing voice. In some countries (such as India, Pakistan and Sri Lanka) the judicial system has also played an important role. Waqar Mustafa, editor of *South Asia Media Monitor*, in 2008 broke down the countries into three broad categories: those with no or imperfect laws on access to information (Afghanistan and the Maldives); those with proposals but no legislation yet (Bangladesh – as it stood at the time – Bhutan, Sri Lanka and Nepal); and those with laws, but lacking their effective implementation (Pakistan and India).

To discuss access to online information, we need to understand the "right to information" (RTI) scenario, along with the e-government[2] and ICT policy landscape in different countries of South Asia. For instance, countries have tackled or settled the right to information and online access to information with different sets of rules and regulations which often seem to be connected to e-government policy and action plans. The following countries illustrate this trend.

Some examples of policy and legislative trends

India

India is considered the pioneer in the region in moving forward RTI legislation and implementing initiatives that enable digital access (or e-access) to government information and services. The Indian RTI movement, started in Rajasthan, is the root to all advocacy efforts around this issue. In 1995, the Supreme Court of India ruled that there was a public right of access to the airwaves. The court said: "The airwaves or frequencies are a public property. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights." Although dealing with access to airwaves, this judgment gave a powerful boost in other areas, particularly in the struggle for equal access to the internet, and to online information and services.

The government passed a RTI law in May 2005, which came into effect in October 2005. Under this law, information concerning the "life and liberty" of a person is required to be provided within 48 hours, and other information within 30 days. As for the enforcement mechanism, a commission that is headed by a high-profile chief information commissioner has been created to oversee compliance. To deliver this information and to facilitate access to information, the e-government programme has been accelerated.

The country's Information Technology Act (2000) was enacted to provide legal recognition for transactions carried out electronically, and also facilitated the electronic filing of documents with government agencies. The National Policy on Open Standards for e-Governance provides a set of guidelines to ensure seamless interoperability of various solutions developed by multiple agencies. The central government has gone some way towards implementing the policy, helping government departments throughout the country exchange information effortlessly by using royalty-free software and adopting technologies and solutions that are interoperable or work with multiple vendors.

There are 5,149 government websites in India,[3] including the country's e-gateway, which is developed and maintained by the National Informatics Centre.[4] This provides a single window for access to information and services provided by the various government entities.

1 See, for instance, Robert Chambers' argument in the Bangladesh country report in this edition of GISWatch.

2 Both government-to-citizen and government-to-government programmes are included in the use of this term.

3 This number includes all central, provincial, municipal and local government websites, as well as their service websites. Directory of Indian Government Websites: goidirectory.nic.in

4 home.nic.in

Pakistan

A Freedom of Information Ordinance (2002) was implemented in Pakistan through a presidential decree. Interestingly, the categories of information that the public was given access to are fewer than those envisaged by the Act. In particular, the definitions of "information" under the law are too restrictive, barring disclosure of several broad categories of records, including records of internal deliberations and Cabinet papers and records relating to law enforcement and defence.

The country's IT Policy and Action Plan (2000), on the other hand, has made a certain degree of online presence mandatory for the government. The Information Technology Commission (2000) was dissolved to form the Electronic Government Directorate (EGD) in 2002 to follow up the actions set by the Action Plan.

Some developments did take place. For instance, 90% of government authorities from local, district, provincial to federal level are now online. However, they are not that interactive. Pakistan's National Database & Registration Authority (NADRA) has a database of driving licences and can track vehicles, search national identity cards, as well as records of the latest biometric-enabled machine-readable passports.

There are certain pieces of legislation that are important for accessing e-services and information in Pakistan. For example, the Electronic Transactions Ordinance (ETO, 2002) covers information and communication transactions; the Electronic Crimes Act (ECA) promulgated in 2004 covers crimes in the electronic domain; the Data Protection Act (DAT) promulgated in 2005 covers the issue of data, particularly data centre activities that provide information on citizens; and the Internet Banking or eCommerce Act, promulgated in 2005, covers information on financial payment and transfer of funds.[5]

Bangladesh

The presently elected government in Bangladesh has approved a RTI Act (2008), gazetted in April 2009. As the country report in this issue of GISWatch shows, the law requires all but eight intelligence and law-enforcement agencies to provide information on a person's life and death, criminal record, and various institutional records of public concern, such as development programmes and public policy. Article 19 of the Act also includes the positive feature whereby it can override inconsistent provisions in other laws, specifically in Official Secrets Act 1923.

A lot of government information is now available online: 50 of the most important or sought-after government forms (such as birth registration, passport application, trade licence application, etc.) are now available online, and more than 200 government agencies now have their presence online. As in India, a national web portal[6] provides one-stop access to government information and e-services. Others, including a portal on policy and legislation,[7] government gazettes,[8] cabinet discussions,[9] and an Election Commission website,[10] are just some examples of the ubiquity of online government information in the country.

Sri Lanka

In contrast to the countries just discussed, Sri Lanka does not have a freedom of information law or even strong provisions in other laws that facilitate information disclosure. A 2004 draft Freedom of Information Act has not been passed. Moreover, there are worrying signs that the government is trying to reintroduce harsh media controls to curb the free flow of information. While the right to information is not specifically defined in the country's constitution, some judgments of the Supreme Court have held that the right to information is implicit in the freedom of speech and expression.

Despite this dismal picture, some legislative arrangements and initiatives have made access to online information possible to an extent. For example, Sri Lanka's eDevelopment strategy, "e-Sri Lanka: An ICT Development Roadmap", which was officially launched by the prime minister, looked at the national strategy of implementing e-government in the country. There were some core strategies for re-engineering the government programme that included bringing about a new governance framework enabled by ICTs and making public service more "citizen centric". The Electronic Transactions Act, which became effective in October 2007, recognises and facilitates the formation of e-contracts, the creation and exchange of electronic documents, electronic records and other communications in electronic form, and allows for digital certification. The Computer Crimes Act, which became effective on 15 July 2008, provides a legal means to identify computer crimes and a procedure for the investigation and prevention of these crimes.

All these have led to the presence and delivery of government information online. A central government website[11] carries links to all other government websites, including its

5 Sarfaraz, H. (2007) E-Governance: A Case for Good Governance in Pakistan. papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1415689_code634203.pdf?abstractid=1415689&mirid=1

6 www.bangladesh.gov.bd

7 www.bdlaws.gov.bd

8 www.bgpress.gov.bd

9 www.cabinet.gov.bd

10 www.ecs.gov.bd

11 www.priu.gov.lk

ministries and semi-government institutions. People can now easily get birth, death or marriage certificates from any district secretariats using the government web services.

Nepal

Nepal's 1990 Constitution provides everyone the right to be informed on government or non-government public activities, except when the law explicitly says otherwise. This is backed up by the Nepalese Right to Information Act (2007).

With the penetration of the internet, more and more citizens are seeking services and information online. Several actions and pieces of legislation have paved the way in this direction. These include the Telecommunications Act (1997) and related regulations (1998); the Information Technology Policy (2000) that established a National Information Technology Center (NITC) to oversee the implementation of the policy; the establishment of a National Telecom Authority (NTA) in 1998; and the Electronic Transaction Ordinance (2004) and Electronic Transaction Act (2006) that made electronic transactions and digital signatures legal.

Online information and services in Nepal include tax filing,[12] e-procurement,[13] cottage and small industry business registration,[14] postal services,[15] government accounting systems,[16] a health management information system,[17] customs,[18] immigration control,[19] and criminal records.[20]

Conclusion

It is clear from the practices and legislative arrangements of different countries that the right to information does not come alone. The role of civil society, particularly the role of media (both electronic and print), is extremely important not only to make people aware of their rights, but also for them to practice their rights. In almost all the countries in South Asia, the media have played a critical role in advocacy efforts to bring best practices to the region, lobby for more access to information in the public interest, and hold the bodies responsible that are in denial.

The regulatory environment in most countries of South Asia remains ill-defined, especially for the rapidly growing electronic media, which have penetrated the entire region:

What had been for decades a state-controlled monopoly broadcasting system operating within national boundaries has been transformed into a multi-channel, largely commercially driven, media environment, in which global and cross-border influences have acquired far greater salience. Some of the issues thrown up by this dramatic transformation have legal implications: such as the issues of public interest, citizen's rights, accountability of broadcasters, freedom of information and expression, censorship, copyright, etc.[21]

Interestingly, the media and civil society have to engage the judicial system in many countries to interpret these issues, as was seen in the 1995 Indian Supreme Court judgment. Similar litigation on public interest was seen in Pakistan, a result of joint action by 60 private television channels, approximately 100 radio channels and dozens of newspapers, journals and periodicals. In Bangladesh, the Supreme Court directed the Election Commission to make eight kinds of information (such as information on property, criminal charges, educational background, etc.) mandatory for an election candidate. In Sri Lanka, the media community went to the Supreme Court last year (2008) when the government allowed the regulatory authority to cancel licences if any broadcasting, print or multimedia messaging service (MMS) content seemed to be detrimental to the interest of national security. As mentioned, not long ago, judgments of the Supreme Court in Sri Lanka held that the right to information is implicit in freedom of speech and expression.

The convergence of telecommunications and broadcasting or print media technologies is bringing another regulatory challenge. The Nepalese government acted early to combine both under one Communications Ministry. India initially thought to keep both under the Telecom Regulatory Authority (TRAI), but the establishment of the broadcasting commission proposed in November 2006 has removed the regulation of cable channels from TRAI. The satellite TV media in India, as relative newcomers on the media stage, have been able to operate under looser restrictions compared to their counterparts in print media or radio. Pakistan has set up a Pakistan Electronic Media Regulatory Authority (PEMRA) which is separate from the Telecom Regulatory Authority, both in terms of its mandate and area of work.

Almost all governments in South Asia have been challenged by new media, because they are ubiquitous, influential and have changed the face of reporting. With convergence, citizen journalism is emerging and is providing a grassroots perspective that was unknown before. There is a need for the regulatory authorities of these countries to become aware of this, and to protect the interests of democracy by allowing pro-people policies. ■

12 www.ird.gov.np

13 www.bolpatra.gov.np

14 www.company-registrar.gov.np

15 www.nepalpost.gov.np

16 www.fcgo.gov.np

17 www.healthnet.org.np

18 www.customs.gov.np

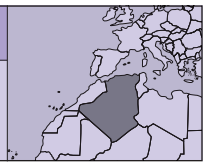
19 www.immi.gov.np

20 www.nepalpolice.gov.np

21 Media South Asia: www.mediasouthasia.org

ALGERIA

Arab World Internet Institute
Khaled Koubaa
www.aw2i.org



Introduction

Bordered by six countries in North Africa, the People's Democratic Republic of Algeria is the second-largest country on the African continent and the eleventh-largest in the world in terms of land area. It has suffered from a decade of terrorism across its vast territory, posing a challenge for the Algerian government to balance the fight against extremism with the development of the national economy.

Algeria has a population of more than 34 million (69.5% aged 15 to 64 years) with a gross domestic product (GDP) per capita of USD 3,968 in 2007. The hydrocarbon sector has helped the country to decrease its external debt to less than 5% and begin to build a national infrastructure.

In this context, information and communications technologies (ICTs) offer a real opportunity for Algeria: an opportunity to spur development across the country's immense territory, an opportunity for the youth to participate in national growth, and an opportunity to make the ICT sector the second-biggest after the hydrocarbon sector.

Policy environment

The implementation and management of Algerian national ICT policy has been mandated to the Ministry of Posts, Information Technology and Communications (MPTIC). The first important policy drafted was in 2000 with the creation of the regulatory authority for post and telecommunications (ARPT), and the split of Algeria Posts and Telecommunications into two companies, one of them becoming the incumbent telecom operator Algeria Telecom (AT).

The ARPT is in charge of regulating postal services and the telecommunications sector. This includes promoting competition in the latter. It is also responsible for the procedures for the allocation of operating licences and defines the rules on pricing for the services provided to the public. It ensures that the licence conditions are implemented and that the telecommunications infrastructure is shared.

In 2005, the MPTIC was assisted by a United States (US)-funded project, the Internews Network Global Internet Policy Initiative (GIPI). This project aimed to assist policy and regulatory actions needed to address the identified constraints on access to and use of the internet in Algeria.

At that time, the MPTIC and ARPT had been focusing on important policy and regulatory decisions aimed at liberalising the telecommunications sector in order to expand internet access.

In addition to the MPTIC and ARPT, the Ministry of Higher Education has also played an important role in the ICT field, especially through the Scientific and Technical Information Research Centre (CERIST), which functioned as the only internet service provider (ISP) before market liberalisation.

In 2006, Algeria scored only 0.35 on the UN E-Government Readiness Index, with a mere 1.1 personal computers and 0.59 broadband subscribers per 100 people. Since then, however, liberalisation has created a competitive market in Algeria, increasing the total number of telephone subscribers (mobile and fixed telephony) to more than 30 million from 1.4 million in 2002. There are now 71 ISPs and eleven providers of voice over internet protocol (VoIP) services.

Several key initiatives have been launched to enhance access to online information itself:

- *Ousratic:* The Ousratic initiative, with its slogan of "a computer for every family", aims to increase the penetration of computers in households by offering people loans for their purchase. The government has also lowered the value added tax (VAT) on computers from 17% to 7%.
- *Academic Research Network (ARN):* This is an education project that aims to interconnect academic and research institutions all over Algeria. The network offers high-speed internet access, and currently connects more than 75 institutions.
- *Virtual Library for Human and Social Sciences:* This initiative involves 30 Algerian university libraries offering access to specialised information related to human and social sciences.
- *Internet for All initiative:* For an average cost of USD 1 per hour for internet connectivity, the goal of this initiative is to popularise the use of the internet by the general public through cybercafés. Recently an old building in Sétif was transformed into a modern cybercafé with 200 terminals and a virtual link to the Mediathèque de Paris library.
- *Cyber Park:* This initiative involves the creation of cyber parks as IT nodes with high employment potential and the capacity to provide technological support and expertise to the industrial sector. Recently a cyber park project was launched in the Sidi Abdellah region.
- *Wikaya Net:* This is a portal dedicated to the spread of information related to cyber security. Amongst other things, it offers alerts about viruses and worms.
- *Web Review:* This initiative is being developed by the Information Science Division of CERIST. It offers access in full text or abstract mode to scientific articles from different fields.

Legislative environment

The Algerian Constitution protects the rights and liberties of the country's citizens by guaranteeing fundamental human and citizens' rights and liberties; freedom of creed and opinion; freedom of trade and industry; and freedom of intellectual, artistic and scientific innovation. It also states that no publication can be seized without warrant, and guarantees the privacy of correspondence and communication, freedom of expression, and equal access to education and professional training.

Legislation dealing with freedom of speech was set up by Law 90-07 of 3 April 1990. The law abolished the state monopoly on the information industry by permitting the creation of several independent newspapers.

Because of the law, Algeria is considered one of the most free Arab countries in the region. However, this freedom needs to be qualified. The law also states that each journalist proven guilty of insulting the president of the republic, the army, the national assembly or other state institutions shall be sentenced for up to two years in jail.

Concerning online content, Decree 98-257 of 25 August 1998 states that ISPs are responsible for all published content hosted on their servers and are also responsible for monitoring content that is considered "contrary to public order and morality".

Algerian legislation has even incorporated the concept of "digital content" through an amendment to the criminal code. It now considers insult or defamation to include writing, drawings or speech, radio and television broadcasts or any electronic means (including computers and the internet).

It is important to note that up until now there have been no online content censorship cases reported in Algeria.

Accessing information: Projects and initiatives to bridge the information divide

The Algerian geography includes the huge Sahara Desert and two significant mountain ranges. As a result, most infrastructure (including the internet) is concentrated in urban areas. Non-urban areas have little access to information by virtue of the fact that they are not even connected to the network.

The Algerian socio-cultural environment is another barrier to accessing information, especially due to the mistrust of technology. This mistrust is encouraged by incidents such as pornography being viewed by students in cybercafés.

A further key barrier to accessing content involves the difficulty of getting access to the information. Information related to economic opportunities at national or local level, as well as to administrative procedures, may exist online on government agency websites, but citizens are neither informed nor encouraged to use the internet as a formal and official source of information.

During the legislative election in 2007, the Ministry of Interior launched an initiative to try to deal with these problems. A bilingual (Arab/French) website was set up that helped voters access information related to the election process.[1] It allowed users to download documents such as the constitution, laws and other legal texts related to the election. It also included a guide for the electorate, as well as information about political parties participating in the election and about voting centres. One of the goals of this website was to inform Algerians residing abroad about the voting process. The traditional media also encouraged the use of the site.

Concerning ICTs in education, a convention was recently signed by the Ministry of Solidarity with Hess, a US corporation with a branch in Algeria, to provide internet access to eighteen schools for people with visual impairment, and to build a central library offering content in audio format in three languages, Arabic, English and French.

Health information and content is an area in Algeria that needs improvement so that it can reach underserved areas and citizens. A Health Algeria network has already been established and the Algerian government reports that several initiatives to promote and enable ICTs in the health sector have been undertaken. The medical and scientific communities have been given online access to international medical and social science journals since 1999. The Ministry of Health has also introduced an official Health Portal to promote access to electronic health content developed by the Ministry.

It is worthwhile noting that a regulatory policy that protects the privacy and security of individual patient data should be implemented as part of any e-health strategy.

New trends

Algerian Communications Minister Hamid Bessalah recently revealed a new strategic plan for developing ICTs in the country.[2] The e-Algeria 2013 initiative is supposed to accelerate ICT use in the country, including the government's application of technology to increase access to government information. This strategy is the result of the deliberations of a so-called "e-committee" headed by President Abdelaziz Bouteflika.[3] It follows the rapid growth of mobile telecommunication services in Algeria, but not internet and broadband services.

The e-Algeria strategy is based on several goals: boosting the use of ICTs in public administration and businesses; developing incentive mechanisms and measures to give citizens access to ICT equipment and networks; stimulating the development of the digital economy; strengthening high and very high speed telecommunication infrastructure; developing human capacities; strengthening research, development and innovation; updating the national legal framework; recognising the value of international cooperation; and establishing e-monitoring and evaluation mechanisms.

As far as the use of Web 2.0 tools goes, this is still considered a new phenomenon in Algeria. The blogosphere is small and made up of bloggers living in France and elsewhere

1 www.legislatives2007.dz

2 Algérie Entreprise (2008) Interview with Mr. Hamid Bessalah, Minister of MPTIC, 30 December.

3 El-Djazair (2009) E-Algérie 2013: une économie numérique, 11 February.

in Europe. YouTube is considered more popular, and used to express individual opinions on political issues and to describe or capture social issues. Algerian youth use mobile phones to record videos which are posted onto YouTube, and friends are then encouraged to visit the website.

Another new trend encouraging access to information is the use of mobile phones for internet access. Recently the mobile service provider Mobilis introduced Mobiconnect, allowing users to connect to the internet through their mobile accounts.

Action steps

Key action steps that need to be taken in Algeria are:

- Advocating for broadband internet infrastructure that can offer more reliable and cheaper access to Algerian citizens.
- Advocating for a national content strategy based on encouraging the private sector and individuals to create more and more relevant content (e.g., text, audio, video).
- Setting up a national cyber security agency to encourage the private sector and especially the financial sector to create more virtual services (e.g., e-banking, e-commerce). ■

References

Hamdy, A. (2007) ICT in Education in Algeria, in , infoDev. www.infodev.org/en/Publication.384.html

IREX (2006) Media Sustainability Index (MSI) Middle East & North Africa. www.irex.org/programs/msi_mena/2006/msimena06_algeria.asp

Office Nationale des Statistiques: www.ons.dz/them_sta.htm

United Nations Economic Commission for Africa (2002) National Information and Communication Infrastructure (NICI) Policies and Plans: Algeria. www.uneca.org/aisi/nici/Algeria/algeria.htm

World Bank (2009) ICT at a Glance: Algeria.

World Health Organisation Global Observatory for eHealth: Algeria. www.who.int/entity/goe/data/country_report/dza.pdf

ARGENTINA

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Introduction

The Argentine Constitution includes access to information as one of the most important civil rights – a right that is also reflected in several government initiatives and public policies, as well as legislative debates dealing with intellectual property, freedom of expression, privacy and access to knowledge. However, these policies and debates are frequently fragmented, and lack specialised input. Civil society organisations working in the field have enriched the discussion, and the recently proposed Digital Agenda could be the proper space to accomplish the aim of securing access to online information as a human right.

Policy environment

The rights of freedom of expression and access to information have constitutional status in Argentina. Article 14 of the constitution includes, among the fundamental rights of all Argentine citizens, "the right to petition the authorities and to publish ideas through the press without prior censorship."

The constitutional reform of 1994 widened this legal basis, with the inclusion of international treaties[1] such as the American Convention on Human Rights, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.

Article 13 of the American Convention on Human Rights states: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." In the same Article, the Convention stipulates: "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls."[2]

Through Decree 512/09, the Presidency has developed the Digital Agenda,[3] a "tool created to take advantage of the possibilities that the information and knowledge society provides. It proposes a work platform integrating government, business, academia and civil society organisations."[4] The programme focuses on three pillars: technological sovereignty and independence (i.e., an emphasis on local possibilities and needs), human rights, and citizen participation. It creates commissions dealing with human capital, content and applications, infrastructure and connectivity, funding and sustainability, and the legislative framework, coordinated by representatives of the public sector.

The area of content – the most relevant for this report – is coordinated by the Ministry of Education. The proposals in this field include:

- Encouraging local content, and in doing so promoting local languages and cultures
- Promoting applications for citizens to exercise their rights
- The digitalisation of archives
- Supporting technological neutrality and interoperability
- Focusing on usability
- The facilitation of access to information and freedom of expression generally.

The following initiatives also reflect government policy on the issue of access to information:

- *Accessing public information:* In relation to public information, the National Office for Information Technologies (ONTI - *Oficina Nacional de Tecnologías de Información*) under the Sub-Secretariat of Public Management, coordinates the use of information technologies in the national public administration. The ONTI is in charge of the National Plan for Electronic Government and Digital Signatures. The office is also responsible for the government's web portal,[5] which collects a wide range of information about the country and offers a guide to procedures in public administration.
- *Accessing educational materials:* The Ministry of Education also develops content for its web portal educ.ar, and coordinated the National Campaign for Digital Literacy from 2004 to 2006.[6] The educ.ar platform offers capacity building and digital resources. However, it does not have the impact it used to. Some analysts point out that the current administration stresses the development of television content, broadcast through Encuentro,[7] an educational TV channel that falls under the Ministry.

1 National Constitution of Argentina, article 75, paragraph 22. www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

2 www.hrcr.org/docs/American_Convention/oashr4.html

3 www.agendadigital.ar

4 CABASE, CESSI, CICOMRA and RODAR (2008) *Bases y lineamientos para una Agenda Digital Argentina.* www.agendadigital.ar/docs/Bases_Agenda_Digital_Argentina_sector_privado.pdf

5 www.argentina.gob.ar

6 Nodo TAU (2007) Argentina, in Finlay, A. (ed.), *Global Information Society Watch 2007*, APC and ITeM. www.giswatch.org/gisw2007/node/401

7 www.encuentro.gob.ar

- *Local domain:* The local entity that delegates domains for the country code .ar is NIC.ar (Network Information Centre Argentina), which falls under the Ministry of Foreign Affairs. It recently approved the use of Spanish and Portuguese characters in web addresses, such as ñ or ç, as well as replacing the gov.ar sub-domain with gob.ar (government = *gobierno* in Spanish), to "reinforce the use of our language, strengthen our identity and reduce the homogenising effects of globalisation."[8]

Legislative environment

Information and communication rights are now on the public agenda in Argentina. In March 2008, the national government presented legislation that would regulate audiovisual communication services. This law will replace the current Broadcasting Law, developed during the military dictatorships in Latin America in the 1970s, and only modified to benefit economic groups and increase media concentration.

The proposed legislation, which is soon to be passed, considers communication as a human right and information as a social good. The legislation is based on a document called *21 Basic Points for the Right to Communication*, which was put forward by the Coalition for Democratic Broadcasting, a grouping of more than a hundred social, labour, academic and professional organisations.[9]

Since the passage of Decree 554/97, which declared "access to the global network" to be "in the national interest," and Decree 1279/97, which included the internet as being subject to "the constitutional guarantees that protect freedom of expression," national legislation related to access to online information has emerged in several ways. Some of this legislation, however, appears to contradict the above decrees.

- *Intellectual property rights (IPR):* Law 25.036,[10] passed in 1998 to replace Law 11.723 from 1933, includes legislation to protect software copyright, the management of databases, and sanctions for copyright infringement. However, many feel the legislation restricts access to knowledge and promotes cultural monopolies. A case in point is the judgment against a philosophy professor who created online "libraries" for his students on Nietzsche, Heidegger and Derrida, without copyright permissions. The libraries included texts, essays, photos and links, as well as translations of core texts.

- *Personal data protection:* Law 25.326[11] deals with the administration of public and private databases that include personal information. The legislation prevents any entity from handing over personal data unless it is justified by legitimate public interest.

- *Access to public information:* Argentina does not have a national law that regulates access to public information. Decree 1172, passed by the national government in 2003, relates only to executive information (i.e., from the Presidency and ministries) and states that information requested from public administrations should be provided without the need to specify reasons for the request.

- *Monitoring online content:* The government delegates control of online content to internet service providers (ISPs). Law 25.690[12] establishes that "ISPs are obliged to offer protective software that inhibits access to specific content." Originally the law was intended to control content harmful to children. In a legislative debate it was changed to "specific content", which also covers other kinds of content, such as content that is discriminatory. ISPs complained about state intervention, arguing that it is difficult to apply the law, and that the legislation goes against the free spirit of the net, amounting to censorship.[13]

The importance of claiming online information rights

One of the challenges in evaluating access to information is the lack of statistical information – a fundamental resource for the evaluation of public policies and for planning. Argentina suffers a serious lack of confidence in official statistics because the organisation in charge, the National Institute of Statistics and Census (INDEC – *Instituto Nacional de Estadísticas y Censo*) is going through an institutional crisis, marked by accusations of corruption and internal political differences.

There are, as a result, no public indices for content. While some private consultants compile reports, they do not investigate content production, but merely provide overviews of commercial use and consumption.

The local media map shows a high concentration of media ownership, the creation of uniform content and a lack of state control. The proposed legislation for audiovisual communication services – discussed in open forums – deals with some of these issues. Although the law is concise in its treatment of new technologies, it assumes that digital media not only facilitate citizens' access to information but also provide the possibility of spreading information to a wide variety of social actors.

However, this does not appear to be the case. A report written by the blogging site Bitacoras.com[14] about the state of the Hispanic blogosphere, and based on its own internal data, says that 52.2% of bloggers are from Spain and 10.9% from Argentina. Regarding content, 54.5% of the blog postings are from Spain and 10.2% from Argentina. The report also indicates the cities where users are from. In Argentina,

8 www.nic.ar

9 www.coalicion.org.ar

10 www.mincyt.gov.ar/25036.htm

11 infoleg.mecon.gov.ar/infolegInternet/anexos/60000-64999/64790/norma.htm

12 infoleg.mecon.gov.ar/infolegInternet/anexos/80000-84999/81031/norma.htm

13 García Bartelt, M. (2003) Proveedores denuncian censura en Internet, La Nación, 12 January. www.lanacion.com.ar/nota.asp?nota_id=465416

14 Bitácoras.com (2009) *Informe sobre el estado de la blogósfera hispana.* bitacoras.com/informe

58,697 bloggers are from Buenos Aires, the capital, 10,193 from Cordoba, its second largest city, and 9,002 from Rosario. This suggests that ICTs are not yet democratised in Argentina, and the digital ecosystem is reproducing the same concentration seen in traditional media, with content produced in the districts with the largest resources.

The internet is a powerful tool for the social reintegration of people deprived of their freedom, due to its potential for interactivity-based learning opportunities.[15] Argentina has no legislation that forbids internet access from jails. However, the right to internet access is only afforded to those who organise themselves and claim it. Some prison groups even manage to develop websites or blogs where they denounce the infringement of human rights in prison conditions, a severe institutional problem in Argentina because prisons are overcrowded and the majority of those imprisoned are still awaiting trial.[16]

Free Way Foundation (Fundación Vía Libre), a local organisation that promotes free software, has made a detailed analysis of the proposals for the Digital Agenda.[17] It emphasises the importance of integrating the experiences of civil society groups and organisations in the proposals. At the same time, Free Software Argentina (SOLAR - *Software Libre Argentina*), together with the National Institute of Industrial Technologies (INTI - *Instituto Nacional de Tecnologías Industriales*) have made suggestions about increasing the use of free and open source software through the Agenda.[18]

New trends

Legislation proposing digital taxes on all technological media that store, record or reproduce music and images is currently under discussion. The tax is proposed by associations that defend the rights of authors and by the business sector whose activities are affected by technology evolution. The tax, a bad solution already tested in Spain, has been criticised because it would add an additional cost to CDs and DVDs, CD, DVD and MP3 players and recorders, computers, digital video and photo cameras and mobile phones.

The "No Tax in Argentina" movement[19] is a group of civil society organisations trying to raise the debate from the point of view of users and free software and culture advocates. They argue that the tax not only widens the digital divide, but also punishes consumers, raising the price of technological goods. It also legalises piracy and the taxes collected would not go directly to cultural creators.

Action steps

- All current legislation needs to be reviewed to ensure that it encourages digital inclusion and respects and promotes communication rights and human rights generally.
- The national government needs to provide access to online information, developing its electronic government policy, promoting the publication of content held by public administrations, increasing transparency and protecting citizens' rights to access this information. Although there is some work in this area, more work needs to be done given the complexity of state institutions. What does not exist is a policy that coordinates different levels of state.
- Access to government information is confined to those with ICT access, including the skills to use ICTs. Electronic government policies should include capacity building for citizens. Some local governments do, but only in a fragmentary way.
- Because there is no entity properly coordinating the online content arena in Argentina, it is difficult to develop strategies to prevent things like child pornography and discrimination, as well as to create a voice for marginalised communities and circulate information useful to these communities. The Digital Agenda could probably provide a space for meeting this need.
- The educational policy on online content could be broadened, allowing for more content creation and teacher training in digital inclusion strategies for schools.
- Prison policies should be revised to encourage the integration of the internet and e-learning in prisons. ■

15 Roman, A. (2005) *Redes y ventanas: tecnologías de la información como factor reinsertivo en los penales argentinos*, Universidad Nacional de Córdoba. www.biblioteca.jus.gov.ar/Roman3.pdf

16 CELS (2008) *Derechos Humanos en Argentina: Informe 2008*, CELS and Siglo Veintiuno Editores. www.cels.org.ar/common/documentos/ia_2008.pdf

17 Fundación Vía Libre (2009) *Aportes para la Agenda Digital Argentina*. www.vialibre.org.ar/wp-content/uploads/2009/05/posicionfvl.pdf

18 Xhardez, V. and Olivera, M. (2009) Agenda Digital, Software Libre y Solidaridad Tecnológica. www.solar.org.ar/spip.php?article574

19 www.noalcanon.org

BANGLADESH

Bytes for All
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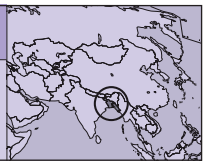

Introduction

In Bangladesh, the link between "access to information" and development is not properly articulated at the policy level. Robert Chambers[1] made a good argument to show the link between the two. He called poverty a deprivation trap with five linked clusters of disadvantage: physical weakness, isolation, vulnerability, powerlessness, and poverty itself. The issue of "access to information" is related to the "isolation" cluster that leaves people with little or no participation in the system. They are uninformed and do not have contact with the market or other important institutions of the society.

An easy, affordable and functioning access to information system starts to break this isolation and relieve people from the clusters of disadvantages that they are trapped in. For example, the Bangladeshi government provides a USD 20 subsidy for each sack of fertiliser to increase agricultural production. However, this fact is known to only 5% of the farmers, who often buy sacks of fertiliser at a higher price set by unscrupulous retailers. Similarly, 20% of all the costs related to electricity-run irrigation pumps are subsidised by the government. But this benefit often does not help farmers because they do not have the information. Therefore "access to information" has a direct link to the development drive of the country.

Policy and legislative environment

Bangladesh's constitution does not make direct reference to the right to information, but Article 39(2) states that "subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence – the right of every citizen to freedom of speech and expression, and the freedom of the press, are guaranteed." The interpretation of this Article is intended to include discussion and dissemination.

In Bangladesh, an interim caretaker government[2] first took a pragmatic step in approving the draft Right to Information (RTI) Ordinance (2008), which was later given the go-ahead by the elected government in the country's ninth parliament, and was gazetted as an Act in April 2009. Amongst other things, the law requires all but eight intelligence and law enforcement agencies to provide information on a person's life and death status and criminal record, as well as information on development work and government policies and legislation to an information-seeker within 24 hours. Information on corruption and violations of human rights must also be published, even by security and law enforcement agencies. A three-member Information Commission has been formed to enforce the law. Anyone who fails to meet the law's provisions can be fined up to BDT 5,000 (USD 73). New posts will be created in most of the government offices and non-governmental organisations (NGOs) to provide information on demand. Article 19 of the Act can override inconsistent provisions in other laws, specifically in the Official Secrets Act (1923).

In 2006, the government enacted the Information and Communication Technologies (ICT) Act (2006) which includes provisions that affect cyber identity, such as digital signature and encryption. The law also covers cyber crime. The Act was supposed to appoint a controller to monitor its implementation within 90 days of its enactment. However, that did not happen. The new government has taken an initiative to amend the provision of 90 days and was planning to appoint a controller soon.

Government officials abide by what is known as a "Secretarial Instruction", which was modified in 2008 to integrate and recognise the role of ICTs. In the Secretarial Instruction 2008, the use of email as a government document, soft copy processing and digital documents have been recognised. Government officials are encouraged to use ICTs as a tool to establish a paperless office.

Although the government has passed the RTI and ICT Acts, there are a number of laws still in place that contradict the vision of a free flow of information in society. These are: Section 5(1) of the Official Secrets Act (1923); Sections 123 and 124 of the Evidence Act (1872); Rule 28(1) of the Rules of Business (1996); Rule 19 of the Government Servants (Conduct) Rules (1979); and oaths of secrecy under the constitution. For a true application of the right to information, these laws need to be modified to avoid contradictions.

Government-to-government (G2G) and government-to-citizen (G2C) information services

Most of the forms for government services are now available online; 50 of these are in a single location[3] and the others are available from the respective ministry websites. However, users cannot submit or respond to these forms online, as back-office automation has not yet been done. A national web portal[4] provides one-stop access to information and e-services provided by the government. The portal is bilingual, although some of the information is available only in Bangla. Around 200 or more government agencies now have websites.

1 Chambers, R. (1983) *Rural Development: Putting the Last First*, Longman, Essex.

2 See: en.wikipedia.org/wiki/Caretaker_government_of_Bangladesh

3 www.forms.gov.bd

4 www.bangladesh.gov.bd

A portal on legislation, president's orders, and ordinances in Bangladesh[5] was launched 2007. Government gazettes are also now available online through a website.[6] The website has published all gazettes since February 2008 and has plans to publish an archive of previous gazettes in the future. All circulars and announcements related to cabinet meetings are published on the cabinet website.[7]

An Integrated Budget and Accounting System (iBAS) helps the government improve financial management and financial control systems by consolidating accounting data and supporting the standardisation of the budget preparation process for line ministries and the government's finance division.

Government officials are now also able to access their long and short personnel data sheets (PDS)[8] through the Ministry of Establishment website.[9] This helps them to track their career development and provides regular information on career opportunities.

Election results, polls schedules, candidates' profiles and disclosures, constituency information, amongst other things, are published regularly by the Election Commission's website.[10] The voter identity (ID) card project, one of the most successful and grand ICT projects in Bangladesh, has registered all eligible voters in a database with their ID photos, signatures and scanned copies of their index fingers. There are plans to put this database online so that an eligible voter or citizen can access that information or can apply to be a voter.

The database has laid the foundation for delivering various information services to citizens such as birth registration, preparation and distribution of vulnerable group development (VGD)/vulnerable group feeding (VGF) cards, passports and driving licences, providing vaccination and school enrolment services, and so on.

A Geographic Information Systems (GIS)-based school mapping project at the Bangladesh Bureau of Educational Information and Statistics (BANBEIS) enables citizens to identify areas in need of priority intervention, such as areas with poor teacher training, lack of infrastructure or infrastructure affected by disaster, and other critical educational issues. A number of government ministries, international organisations, donor agencies, and research organisations are accessing and using this mapping project. The Education Board of Bangladesh, which is under the Education Ministry, also regularly publishes all public examination results online.

A GIS-based Agriculture Resource Planning (ARP) database prepared by the Planning Commission and used by different stakeholders contains information on the country's land resources, including physiographic, soil, climate, hydrological and crop information. At the same time, a National Water Resources Database (NWRD) and Integrated Coastal Resources Database (ICRD), prepared by the Ministry of Water Resources, offers information on things like surface water, ground water, soil and agriculture, fisheries, forestry, socioeconomics, meteorology and the environment. This helps users to implement projects related to these areas.

Finally, the research and development website of the Roads and Highways Planning Department provides important and critical information on roads and bridges, finances, testing procedures, design standards and management plans. Planners can prioritise areas for intervention using this data.

Access to information through mobile phone devices

Mobile phones play a key role in accessing information or services from remote locations. A number of service sector agencies, both in the government and non-governmental sectors, are providing on-demand services via short message service (SMS) or email request. For example, electricity customers in Dhaka, Chittagong, Cox's Bazar and Chittagong Hill can pay their bills through mobile phones from anywhere anytime. Similar facilities for the whole country exist for consumers of natural gas and owners of land phones provided by Bangladesh Telephone Company (BTCL).

Vital information such as tax assessments, graveyard bookings, trade licence renewals, and railway schedules, fares or seat availability can also be accessed nationally through mobile phones, as well as internet services. One private enterprise offers agricultural and health-related information via phone.

Using SMS, eligible voters can find out which polling station they are registered at. During local government elections in the past, tens of thousands of voters have used this service. Different news media organisations are providing on-demand and up-to-date news services and information via mobile phone.

Access to business-related information and services

Access to different types of business-sector information and services are possible nowadays. The following are some examples:

- Online searching and clearance services for company names from the registrar are available.
- The online submission of import general manifests (IGM) and export general manifests (EGM) for shipping agents, freight forwarders and other stakeholders at Chittagong and Dhaka Custom Houses is possible. As the e-payment system is yet to be introduced, the system uses pre-paid cards for payment.
- The Board of Investment (BOI) has introduced an online investment tracking system through which interested parties can find foreign investors' information.

5 bdlaws.gov.bd

6 www.bgpress.gov.bd

7 www.cabinet.gov.bd

8 Personal and confidential human resources files.

9 www.moestab.gov.bd

10 www.ecs.gov.bd

- Farmers can access daily, weekly and fortnightly price information for different agricultural items and commodities using the online market price index developed by the Department of Agricultural Marketing.
- Bangladesh Bank, using customised software, can now easily generate and publish different reports such as export receipts, import payments, scheduled bank advances and deposits, scheduled bank bills and debits and summary statements. This reduces the need for telephone inquiries and personal visits to the bank.

New trends and action steps

Recently the government unsuccessfully tried to block access to several streams of communication – only to later withdraw their attempts. In 2006, the Bangladesh Telecom Regulatory Commission (BTRC) issued a circular to all mobile phone companies to shut down the midnight calling packages, which were extremely popular among the younger generation.[11] In July 2008, the government blocked a popular Bangla blog site, Sachalayatan,[12] which had become a major source of news and information on public unrest at Dhaka University. However, the block was withdrawn after a few days. A similar thing happened in March 2009 when the government blocked access to YouTube,[13] which resulted in severe criticism from civil society organisations.

With the approval of the RTI Ordinance in the Parliament and the subsequent formation of the Information Commission (as per the RTI Act) it is very likely that these sorts of attempts would now be monitored by the Commission. The RTI Act is meant to ensure transparency, good governance and accountability of government institutions. Any aggrieved person/institution can now approach an Information Tribunal seeking justice.

However, the Act has some drawbacks. Some rules within the Act exempted the public authority from sharing information on the grounds of safety and national security. It also created an Information Tribunal but did not mention any specific time limit to resolve issues. As a result, one might have to wait for a long period of time before receiving justice. Also the compensation package (BDT 5,000 or USD 75-80) that has been offered (in case of information being held) is thought to be too little.

Private authorities such as trade bodies (particularly those that receive public funding) are also subject to the Act. However, NGOs often receive public funding but do not share information on their activities, accounting systems, services, fund management, etc.

Section 7 of the RTI Act defines the categories of information that are not open. These include: "information related to commercial or business confidence, copyright or intellectual property rights, the disclosure of which would harm the intellectual property rights of any third party." As a result, the private sector can exercise restraint in making information available in the name of intellectual property rights.

Access to information is useless when it is not supported systemically by an institution. For example, many government ministries do have a website, but they are not updated regularly or no one is assigned to keep track of the feedback received through the website. This can dampen the entire spirit behind the citizen's right to access to information. On the other hand, many individuals and organisations are unaware of their rights and ways to access information on demand. Because of this, media and civil society organisations need to do campaigns to make people aware of their rights, and the processes and means of demanding information, as well as the legal remedies that they can follow if the information is not shared. It is also important for the media and civil society organisations to show the direct link between access to information and the development problems faced by the country. This would enable citizens to understand how it is important to their day-to-day lives.

Another interesting trend is that different shared access points, such as telecentres, are being used to provide low-cost access to critical livelihood information on agriculture, health, human rights, education and employment at the grassroots level. It is estimated that there are about 2,000 or more telecentres in different locations across the country. The telecentre movement within the country will certainly add a new dimension to the nature of access to and demand for information. ■

11 The government believed the youth were losing their moral values.

12 www.sachalayatan.com

13 The government was embarrassed that an audio file of a conversation between a military officer and Prime Minister Sheik Hasina was in the public domain.

BOSNIA AND HERZEGOVINA

Oneworld – platform for south east europe (owpsee) Foundation
Valentina Pellizzer and Amila Akagic
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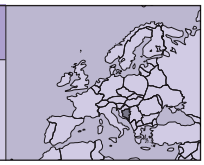

Introduction

Freedom of information, as a right, is not stated expressly in the Constitution of Bosnia and Herzegovina, but it is protected indirectly. A Freedom of Access to Information Act (FOIA) was passed in 2000, with Bosnia and Herzegovina the first state of the Western Balkan countries to adopt it. One year later the FOIA had been passed by both entities.[1] However, by 2006, according to a survey done by the Centre for Free Access to Information, the FOIA was one of those acts that existed on paper, but had never actually been implemented.[2]

Today most institutions have appointed information officers and prepared a guidebook where citizens are informed of their rights and the necessary procedures to obtain information. An information ombudsman has been appointed within the Ombudsman Institution of Bosnia and Herzegovina to "examine the activities of public authorities in relation to this Act, either upon receiving an application or ex officio."[3]

Still, considering the fragmentation of Bosnia and Herzegovina, its several government and administration levels, and its inefficient and non-responsive public administration, with no state network and common infrastructure, it is not easy for a citizen to understand the structure of administration, or how to get information from a public institution.

Policy and legislative environment

Sometimes it feels as if laws in Bosnia and Herzegovina are passed simply to comply with the European Union (EU) obligations and road map, without a serious plan to implement them, or without proper tools for their implementation. Meanwhile, the country lacks a law that will establish the Agency for the Information Society (AIS) that should oversee the development of the information society across the country.

Bosnia and Herzegovina has several key legal instruments and frameworks at its disposal that affect access to online information. Their status is as follows:

- A law on personal data protection was adopted in 2001
- A legal framework on e-signatures was passed in September 2006
- A law on cyber crime was signed in 2006
- A law on electronic legal and business operations was passed in 2007
- Draft e-commerce legislation is currently before Parliament.

Besides these, intellectual property rights contained in an EU-supported information and communications technology (ICT) strategic research agenda called SCORE[4] are unclear regarding ICT products. The effect of this is a lack of support and incentives for local ICT enterprises to develop local products. Only recently the state regulatory agency for communication (RAK) started working on online media regulation and registration.

In the general context of education, it is important to mention that the educational system in Bosnia and Herzegovina is passing through a structural change in order to harmonise its system and curricula to the EU general standard. The key document is represented by the Bologna Declaration which marks a turning point in the development of European higher education.[5] A document entitled *Education Reform in Bosnia and Herzegovina* was presented to the Peace Implementation Council (PIC) in Brussels on 21 November 2002. This document was endorsed by both entities in the country. It focuses on the implementation of education reforms, and contains clear guidelines for these reforms.[6]

The academic and research network

There is a word in Bosnia and Herzegovina, *polako*, that is used whenever someone makes haste. *Polako* means that things will happen without the need to be in a hurry. The academic and research network in the country, BIHARNET, carries the flavour of this word. In the last nine years, since 2000, it has not fulfilled its mandate: there is no connectivity between the eight public universities in Bosnia and Herzegovina, and the universities still face high ICT costs.

During these dormant years, universities have continued to try to integrate ICTs into their work. Thanks to the implementation of another EU-supported project called SEEREN2 in December 2006, the University of Banja Luka was connected through SARNET, the academic network

1 Bosnia and Herzegovina encompasses two entities with their own governments and parliaments: the Federation of Bosnia and Herzegovina and the Republika Srpska. There is also one internationally supervised district, the Brcko District. This system of government was established by the Dayton Agreement to guarantee the representation of the country's three major groups (Muslims, Serbs and Croats), with each having a veto on anything that goes against what is defined as "the vital interest of the constituent people."

2 From September 2005 to September 2006, a project called the Full Implementation of the Freedom of Information Act (FOIA) in Bosnia and Herzegovina was implemented, aiming to increase the transparency and responsibility of all public organs in Bosnia and Herzegovina. See: www.cspi.ba

3 Freedom of Access to Information Act for Bosnia and Herzegovina, published in the *Official Gazette of Bosnia and Herzegovina*, Number 28/2000, 17 November 2000.

4 Final ICT Strategic Research Agenda for Bosnia and Herzegovina, SCORE: www.score-project.eu

5 ec.europa.eu/education/policies/educ/bologna/bologna.pdf

6 www.untz.ba/bolonjski_proces/bolnatreport-fbh.pdf

in Republika Srpska, to a GÉANT2[7] point of presence in Sabac, Serbia. This opened up a whole set of opportunities for the university. The connection goes through Doboj in northern Bosnia and Herzegovina, with the service provided by Telekom Srpske, a telecommunications company based in Banja Luka, and the second largest in the country.

This has had the effect of an alarm bell, given the political geography of Bosnia and Herzegovina and its rigid national-ethnic lines. It meant that in 2007 SARNET could serve the University of Banja Luka with a high-standard connection at a very good price. The Universities of Sarajevo, Tuzla and Zenica, which are all in the Federation, tried for more than two years to do the same thing,[8] but BH Telecom, the largest telecommunications company in Bosnia and Herzegovina, declined citing technical reasons.

To connect all eight universities, according to the cost assessment of the SEEREN2 project, would require EUR 450,000 for the first year and EUR 370,000 for maintenance. However, the Ministry of Civil Affairs at the country level, responsible for coordinating policies on education and science, has no budget for an academic network, while the Ministry of Education and Science in the Federation, the ten Ministries of Education at cantonal level in the Federation, and the Ministry of Science and Technology in Republika Srpska have financial resources.

After a year, in 2008, five universities in the Federation – Sarajevo, Tuzla, Zenica, Bihac and (east) Mostar – were connected and operating through FARNET, a network using a 100 megabits per second (Mbps) multi-protocol label switching (MPLS)-based virtual private network (VPN). There was also a proposal to revive BIHARNET, under the responsibility of the minister of civil affairs, but still no decision has been taken in this regard.

Despite universities now being connected, problems remain. FARNET has no governance or management structure. This is the result of several stakeholders working on a single project. All the issues faced by BIHARNET persist. Political manipulation is ready to be used, while universities try to link Bosnia and Herzegovina with neighbouring universities to gain knowledge, to develop services and to have the means for their own sustainability by providing new services.

Libraries

The Library Electronic Information Consortium of Bosnia and Herzegovina (EICBIH) was established in March 2004. Its goals included sharing bibliographic records in libraries throughout the country and offering access to educational materials useful to students such as books, journals, etc., and other electronic information. Today EICBIH offers access to global databases such as SCOPUS, Web of Science, ScienceDirect, Emerald and the EBSCO research database. Although EICBIH was active from 2004 to 2006, there has been no news about its activities in recent years.

A different system, the Co-operative Online Bibliographic System and Services (COBISS), is the platform for the national library information system (or virtual library) for Slovenia, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. The system provides basic information about books accessible in specific libraries as well as their availability. It is possible to exchange books between libraries through a book request.

The National University Library in Sarajevo implemented COBISS in 2005, in cooperation with the Slovenian company IZUM. Twelve libraries signed the contract with COBISS.BH (the COBISS system in Bosnia and Herzegovina), and became members of COBISS.Net the same year. Since then, about six libraries join the network every year.

In June 2009 COBISS had 278,377 records from 33 libraries,[9] mostly from the Federation of Bosnia and Herzegovina, with only one from Republika Srspka. However, there is no online information available about the usage of this system by the general public or academia.

The National University Library of Bosnia and Herzegovina offers a few online services, such as searching all the records in the library through the COBISS.BH network, access to the Registry of Scientific and Research Work in Sarajevo Canton and the Federation of Bosnia and Herzegovina, and to global databases such as EBSCO, Web of Science, ScienceDirect and Emerald.

The European Library's new FUMAGABA project offers access to digital paintings, books, films and the archives of the National Libraries of the Former Yugoslav Republic of Macedonia, Ukraine, Moldova, Albania, Georgia, Armenia, Bosnia and Herzegovina, and Azerbaijan. The project should be completed in July 2009. The goal of the project is to provide information about lesser-known works of art for European researchers. The records from the National University Library of Bosnia and Herzegovina were integrated into the European Library database in June 2008, thanks to this project.

The Registry of Scientific and Research Work in Sarajevo Canton and the Federation of Bosnia and Herzegovina[10] provides general information about researchers, research organisations, research projects and investments

7 GÉANT2 is the high-bandwidth academic internet network serving Europe's research and education community (www.geant2.net).

8 "In fact, as of June 2007, most universities in the country were connected via 2 Mb/s symmetric DSL connections offered by the incumbent operators via a standard educational package for a price of approximately EUR 4,500/month. The two exceptions were the universities of Banja Luka (dark fibre) and East Sarajevo (ISDN). The University of Mostar has a connection to CARNET, the Croatian NREN, which is… only connected to a local node (and does not give access to GÉANT2) and only used for video-conferencing." TERENA (2008) *Annual Report on Activities to Support Research Networking in Less Advanced Regions*. www.terena.org/activities/development-support/GN2-08-033-DN4-0-3-3_Annual_report_to_support_research_networking_in_less_advanced_areas_20080129105949.pdf

9 www.cobiss.ba/scripts/cobiss?ukaz=GETID&lani=ba

10 registar.nub.ba

in research in Sarajevo Canton and the Federation of Bosnia and Herzegovina. Although not complete, the database provides information about the educational background of researchers along with information about books and scientific articles that the researchers have published. However, this information is not regularly updated, and the procedure for updating is not known. Most likely it is done through a written request to the National University Library in Sarajevo,[11] which is a slow and ineffective process.

Educational materials for different faculties are published with the help of open source publishing software such as Moodle, or software developed in-house that is not shared among other universities. Each faculty has its own system of publishing course material, which means it is not openly and easily accessible outside of that faculty.

New trends

Looking at the priorities that emerged from the SCORE agenda, Bosnia and Herzegovina has a high level of readiness to offer e-learning services. Distance learning is already offered in Sarajevo at the ICT, economic and electro-technical faculties at Mostar. It is important to continue and to develop consistent services, and essential to find an adequate technical framework that can be scaled up across universities, as well as to secure finances from BIHARNET.

With the creation of FARNET and SARNET we now have two parallel institutions, one in each of the two entities, instead of the single network, BIHARNET. What is vital now is to avoid the parallel development of the two structures without any collaboration. It is well known that the dynamics of public institutions, unfortunately, follow a sort of national-ethnic divide. Institutions collaborate with neighbouring countries instead of internally. At the same time, in view of the vacuum that has existed in the past, there is a need to continue to look for a flexible and viable solution, and to avoid getting trapped in a vicious discourse which has no other intention than to divert public attention and divide public opinion.

An interesting development, offering a relatively neutral space to develop an effective strategy, could be provided by the country's e-government agenda. The fact that Bosnia and Herzegovina should comply with the EU interoperability framework for administration holds promise for libraries and academic institutions. This framework could help to attract the interest of citizens and private stakeholders which could support the efforts of universities such as Tuzla and Zenica.

Action steps

After studying all these projects and initiatives, especially with reference to the EU-supported projects such as SCORE and SEEREN2, what emerges is the absence of civil society actors – advocates for ICTs for human rights engaged in this field. Advocacy is necessary to support the findings of research, and to support the efforts of so many individuals working with a contemporary concept of what "access" entails.

As a country, Bosnia and Herzegovina has through its institutions shown an interest in recognising ICTs as a critical component for economic development, and the development of society in general. There is a need for sharing information online, but a lack of ICT support and the virtual non-existence of BIHARNET limit these possibilities.

Following the implementation of the Bologna education system, the result of the Bologna Declaration, progress has been made in publishing educational material and other information online in the past four years in academia, but this progress would be much greater if it were coordinated by a national academic research network. This would mean new projects, more scientific papers, an exchange of ideas, and greater mobility for students. But as long as the issues raised in this report remain trapped in the musty rooms of academia, and echo through the hundreds of halls found in ministries and public institutions, none of this will be possible. ■

11 www.nub.ba

BRAZIL

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Introduction

If we understand access to information policies as initiatives led both by the government and civil society relating to the internet and the digital environment, then such policies in Brazil can be traced to the late 1990s.

The first initiatives aimed at providing free access to information date back to the availability of the internet to the general public in 1995. Some were local projects, such as the open access journals portal SciELO, founded in 1998, or the movement for the reuse and free redistribution of music called Re:combo, founded in 2001. Others were local chapters of global projects such as the Independent Media Center (Indymedia) founded in Brazil in 2000, or the local chapter of Creative Commons, founded in 2004. Originally they were mostly civil society projects; but several of them were later supported by public policies, especially after the government of Luis Inácio Lula da Silva came into power in 2002.

This report will focus on five dimensions of these access to information policies: access to scientific production; access to educational materials; free culture; copyright reform; and internet regulation.

Open access to scientific literature

Brazil has been a leading force in providing free access to scientific literature with the launching of the Scientific Electronic Library Online (SciELO)[1] project in 1998. The project was founded by the scientific community working in the health sciences who aimed to improve the dissemination of Brazilian scientific journals globally, and thereby give exposure to Brazilian scientific practice. With the support of Brazil's main funding agencies for science, SciELO grew from ten journals in the early pilot project in 1997 to 197 journals in all major areas of knowledge by 2009.

Free or open access to scientific literature is a goal fostered by the international open access movement. Since its early organisation in 1998, the movement has envisioned two roads to provide free online access to articles published in scientific journals: the so-called "golden road", in which full journals are put online; and the so-called "green road", in which individual researchers put an electronic copy of their articles published in journals in a website or portal run by their institution, to create an institutional repository.

Because SciELO has been such a success and become a reference for the open access movement worldwide, the green road of scientists self-archiving their articles has been neglected. However, as much of Brazil's scientific output is published abroad in non-open access journals, the need for a green road type of policy is pressing.

Such policies usually consist of establishing a mandate obliging scientists and scholars being funded by an institution (university or research centre) or scientific funding agency to put a copy of their articles online in an institutional repository. This repository, in turn, needs to be open to the public. So far, no institution or funding agency in Brazil has established this kind of mandate (although there are some discussions being held in a few universities).[2]

Notwithstanding, a federal law has been proposed by deputy Rodrigo Rollemberg (Bill 1120/2007)[3] which states that all scientific production by students, faculties and researchers in public institutions of higher education should be placed online. In July 2009 the Bill was approved by the Science and Technology Committee of the Congress, and now needs the further approval of two other committees, as well as the Brazilian Senate.

The proposal follows the principles of a mandate already in practice since 2006, promoted by CAPES (the agency responsible for higher education). This states that theses and dissertations produced in both private and public institutions must be put online.[4] Non-compliance is punished with a negative evaluation of the post-graduate programme (which means receiving less public funding).

Open educational resources

While the open access philosophy is more focused on putting scientific literature online, another set of policies known as "open educational resources" aim at putting educational and learning materials online, both for basic and higher education.

The leading experience in Brazil in open educational resources is the Public Textbook project[5] promoted by the state of Paraná since 2004. The project encourages primary and secondary school teachers to produce and upload their own educational materials onto the internet, by offering them financial bonuses. This material is later peer reviewed, compiled, edited and printed in textbook form, and also made freely available on the internet for students and non-students.

The federal government has two projects in the field. However, they are less developed than Public Textbook.

1 www.scielo.org/php/index.php?lang=en

2 For a full list of policies mandating self-archiving worldwide see: www.eprints.org/openaccess/policysignup

3 www.camara.gov.br/sileg/Prop_Detalhe.asp?id=352237

4 Theses and dissertations can be found on two websites: the Digital Library of Theses and Dissertations (bdtd.ibict.br) and the Public Domain Portal (www.dominiopublico.gov.br).

5 www.seed.pr.gov.br/portals/portal/livrodidatico

The International Bank of Educational Objects[6] is a web portal of learning tools such as maps, texts and videos that are put online for use by learning communities. As of July 2009, the website had 6,718 tools. The Public Domain Portal[7] is a website where public domain literature and other open-licensed texts and multimedia tools are made available on the internet. As of July 2009, the portal had over 83,000 Portuguese-language texts in addition to other public domain and open-licensed foreign language and multimedia tools.

Free culture

Work towards a "free culture", understood as the practice of authors licensing their own copyright-protected products in a way that allows free reproduction, grew more consistently after the establishment of Creative Commons in Brazil in 2004. Before that, there were some initiatives such as Re:combo[8] (a movement of musicians freely licensing their music for remixing and reproduction) and the Brazilian branch of Indymedia[9] (a freely licensed alternative media website). However, with Creative Commons, free licences were given a legal backing, and could be incorporated into larger initiatives and public policies.

As elsewhere, free culture diffusion in Brazil relies a lot on Web 2.0 platforms, and websites and portals that adopt free licensing models such as Creative Commons to release the content produced by users. Besides the large international platforms such as Flickr and Wikipedia, some local projects such as Overmundo[10] have contributed to the estimated 1,516,793 Creative Commons-licensed works from Brazil available on the internet.[11]

In terms of public policies, several governmental websites have adopted Creative Commons licences for content (including the government press agency Agência Brasil).[12] The Ministry of Culture has also supported the use of free licences, but has not yet mandated the use of those licences for the works they fund. In fact, a new law proposed by the Ministry, which is about to be sent to Congress, allows for the free use of content for educational purposes three years after the publication of works that were funded through a tax deduction mechanism called the Rouanet Law. It is expected that this proposal will face stiff opposition in Congress, particularly because of this free-use provision.

Copyright reform

The Ministry of Culture is also the leading force behind a very bold attempt at reforming the copyright law in Brazil. The Brazilian copyright law was designed in 1998[13] with very limited provisions for the free use of works (in line with the more recently developed concept of "access to knowledge"). In an international comparison undertaken by the international non-governmental organisation (NGO) Consumers International, Brazil ranked thirteenth among sixteen countries evaluated for their legal provisions for access to knowledge.[14] Brazilian law does not allow the free reproduction of works through format shifting (e.g., copying music on a regular CD to an MP3 device), for use by people with disabilities (e.g., converting a book to Braille), or for classroom use by teachers.

Because of such poor performance in allowing access, Brazilian copyright law is about to be reformed. A long process of discussion and debate with industry, artists, academia and civil society led to the drafting of a bill that was expected to be presented to Congress in September 2009. A preview document was made available in January 2009,[15] through which the main outlines of the proposed reforms can be seen. In particular, it allows for a larger spectrum of exceptions and limitations (allowing copying for private use, the preservation of cultural heritage and education, among others).

Internet regulation

Brazil lacks a legal framework for regulating internet activity. Because of this, internet use is mainly regulated by other laws (such as the criminal and civil code), and the transposition of the law to the digital environment is made according to a judge's understanding of the law's application. This has led to a series of problems where issues specific to the internet are not recognised by the judges applying the law. Because of this, there has been a demand by some members of the internet community for a legal framework designed specifically for the internet.

The first serious attempt to provide such a framework was a proposal (Bill 84/1999)[16] to reform the criminal code and include provisions for "digital" crimes, both online and off. Civil society groups strongly opposed the bill, saying that the law proposed would criminalise everyday uses of technology such as circumventing mobile phone blocks that restrict the use of a mobile handset to one telecom company, or circumventing other restrictive technologies that

6 objetoseducacionais2.mec.gov.br

7 www.dominiopublico.gov.br

8 The project ended in 2008 and does not have a working website anymore.

9 www.midiaindependente.org

10 www.overmundo.com.br

11 For an estimate of Creative Commons adoption worldwide see the CC Monitor: monitor.creativecommons.org

12 www.agenciabrasil.gov.br

13 An English-language translation of the Brazilian copyright law is available at: www.wipo.int/clea/docs_new/en/br/br002en.html

14 The Consumers International IP Watch List Report 2009 is available at: a2knetwork.org/watchlist

15 www.cultura.gov.br/site/wp-content/uploads/2009/01/livro-direito-autoral.pdf

16 www.camara.gov.br/sileg/Prop_Detalhe.asp?id=15028

limit consumers' rights. In addition it was pointed out that it would promote the invasion of privacy by demanding internet service providers to retain their data (possibly to be used to prosecute file sharers and other so-called copyright infringers).

A petition opposing the bill gathered over 140,000 signatures.[17] Due to public pressure, at the time of writing it seemed very unlikely that this proposal would be approved. The activism generated by the proposed law is now being channelled into building a civil law framework for internet use where the rights of users would supersede criminalisation.

Actions steps

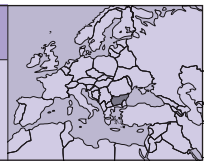
Based on this brief overview of civil society initiatives and public policies adopted at different levels of government promoting access to information in the digital environment, the following action steps are recommended:

- Support Bill 1120/2007, which will provide access to most of the scientific literature by scientists working in the public sector.
- Support the Rouanet Law reform, which will allow the free use for educational purposes of works funded by a tax deduction three years after their publication.
- Support the copyright reform promoted by the Ministry of Culture, which will increase exceptions and limitations and promote access to knowledge.
- Oppose Bill 84/1999, which would criminalise everyday uses of technology and violate the privacy of internet users.
- Support the creation of a civil law framework establishing internet rights. ■

17 www.petitiononline.com/mod_perl/signed.cgi?veto2008

BULGARIA

BlueLink and Access to Information Programme
Vera Staevska and Alexander Kashumov
www.bluelink.net and www.aip-bg.org



Introduction

Since 2008, the Bulgarian public has been increasingly alarmed by persistent legislative and policy pressures to impose restrictions on privacy in online communications. While access to information and communications technologies (ICTs) is on the rise – with a quarter of households accessing the internet in 2008 and a 6% increase in the personal use of ICTs[1] – the past year has been marked by instances of infringements on both online and traditional media freedoms. New regulations aimed at establishing rules for retaining electronic traffic data for security reasons, and a lack of transparency in the digitalisation process, suggest increasing state control over electronic communications and freedom of speech. Concerns over censorship of electronic communication and information have been expressed by foreign observers;[2] but on a more positive note these issues have also triggered widespread public reaction[3] and debate in Bulgaria's parliament, the mass media and the blogosphere. As a result, some drastic legislative changes intended to limit privacy and other online communication rights have been stopped. At the same time, a newly formed political party, rooted in a re-emergence of green activism, has embraced internet rights as a core part of its campaigning.[4]

Policy and legislative environment

The year 2008 marked the start of implementing European Union (EU) Directive 2006/24/EC on data retention in Bulgarian legislation. This Directive serves "the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law"[5] and "respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union."[6] Allegedly in order to implement Directive 2006/24/EC on data retention, in January 2008 State Regulation 40 gave the Ministry of Interior (MVR) direct access to all electronic communications (i.e., mobile and internet) data, except for the content of messages.

After wide public opposition, and a court trial initiated by the civil society Access to Information Programme (PDI), a court decision was issued to the effect that the regulation contradicts both the Bulgarian Constitution and the European Convention on Human Rights. An amendment to the law was made, stipulating that access to the data is subject to a court warrant, and only to be used for investigating capital offences and cyber crime.

Meanwhile, 2009 saw improvement with regard to access to public information. In 2008, 95.1% of all administrative bodies maintained their own websites.[7] However, documents provided online do not fully meet the demand for information, especially those related to government contracts with private companies. To partially respond to this problem, amendments were made to the Access to Public Information Act in December 2008 which obliged public bodies to publish information online.

Official statistics show that 38% of administrative bodies handle electronic requests.[8] However, a survey by the PDI in February 2009 showed that only 34.3% of all 399 public bodies included in the survey responded to electronic requests promptly. Another 7% delayed their replies, whereas 58.4% did not respond at all.[9] The range of e-government services are reported by the National Statistical Institute to have increased since 2007, so that the share of companies who used the services in 2008 showed a 13% increase from the previous year.[10]

In line with fostering access to online information, the Ministry of Education and Science (MON) has continued its National Strategy (2005-2007) for introducing ICTs into Bulgarian schools with a new national programme called ICTs at School.[11] This programme aims at providing access to information and developing teachers' and students' skills. The ministry has also been a partner in Microsoft's Partners in Knowledge initiative, which includes the Network of Innovative Teachers,[12] a portal offering a forum and electronic educational content, amongst other content.

The official website of the State Agency for Information Technologies (DAITS) has announced a draft policy document on electronic communication[13] and a draft for a National Programme on Developing Broadband Access,[14] the latter having been offered to the NGO sector for feedback. Both

1 www.nsi.bg/IKT/ICT2008.pdf

2 Such as the Bulgarian Helsinki Committee (www.bghelsinki.org/index.php?module=news&lg=en&id=2224), Reporters without Borders (www.rsf.org/IMG/pdf/rsf_rep_bulgaria_en.pdf), and US Department of State (www.state.gov/g/drl/rls/hrrpt/2008/eur/119072.htm).

3 NGO actions include various petitions by Electronic Frontier Bulgaria (e.g., efb.bg/images/b/b3/Zes_251.pdf) and a court trial against the regulations filed by the Access to Information Programme (www.aip-bg.org/documents/data_retention_campaign_11122008eng.htm).

4 www.zelenite.bg/517; www.zelenite.bg/wordpress/wp-content/uploads/2009/06/internet.pdf

5 www.ispai.ie/DR%20as%20published%20OJ%2013-04-06.pdf

6 Ibid.

7 Ministry of State Administration and Administrative Reform (2008) *State of Administration* Report 2008, p. 143. www.mdaar.government.bg/docs/Annual%20Report%20%202008.pdf

8 Ibid., p. 44.

9 See the survey results at: www.aip-bg.org/e_register.php and analytical report at: www.aip-bg.org/l_reports.htm

10 www.nsi.bg/IKT/ICT2008.pdf

11 www.minedu.government.bg/opencms/export/sites/mon/left_menu/jointprojects/national_programs/2009-05_IKT.pdf

12 www.teacher.bg

13 daits.government.bg/upl/docbg20090331172918.doc

14 daits.government.bg/upl/docbg20090319170346.doc

documents emphasise the priority of establishing broadband infrastructure and adopting new regulatory policies in line with the ongoing EU revision of directives on internet control. The respective new legislative initiatives have concentrated on control over mobile and online communication.

Access to government-held information is regulated by the Access to Public Information Act adopted in June 2000.[15] Since its amendment in December 2008, the Act obliges public authorities to publish on their websites information including details about their organisation and its functions, a list of administrative documents issued, and contacts in the unit responsible for the Access to Public Information Act. Moreover, they have to provide their procedures for granting access to information and public registers (Article 15a). Requests for access to public information may be submitted by email. These requests are regarded as written and handled in a way defined by the respective public institution (Article 24, paragraph 2). Any citizen has the right of access without demonstrating any legal interest. The 2008 amendments require the authorities to take into account the public interest in information disclosure.

Restrictions on the right to access public information may be imposed only if provided for by law. In any case, when possible, at least partial access should be provided. Bulgarian legislation also establishes the possibility of limiting access to information to protect certain interests, such as state secrets, business confidentiality, protection of deliberations before final decisions, negotiations, and third party interests (personal data and trade secrets).

Uneasy passage for rights-based legislation

Even after the court decision to repeal State Regulation 40, five more amendments to the Law on Electronic Communication were proposed by the Ministry of Interior, using similar formulations to those that had already been rejected, but again granting the ministry the same broad rights to access traffic data without court permission and without clearly saying what the data would be used for. The last formal attempt to make this amendment was in June 2009, just three working days before of the end of the incumbent parliament's term. It was therefore not discussed before the July parliamentary elections.

The insistent interest in government control over electronic communication is a serious threat to privacy and freedom of expression and has provoked broad civil society criticism. The new parliament will need to face the same threat, and either finally deny these attempts at control, or allow for state intrusion on civil rights in the sphere of internet and mobile communications. However, because these attempts have evoked serious discussions in parliament, and broad opposition by the public, with NGOs and media participating actively in the debate, it is unlikely that the latter will be the case.

Another issue provoking intense public debate is the February 2009 amendment to the Law for Radio and Television (ZRT), which formally kick-started the first round of competition amongst media houses wishing to access digital transmission spectrum as part of the process of the digitalisation of the Bulgarian TV sector. However positive the start of the process was, there has been serious public criticism of the lack of transparency in criteria for spectrum allocation, wilful interpretation of the Law for Radio and Television and the Law on Electronic Communication, and the delaying of required procedures by the Council of Electronic Media (SEM) and the Commission for the Regulation of Communications (KRS), which are the state bodies responsible for the selection and evaluation of digital media holdings. All of this has resulted in an advantage for certain media companies owned by businesspeople who had previously been favoured in profitable deals with the government, often to the detriment of the national budget.

Mass media and civil society analysts[16] argue that the amendments to the legislation on the digitalisation of electronic media and the way these amendments have been interpreted by KRS favour specific media houses. These companies have a close relationship with the current government – a relationship that is likely to give them a monopolistic position in the media sector and can also lead to political influence over content and control over public speech. An independent peer-reviewed report defines the biggest challenge in the field as stemming from "the locus of political and business interests" and concludes that the government-imposed method of implementing European-level legislation amounts to a "top-down" process that "links directly to a very powerful group of media business entities, whose political and economic clout is powerful enough to sway political and regulatory decisions in their favour. These trends are even more alarming in view of the increasing media ownership concentration which inevitably leads to the elimination of a pluralism of opinions, leads not only to a civil society that lacks diverse public fora, but also results in the hyper-commercialisation of TV programming, where profit overtakes public interest, and where only a few players will make it to the finish line of the digital conversion marathon."[17]

Besides the monopolisation of the media, the current political majority in parliament has been accused of suppressing independent traditional and electronic media. The Bulgarian Helsinki Committee (BHC) argues in its Annual Human Rights Report that the ownership of the Bulgarian media is unclear, and the media are subjected to political pressure from the state and political parties.[18]

The year 2008 was marked by incidents like the physical attack on Ognyan Stefanov, editor-in-chief of the independent website Frognews,[19] and the arrest and interrogation

15 www.aip-bg.org/library/laws/apia.htm

16 For example, www.capital.bg/show.php?storyid=734948 and nellyo.wordpress.com/2009/04/24/cem-13

17 Ibroscheva, E., and Raicheva-Stover, M. (2009) Development of Digital TV in Bulgaria: Opportunities and Problems, *International Journal of Communication*, 3, p. 104. http://ijoc.org/ojs/index.php/ijoc/article/viewFile/402/295

18 www.bghelsinki.org/index.php?module=resources&lg=en&cat_id=24

19 Leviev-Sawyer, C. (2008) Bulgarian Parliament, journalists condemn assault on website editor, *The Sofia Echo*, 24 September. sofiaecho.com/2008/09/24/661145_bulgarian-parliament-journalists-condemn-assault-on-website-editor

of the website's administrator, Yorgo Petsdas, by the State Agency for National Security (DANS).[20]

Police and state security agencies have also monitored telephone calls and examined telephone records. All these incidents demonstrate the strong culture of suppression of freedom of speech and privacy rights which has been inherent to Bulgarian state authority since the times of the socialist regime of 1944-1989. The United States (US) Department of State's 2008 Human Rights Report on Bulgaria also stressed an increase in "self-censorship due to pressure by political and business leaders and organised crime" and "increased political influence over media, pressure from powerful economic interests and attacks against journalists."[21]

In spite of the oppressive political status quo, it can be argued that as ICTs develop in Bulgaria, the state will be torn between a conservative tendency to control their potential, and a progressive pressure towards information and internet freedoms. This latter pressure will largely be driven by the EU and growing domestic pressure from an active and critical civil society.

New trends

The issues of online access to information, internet and communication rights, and online privacy have gained prominence and are likely to dominate the public agenda going forward.

The civil society sector focused on access to information and human rights has been working in two main policy areas:

- Access to online communication, which is in line with the official policy on strengthening internet infrastructure and is supported by the government.
- Digital rights, which in general needs to be defended against the government-proposed legislation.

An example of the former is the United Nations Development Programme (UNDP) project called Bulgarian Libraries, funded by the Bill and Melinda Gates Foundation and institutionally hosted by the Bulgarian Ministry of Culture.[22] The project's full name is Bulgarian Libraries – Access Points to Information and Communication for All, and its strategic objective is to provide easy and equitable access to information, knowledge, communications and electronic services in public libraries via the free use of the internet and access to educational training.

The latter field of civil society action can be exemplified by the statements of protest and civil society discussions initiated by Electronic Frontier Bulgaria, [23] a Bulgarian NGO advocating for online communication rights. Civil society actions have included campaigns for public debate on the relevant issues (e.g., online discussions, a Facebook information campaign, policy proposals and meetings with government institutions), and the Access to Information Programme,[24] active in monitoring and policy analysis in the field.

In general, further public involvement is expected in the following areas:

- Opposition against infringements of internet and communication rights, including privacy and freedom of speech, that have typically been part of the Bulgarian authority's oppressive culture. State control over internet and mobile communications and the electronic media is in the limelight and is likely to remain a hot topic in the online public sphere. Bloggers writing on these developments[25] are consistently ranking among the most popular according to statistics.[26]
- The re-emergence of green and other activism, primarily using internet-based communications. This form of activism challenges the present political culture and demands more transparency and citizen participation.
- Lack of public respect for intellectual property rights, broadly perceived as "imposed" on Bulgaria as part of the EU accession process. This is likely to lead to various forms of resistance, and potentially give rise to political representation via a non-registered "Internet Pirates" party.

Action steps

- A general direction for action, embraced by BlueLink, involves support for individuals' involvement in policy making and advocacy for participatory policy-making processes. This is seen as a primary driver for securing internet rights, transparency, public participation and good governance.
- With regard to access to public information, more action needs to be taken in order to ensure that state authorities effectively provide access to public registers and databases, especially with regard to state-private ownership deals affecting public property.
- With regard to data retention and control over electronic communication, civil society needs to keep up the pressure to ensure basic human rights legislation in line with freedom of expression and the right to privacy. Data from online and mobile communications must only be provided for serious crimes.
- With regard to the transition from analogue to digital media, public and parliamentary control over the actions of KRS need to be strengthened, especially regarding competition criteria for media companies.
- In order to minimise political influence and the monopolisation of both electronic and traditional media, there needs to be clearer media ownership regulations, and competition rules need to be revised and more strictly defined. ■

20 Reporters Without Borders (2008) Security agency closes corruption whistle-blower website, 15 September. www.rsf.org/Security-agency-closes-corruption.html

21 www.state.gov/g/drl/rls/hrrpt/2008/eur/119072.htm

22 www.glbulgaria.bg/en/

23 efb.bg/index.php?title=Aboutus

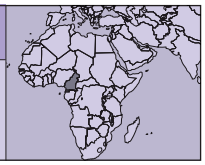
24 www.aip-bg.org/index_bg.htm

25 For example, nellyo.wordpress.com, www.bogomil.info and www.eenk.com

26 topbloglog.com

CAMEROON

PROTEGE QV
Sylvie Siyam, Serge Daho and Emilie Jabouin
www.protegeqv.org



Introduction

Cameroon is a country located in central Africa with a population of about 18 million inhabitants and a low average population density. It has a low-middle income level with a gross national product of USD 2,300 per capita, and is ranked in 144th position out of 177 countries classified in the United Nations Development Programme (UNDP) Human Development Index.

Cameroon's constitution (in the preamble) lists several inalienable rights and provisions guaranteeing the freedom of speech and opinion.

The digitisation of Cameroonian society is still in its infancy, and telecommunication infrastructure is significantly underdeveloped. The Scan-ICT 2006 report reveals that the cost of a computer is equivalent to the annual per capita income, which makes this tool inaccessible to the majority of Cameroonians and constitutes a major obstacle to internet access for the population (less than 1% of households have an internet connection). Moreover, according to the Scan-ICT survey, 66.2% of institutions have no computers and only 6.2% have more than one computer. Yet the country is endowed with a fibre-optic backbone running along the Chad-Cameroon oil pipeline. It is also a landing point for the SAT-3 submarine cable, in Douala, with a capacity of 2.5 gigabits (Gb).[1]

Policy environment

Since the 1990s, legislation in Cameroon has catered for freedom of speech to ensure a free press. In practice, however, there are still considerable limitations, such as governmental sanctions ranging from fines to censorship and even imprisonment. The professionalisation of journalism is not supported in that there is a perception that the state should be shielded from the media. Trumped-up allegations against the independent press and attempts to control the information sector generally are still common today. Governmental structures still play an important role in countering the implementation and reinforcement of the law when the state's status quo is threatened.[2] The incarceration in 1998 of Pius Njawé, a Cameroonian journalist, is proof of tensions found in Cameroonian society in respect to freedom of speech.[3] Cameroon has been one of the countries most reluctant to democratise at the state level: it allows plurality yet makes sure that important barriers that stunt the growth, credibility and integrity of the media are put in place.[4]

In Cameroon, internet access and use have increased considerably. This has partly been due to state initiatives that have also focused on building information technology knowledge and professionalism, and pushing for technological upgrades.[5] Since 2002, online access has been used primarily for administrative purposes. Inside government structures, information and communications technologies (ICTs) have been used to improve governance, especially when it comes to corruption. The SIGIPES programme is a good example of this. It keeps track of civil servants' professional career records, to prevent fraud and practices like claiming double or triple salaries.[6] Other technological reforms have involved SYDONIA, which is a trans-border customs clearance programme enabling the tracking of merchandise.

Advancements are also noticeable when it comes to the digitisation of the press. The main Cameroonian newspapers are now available online, which shows a certain familiarisation of the internet among Cameroonian intellectuals and the middle class. A number of websites now also offer a wide range of information on government activities, including those of the Presidency, as well as companies and non-governmental organisations.

Nevertheless, infrastructure to support online communication is not assured due to lack of funding and maintenance, which also raises connectivity costs. In terms of sharing information over the internet, no significant limitations, such as censorship, have been found. State intrusion into the online sphere is nonetheless suspected, according to the Institut Panos Paris.[7]

Legislative environment[8]

The following key laws are relevant to accessing online information in Cameroon:

- Telecommunications Law No. 98/014 of 14 July 1998, which regulates telecommunications, but does not deal with internet access.

1 Ministry of Posts and Telecommunications (2006) *Final Report: National Survey on the Level of Penetration and Usage of ICT in Cameroon (Scan-ICT).*

2 IREX (2007) Media Sustainability Index Africa: Cameroon. www.irex.org/programs/MSI_Africa/cameroon.asp#intro

3 Institut Panos Paris (1999) *Internet à l'usage des journalistes africains*, Karthala.

4 IREX (2007) op. cit.

5 National Agency for Information and Communication Technologies (ANTIC) (2007) Chapitre 3: Axes d'intervention prioritaires, in *Stratégie Nationale de Développement des Technologies de l'information et de la communication.*

6 Ministry of Public Service and Administrative Reform (MINFOPRA) (2002) *SIGIPES & Aquarium: More Transparent Handling of Personnel Files in Cameroon.* www.egov4dev.org/transparency/case/sigipes.shtml

7 Insitut Panos Paris (1999) op. cit.

8 Ministry of Posts and Telecommunications (2006) op. cit.

- Law No. 0053 of 19 December 1990, dealing with mass communication, supplemented by 1996 legislation dealing with censorship and the freedom of the press. A Decree of 3 April 2000 applies this legislation.

Building a knowledge society slowly

The development of ICTs is considered advantageous and even crucial to development. The government foresees the positive use of ICTs in health, agriculture and rural development, education and training, and research, as well as in alleviating poverty generally.[9] Even in the most remote areas, the *Institut Panos Paris* states that internet access can be very useful in public programmes – for example, checking medication stocks in remote locations, or obtaining vital and basic health information. This saves time and lives where medical assistance and/or knowledge are needed and hard to access.[10]

In 2001, a head of state announcement stated that ICTs would be introduced at all levels of schooling.[11] Following the announcement, the Ministry of National Education published a decree that computer literacy and essential ICT knowledge should become a compulsory school subject beginning September 2003. As a result, more and more schools in Cameroon are being equipped with computers, although there are no precise figures available.

Civil society is playing an active role in bringing ICTs to the classroom. For example, in February 2009, PROTEGE QV provided the Biyem-Assi Bilingual Primary School with five second-hand computers. Another civil society organisation, SchoolNet Cameroon, equipped 34 schools with 380 used and refurbished computers shipped by World Computer Exchange, an organisation based in the United States (US), in May 2001.[12] Through yearly festivities such as *La Fête de l'internet* (Internet Festival), RESCATIC,[13] CONESTEL,[14] Wagne.net (an African telecommunications service provider), ANAIS-AC,[15] and many others have contributed to ICT awareness raising through conferences, debates, presentations and training sessions.[16]

However, a number of challenges remain. There are, for example, few online resources available for the classroom. School enrolment figures are also low, with secondary school enrolment rates of 51% for boys and 36% for girls.[17] These low rates stand as an important barrier to the spread of ICT use in Cameroon.

Serious obstacles to social and economic development using ICTs are also encountered in the academic field. A survey revealed that internet access was ranked one of the highest priority needs by both students and lecturers in Cameroonian universities.[18] University students, faculties and libraries have very limited access to the internet. When the internet is available, connectivity poses a problem for staff and students, who frequently have to access the internet off campus.

This limited access to online information, academic journals and other networks is a setback for the development of scholars. Professionalism, innovation and social, economic and intellectual development suffer from this, as well as the credibility of Cameroonian universities.[19] The irony is that the youth should be the focus of government programs, as they are the future pillars of ICT development as well as economic and social development in the country.[20]

The World Bank and others have sustained the idea that developing ICTs is key for social and economic development. ICTs are said to bring about "efficiency, transparency and participation."[21] This is said to result in a better quality of life where human rights would be respected (even minimally), where information would circulate, and where society would evolve positively through the sharing of ideas and knowledge. However, the essential precondition of this is political will – a possible challenge in Cameroon. The government is adopting programmes and policies to encourage the adoption of ICTs in the country, and to aspire to universal online access for Cameroonians through different telecommunication development strategies.[22] But progress is timid.

Funding and infrastructure development are insufficient at the local level.[23] Legal frameworks and financial shortages also limit professionalism in journalism, a sector crucial to raising awareness and bringing about change (and development).[24]

New trends

New initiatives in Cameroon are focusing on spurring online access. In urban areas, rates of internet use are increasing in cybercafés. This is explained by some as being due to the rising rate of young Cameroonian women and men using the internet in hopes of finding European partners.[25]

9 ANTIC (2007) op. cit.

10 Institut Panos Paris (1999) op. cit.

11 Tchinda Josué, T. (2007) *Survey of ICT and Education in Africa: Cameroon Country Report*, p. 4. www.infodev.org/en/Document.390.pdf

12 www.worldcomputerexchange.org

13 *Réseau de la société civile camerounaise pour la promotion des TIC* (Cameroonian Civil Society Network for the Promotion of ICTs)

14 *Collectif des Opérateurs Nationaux Exploitant dans le Secteur des Télécommunications du Cameroun* (Association of National Telecommunications Sector Operators of Cameroon)

15 Advisory Network for African Information Society, Central Africa

16 www.wagne.net/fia/dossiers/dossiers.php?id_dossier=20

17 Tchinda Josué, T. (2007) op. cit.

18 Willinsky, J. et al. (2005) Access to Research in Cameroonian Universities, *The Electronic Journal of Information Systems in Developing Countries*, 21, p. 8. www.ejisdc.org/ojs2/index.php/ejisdc/article/view/

19 Ibid.

20 ANTIC (2007) op. cit., p. 48.

21 World Bank Institute (2009) A New Approach to Aid Effectiveness: Delivering on the Agenda for Action, *Development Outreach Magazine*, February, p. 34.

22 ANTIC (2007) op. cit.

23 Institut Panos Paris (1999) op. cit.

24 IREX (2007) op. cit.

25 Wame, B. (2005) *Internet au Cameroun: Les usages et les usagers Essai sur l'adoption des technologies de l information et de la communication dans un pays en voie de développement*. PhD thesis, Université de Paris II Panthéon-Assas, 12 December.

At the same time telecentres are being set up in rural areas by the government and other stakeholders. These were initially funded by the state of Cameroon with the dividends generated by the Highly Indebted Poor Countries (HIPC) initiative in April 2006. Today, a little more than 40 telecentres have been set up and at least 60 others are under construction. The telecentres are now funded by the Telecommunications Special Fund, which was put in place to provide rural access to ICTs. Promisingly, 2,000 telecentres are expected to be set up by 2015.[26]

Action steps

The following points ought to be considered:

- The current legal and regulatory framework governing the ICT sector is inadequate. Therefore, the creation of an adequate and effective legal and regulatory framework is needed.
- In terms of capacity building, the sharing of professional expertise and training must be encouraged in order to upgrade Cameroon's skills level.
- Reliable infrastructure such as electric power should be seen as essential for the successful roll-out of telecom infrastructure and ICT services.
- Private-public partnerships should form the basis for infrastructure implementation, especially for projects of national importance.
- E-government is also a very important development pillar and should be improved so that there is more transparency and accountability in the state, and so that trust amongst citizens is built.
- Funding for infrastructure roll-out and for the development of media institutions needs to be secured.
- In terms of legislation, there are currently no laws that regulate access to the internet. Telecommunications Law No. 98/014 of 14 July 1998 needs to be updated to take into account new telecommunication trends such as the globalised use of the internet and the information revolution. ■

References

Bayemi, J.-P. (1989) *L'Effort camerounais – ou la tentation d'une presse libre*, L'Harmattan.

Bello Bouba, M. (2008) Toutes les zones rurales du territoire seront quadrilles par les télé centres, *Performances des P&T*, 4 (August-October), p.20-23.

Institut Panos Paris (1999) *Internet à l'usage des journalistes africains*, Karthala.

IREX (2007) Media Sustainability Index Africa: Cameroon. www.irex.org/programs/MSI_Africa/cameroon.asp#intro

Ministry of Posts and Telecommunications (2006) *Final Report: National Survey on the Level of Penetration and Usage of ICT in Cameroon* (Scan-ICT).

Ministry of Public Service and Administrative Reform (MINFOPRA) (2002) *SIGIPES & Aquarium: More Transparent Handling of Personnel Files in Cameroon*. www.egov4dev.org/transparency/case/sigipes.shtml

Momet, M. (2006) La Douane vers un système intégré de dédouanement grâce au SYDONIA, *Le Confident*, 1 April. www.leconfident.net/LA-DOUANE-VERS-UN-SYSTEME-INTEGRE-DE-DEDOUANEMENT-GRACE-AU-SYDONIA_a2095.html

National Agency for Information and Communication Technologies (ANTIC) (2007) Chapitre 3: Axes d'intervention prioritaires, in *Stratégie Nationale de Développement des Technologies de l'information et de la communication*.

Siyam, S., Daho, S. and Houssou, L. (2008) Cameroon, in Finlay, A. (ed.), *Global Information Society Watch 2008*, APC, Hivos and ITeM. www.giswatch.org/gisw2008

Tchinda Josué, T. (2007) *Survey of ICT and Education in Africa: Cameroon Country Report*. www.infodev.org/en/Document.390.pdf

Wame, B. (2005) *Internet au Cameroun: Les usages et les usagers – Essai sur l'adoption des technologies de l'information et de la communication dans un pays en voie de développement*. PhD thesis, Université de Paris II Panthéon-Assas, 12 December.

Willinsky, J. et al. (2005) Access to Research in Cameroonian Universities, *The Electronic Journal of Information Systems in Developing Countries*, 21, p. 1-15. www.ejisdc.org/ojs2/index.php/ejisdc/article/view/137

World Bank Institute (2009) A New Approach to Aid Effectiveness: Delivering on the Agenda for Action, *Development Outreach Magazine*, February.

26 Bello Bouba, M. (2008) Toutes les zones rurales du territoire seront quadrilles par les télé centres, *Performances des P&T*, 4 (August-October), p. 20-23.

CHILE

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Introduction

Emerging from a period of strong censorship under military dictatorship, it is only in the last decade that access to information as a right (in its different forms) has become a serious concern for the Chilean government and society in general. Access to public information and the consequences of intellectual property rights are now the topics of ongoing debates.

New legislation regarding access to public information has recently been adopted, creating challenges in its implementation for government, citizens, the media, civil society and the different actors in this arena. With very concentrated and monopolised traditional media, the internet and other new information and communications technologies (ICTs) have provoked an important break with the past, opening up new possibilities to amplify the diversity and pluralism of voices. A very strong debate over intellectual property rights and data protection in new media platforms has emerged in the last two years, raising the need to update old legislation relevant to the issues. As in other countries, positions are divided between those sectors wanting to reinforce copyright and those that defend the "fair use" and "public domain" approaches.

Policy and legislative environment

Chile lacks a public policy on access to information. From 1973 to 1990, the country was governed by a military dictatorship with severe constraints on human rights, including communication rights and access to information. When the Constitution of 1980 was adopted, it emphasised economic liberties and a free market, instead of social, economic and cultural rights. Public transparency and access to information were not mentioned in the new constitution.

There have been some successes in dealing with censorship. However, there have been fewer successes in dealing with data privacy and intellectual property, and ongoing work on public transparency, off and online.

Since 1999, Chile has had a personal data protection act that regulates the processing of personal information by both the public and private sector. However, the European Union (EU) has categorised Chile as a non-secure country, because the data protection act does not contain restrictions for cross-border flow of personal data to other countries, and the country does not have a data protection authority. This year (2009), the Chilean government introduced a draft data protection act that follows EU and Organisation for Economic Co-operation and Development (OECD) standards.

The copyright act, adopted in the early 1970s, does not guarantee access to or use of public works, because their copyright is owned by the respective public service. There is no adequate copyright exception that authorises access by citizens, even for non-profit purposes. There is also no law that guarantees access to and use of copyrighted works for educational purposes, including e-learning. In May 2007 the government introduced draft legislation that modified the current act by setting norms regarding the responsibility of internet service providers (ISPs) for copyright infringement, new copyright exceptions and limitations, and norms related to piracy and judicial procedures.

In August 2006, the government had established standards that state administration websites must follow. The standards require that the websites ensure the availability and accessibility of information and the proper protection of personal data. In January 2008, the government adopted the Digital Development Strategy,[1] a working plan to build the information society in Chile from 2007-2012. The strategy includes the idea of adopting a new set of laws on data protection, cyber crime and intellectual property, among others. As part of this strategy, the government is promoting local government services online, as well as an electronic register of services and service providers (such as notaries and a real estate register).

In August 2008 a new law dealing with access to public information was adopted, which will become effective in April 2009. This law significantly strengthens citizen control and accountability. The law recognises most of the principles established by the OECD recommendations on the matter.[2] Additionally, the new law creates the Transparency Council,[3] a public and independent entity that supervises the fulfilment of the law. This includes punishing any infringements, resolving complaints, and making recommendations to the president and the Congress on the matter.

The right to access information

Today, the main criticism against the Chilean media industry (and the role of the government in the sector) is the concentration of ownership. This has had a pernicious effect on public deliberation as well as on accessing content and information. In December 1999, the so-called Transparency Act secured the right to access state-held information, with some exceptions. However, it was only in August 2005 that a constitutional modification was published guaranteeing access to state-held information.

1 www.estrategiadigital.gob.cl/files/Digital%20Strategy_CHILE.pdf

2 Law 20.285 on Public Transparency and Access to State Administration Information, published 20 August 2008: www.leychile.cl/Navegar?idNorma=276363; reports and legislative discussion about the new act are available at www.bcn.cl/ley-transparencia

3 www.consejotransparencia.cl

There are many questions emerging regarding the strengths and weaknesses of the new access to information legislation. There are some grey areas, especially in how information is being made accessible, the process of requesting the information, and how it is provided.

Civil society organisations like Proacceso,[4] CIPER Chile,[5] the freedom of expression programme at the University of Chile,[6] and the NGO coalition ACCION[7] have been monitoring and evaluating the mechanisms for accessing information, and educating civil society leaders (especially at the local level) and journalists in how to use the new legal framework.

The Transparency Council is also monitoring how public services, ministries and state secretaries make their information accessible through websites. The Council is working on the development of an electronic platform that will facilitate online access, regardless of the operating system used. However, it remains necessary to modify the intellectual property rights act to guarantee the appropriate reuse of state documents.

Current debate about intellectual property legislation has included discussions on what to protect, piracy and illegal distribution, how to protect copyright holders, and how to ensure public access and fair use of content. In many universities or public schools it is common to have access to photocopies of books, since many students cannot afford them because value-added tax (VAT) is included in the final price, making them very expensive to buy. Another practical example is the case of public libraries for blind people where it is common to have access to audio books that in most cases do not have legal authorisation to use the original material. In these cases, being able to access e-books or audio books through electronic online libraries for free would improve the situation.

Here positions have been divided. On the one hand there is the private sector, and related copyright organisations working in the music and entertainment industry, which want to ensure the protection of their works and the enforcement of the existing legal and regulatory framework that punishes illegal downloading, or the illegal distribution of copyrighted digital content.[8] On the other hand there are citizen's movements that claim their right to access cultural productions and information, based on the "fair use" or "public domain" approach, and reject the idea that people are committing a crime when they download, share or copy content from websites or peer-to-peer networks.[9]

In July 2009, the Chilean Senate proposed the introduction of "fair uses" for educational, academic and research purposes, but the proposed text has not been approved yet.

New trends

Over the coming years, the government should concentrate its efforts on the implementation of free trade agreements with the United States and EU, and adopt public policies according to the requirements of the OECD in order to become a member. This situation will imply an awareness of global debates and trends.

There is an impressive growth in the number of open access and open culture initiatives, most of them related to universities (e.g., access to theses, websites and journals), but also in media blogs. Several new net labels are creating new distribution platforms for independent musical groups and bands. Most of these initiatives use the Creative Commons licence, available in Chile since 2005. Several public service websites have also adopted Creative Commons licences, such as the Library of the National Congress and the website for the Modernisation of State Programme.

Because of these developments, the country has a good opportunity to improve and develop a high quality legal framework in the area of accessing online information and intellectual property rights. Political will, more knowledge in the area and a civil society prepared to take action are critical ingredients to leveraging this opportunity.

Action steps

While important improvements have been discussed and implemented in national law relating to access to public information, there are still two main challenges: improving the enforcement of the current legislation, and citizens' awareness of the right to access information and its value as a public good (and not only a commodity that can be purchased). Education to strengthen public advocacy from civil society and citizens groups must be developed, as well as a strong information campaign at the national level in order to decentralise the current debate.

A critical problem in the Chilean legal system is the lack of public authorities that supervise the adequate fulfilment of legislation, especially those laws related to civil rights and public liberties. This is the case, for example, in a decree related to public services websites. In these cases, those affected can sue, but this is a highly expensive procedure. The Transparency Council is a newcomer in this field, but its capacity is limited. There is also a need for a body to supervise the data protection act, as well as citizen rights when it comes to accessing personal data. ■

4 www.proacceso.cl

5 ciperchile.cl

6 www.libertaddeexpresion.uchile.cl

7 www.accionag.cl

8 See the web-based platform of a group of Chilean artists and authors, "Trato Justo" (Fair Treatment): www.tratojustoartistas.cl

9 See the web-based platform of a group of civil society organisations, "Trato Justo para Tod@s" (Fair Treatment for @ll): www.tratojustoparatodos.cl

COLOMBIA

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Introduction

The number of internet users in Colombia trebled between 2006 and 2009 – from 13.2% of the population in June 2006 to 26.9% in December 2007 to 40% in March 2009.[1] According to the Telecommunications Regulatory Commission's (CRT) most recent report, Colombia is ranked among the top countries in Latin America in terms of internet access, behind only Chile and Argentina.[2]

These positive access statistics are borne out by other reports. According to the consultancy firm Everis, which carried out a study to find out the level of growth of internet access across the world, only nine countries of the 44 surveyed increased the number of users at a 40% annual rate or more. Four of these countries are in Latin America: Brazil, Colombia, Cuba and Paraguay. Colombia has a good ranking, with an average annual growth higher than 40%.[3]

According to a World Economic Forum report on connectivity, Colombia is above the world's average on the connectivity index,[4] while the Economist Intelligence Unit says that the country jumped from 58th place in 2008 to 52nd in 2009 in an e-preparedness index which measures information and communications technology (ICT) infrastructure and preparedness among 70 countries around the world.[5]

The CRT report also says that for every 100 households in Colombia, 23 owned a computer. This is due in part to the value-added tax (VAT) exemption that has encouraged the supply and demand of computers in the country. The establishment of 1,669 new Compartel telecentres in educational institutions is also expected to increase access to ICTs, while broadband access will encourage the production of content.

Policy and legislative environment

In recent years, the Colombian government has made a remarkable effort to include ICTs in its plans and policies. In 2008 there was a big step forward with the introduction of national and regional strategies to boost access to ICTs at the community level.

Over the last two years, the ICT Ministry has been promoting an initiative called Digital Territories in eighteen departments and sixteen municipalities. With this initiative the government aims to combine efforts by local governments and private companies to improve access to ICTs. One of the key challenges is to produce and offer relevant information at the local level.

ICT Act 1341 of 30 July 2009 has been passed by Congress and approved by the president. Its main objectives are to develop guidelines for ICT roll-out and to promote the access, use and ownership of ICTs. The Act also aims to protect users' rights and regulate the sector through the Superintendency of Industry and Commerce, the National Radio Spectrum Agency and the CRT.

The Act stipulates that both the government and private companies should act as service providers when it comes to ICTs and content development in the public sector (e.g., for education). It highlights the efficient use of the existing infrastructure and resources, and stipulates that ICT service providers will continue to contribute to the existing ICT Fund used for ICT development in under-served areas. It also promotes technological and software neutrality. However, this will be limited by existing agreements between the government and software development companies.

In order to ensure access to ICTs in the most deprived urban and rural areas, the government will implement comprehensive educational initiatives and improve access to infrastructure. These initiatives are essential in those areas not covered by private companies.

According to the CRT, out of every 100 Colombians, 91 own a mobile phone. Despite this fact, mobile phones have not been used to spread relevant information. Currently only commercial information (including advertisements) are posted by private companies. But content related to, for example, crop prices and early warning weather forecasts are not provided, and this is a missed opportunity.

Given the increase in the number of unsolicited text messages on mobile phones, the CRT submitted a proposal to create a national register where users could subscribe their mobile phone number and request to be excluded from receiving unwanted short message service (SMS) and multimedia messaging service (MMS) messages.

Access to information provided by the national government

E-government programme

An e-government strategy,[6] ratified by the ICT Act, aims to build a more efficient, transparent and participatory government, providing better services to its citizens and the private

1 www.internetworldstats.com

2 Telecommunications Regulatory Commission (CRT) (2009) Connectivity Quarterly Report, No. 15, May. www.crt.gov.co

3 www.everis.com

4 World Economic Forum (2008) The Global Competitiveness Report 2008-2009, World Economic Forum, Geneva.

5 Economist Intelligence Unit, E-readiness rankings 2009. www.eiu.com

6 Information on Colombian e-government initiatives was provided by an interview with Alejandro Barrera, the e-government coordinator at Colnodo, and an interview with Communications Minister Maria del Rosario Guerra, available at the Colombia ICT policy portal: cmsi.colnodo.apc.org/entrevista.shtml?x=3598

sector through ICTs. One core principle of the strategy is to consider the citizens as clients of the public administration who deserve good and efficient service that saves them time and money.

The strategy is a gradual process, with the implementation of several phases of differing complexity:

- *Online information phase:* Governments set up websites in order to post information about their administration, plans and work online. Although most of the municipalities in Colombia have websites, it is a challenge to get them to update the information needed in order to move into the next phase.
- *Online interaction phase:* Public institutions, the general public and the private sector receive information, particularly after making enquiries. This is also a challenge given that the municipalities should have staff available to answer these enquiries at specific times during office hours.
- *Online transactions:* Products and services are offered online. Presently there is an information system that offers 1,500 application forms for civil documents, 100 of which can be processed online.
- *Online services phase:* Public institutions change the way they deliver their services according to what the citizens need, using over-the-counter virtual windows (a virtual office that integrates different government services related to the same process into one access point) and the government intranet. This is one of the most complex phases because it requires an overhaul of how the system currently operates. It involves looking at processes and setting up quality management systems, and includes an institutional cultural change amongst civil servants as far as service delivery is concerned.
- *Democracy online:* Citizens participate actively in the decision-making process and in the definition and evaluation of public policy.

The goal is to complete these phases by 2010 for the national bodies, and by 2012 for territorial bodies.

Government services are currently provided via portals, among them:

- The Colombian government portal,[7] which provides information, services and processes of public institutions for the general public and private companies, as well as civil servants.
- The online tenders portal,[8] which is the electronic system for public contracts and provides information on how to respond to government tenders.
- The municipalities portals, some 1,067 sites where general information is provided.
- Sector services, where specific services from different public bodies are provided online (e.g., enquiries about transport fines, payment of income tax, national insurance, etc.).

Information Network for the Agricultural Sector (Agronet)

Agronet[9] is a network promoted by the Ministry of Agriculture and Rural Development and is supported by the United Nations Food and Agriculture Organisation (FAO). The network provides information and knowledge on new techniques for sustainable food security and for the diversification of crops in order to improve productivity and opportunities in the market. This information is aimed at both policy makers and stakeholders in the agricultural chain – particularly small producers. Agronet also has alliances with several actors in order to integrate other systems of information into the network and expand the content offered.

Portal Colombia Aprende

Colombia Aprende ("Colombia Learns")[10] is an education portal set up by the Ministry of Education to provide information and knowledge to teachers, families, researchers and other users. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) considers it one of the three best educational portals in Latin America and the Caribbean. The content is distributed at many levels: nursery, primary and secondary schools and at the higher education level. Unfortunately the website, like many of the government websites, does not compile data on users. This could be quite useful in finding out about the relevance of the information offered, and ways to improve it.

Virtual SENA

The National Learning Service (*Servicio Nacional de Aprendizaje*, SENA)[11] provides free vocational training to all citizens and in all economic areas in order to improve their job opportunities.

SENA has national coverage and is widely recognised, given the opportunities it provides to people living in isolated rural areas who otherwise would not have any access to education. SENA also supports small enterprises with training, support and tutoring. A few years ago, SENA set up Virtual SENA in order to promote the use of ICTs in education. SENA has a wide range of free online courses – more than 400 courses – some of them linking to other organisations. SENA will soon offer courses on digital television to promote digital content. In 2008 Virtual SENA offered 2,135,758 places in its courses. For 2009 the goal is 3,000,000 places.

7 www.gobiernoenlinea.gov.co

8 www.contratos.gov.co

9 www.agronet.gov.co

10 www.colombiaaprende.edu.co

11 www.sena.edu.co

Other information services

Noteworthy examples include virtual libraries such as the Luis Angel Arango Library[12] and the National Library of Colombia;[13] museums like the National Museum[14] and the *Museo del Oro* (Gold Museum);[15] and national resources and research centres like Corpoica.[16]

The initiative *Expreso Colombia* ("a country that lives its culture"), recently launched by the Ministry of Culture, is a virtual space to broadcast and promote cultural events such as carnivals, fairs, folklore celebrations, etc. The audiovisual materials will be broadcasted using the latest ICT technologies. The goal of this programme is to make the content produced accessible to all.

Other initiatives by the national government related to the production and dissemination of content are digital terrestrial television (including a digital television network) and the issuing of 102 commercial radio licences and 150 community radio licences. As a result of the latter, at the end of 2009 there will be more than 1,600 radio stations all over the country. It is expected that the government will set up quality control standards in order to guarantee the quality and relevance of content.

New trends

The Korean government will provide Colombia with credit for USD 10 million in order to launch an ICT training centre. One of the key issues at the centre will be digital content. Universities and research and development centres will be invited to submit proposals for training curricula.

The Colombian government will receive advice from Korean consultants about technology trends, policies that promote digital content, as well as next-generation networks. After the digital industry in Colombia has been analysed, the consultants will recommend guidelines for a public policy to promote digital content in the country.

Another development is worth highlighting. Since the arrival of the internet in Colombia, the .co domain administrator has been the University of the Andes. However, there has been a change, and the new administrator is a temporary association of national and international private companies. With this change, the government is expecting to increase the 26,300 new .co domains added per year to 500,000.

Action steps

The ICT Act offers important possibilities for promoting the production and dissemination of content. However, it is important to see how citizens will have the opportunity to participate. It is necessary to decentralise the production and dissemination of information with training programmes so that people are able to produce their own content. Access to information needs to be democratised, and in doing so issues such as Creative Commons as an alternative to traditional copyright will need to be addressed.

It is also necessary to promote the use of the services, procedures and information provided by the e-government programme, so that citizens can take advantage of these resources and save both time and money.

Finally, it is important to motivate civil society organisations to monitor the government regarding ICT policy and practices, including e-content as it emerges in the policy arena. ■

12 www.lablaa.org

13 www.bibliotecanacional.gov.co

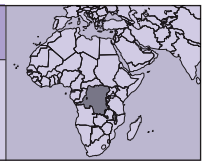
14 www.museonacional.gov.co

15 www.banrep.org/museo/eng/home.htm

16 www.corpoica.org.co

CONGO, DEMOCRATIC REPUBLIC OF (DRC)

DMTIC (Dynamique Multisectorielle pour les Technologies de l'Information et de la Communication) and Alternatives
Alphonse Ntita Misakabu and Michel Lambert
www.alternatives.ca



Introduction

Legislators in the Democratic Republic of Congo (DRC) have so far taken little interest in online access to information. However, the country's Constitution (2006) states:

> All people have a right to the respect of their private life and to the secrecy of their correspondence, telecommunication and all other forms of communication. (…) This right is inalienable except in cases described by the Constitution.

Notable laws that govern the sector are Law 013/2002 on telecommunications in the DRC, and Law 014/2002, which established the regulatory authority for posts and telecommunications, but largely ignored the online aspect of access to information — notwithstanding a few articles that allow for prosecution upon certain infractions.

Consultations, chiefly with civil society, raised questions around the right to access information and communications technologies (ICTs). The Ministry of Posts and Telecommunications finally solicited the aid of the Common Market for Eastern and Southern Africa (COMESA) to formulate the necessary policy and legislation. COMESA, which began the work with the help of the World Bank, in turn hired an expert to draft an ICT policy and new legislation.

Policy environment

The ICT policy that is being developed by COMESA and the World Bank aims to update existing legislation and to promote certain key initiatives. These include:

- Continuing to install a national backbone. The first section, stretching from Muanda to Kinshasa, should be completed by December 2009.
- Putting in place an e-government system.
- Developing and reinforcing competencies: training judges, magistrates and lawyers in order to render them expert in the application of the new legislation.

However, many questions remain unanswered, including those pertaining to rights to access.

Legislative environment

The key texts with implications for accessing online information in the DRC are the 2006 Constitution and the telecommunications legislation created in 2002.

The Constitution recognises the right to privacy in correspondence, telecommunications and other forms of communication. People are, therefore, protected to some extent regarding the privacy of their personal information, as well as their internet-based exchanges. If somebody obtains information without the knowledge of the owner of this information, they can be prosecuted. But there is still a need for laws that clearly define the crime and related crimes, and their subsequent punishment.

Regarding the legislation passed in 2002, the only penal stipulations related to these matters call for six months imprisonment and/or a fine of CDF 100,000 (around USD 120) for those who alter, copy or destroy any communications correspondence without authorisation, and who open or intercept communications passing through a public telecommunications channel.

Problems relating to the protection of privacy, freedom of expression, access to private or public information, and intellectual property rights have yet to be taken into consideration.

New legislation on the cards

The national backbone, on which work has already begun, aims to connect the four corners of the republic by using optical fibre, as well as satellite, digital radio transmissions, and potentially even WiMAX.

This infrastructure will allow the development of a government intranet to improve the interconnectedness of public services by giving them the ability to exchange the information they need in order to function more effectively. At first, this will apply only to the central and provincial services — to the *commune* level in cities and *territoire* level for other administrative areas. It is only much later that the system could be expanded to lower levels of government.

The e-government system also planned will digitise identity cards, the civil service, police records, commercial registration, and allow for taxes and tariffs to be paid online.[1]

All of these new services, however, will create innumerable legislative problems, particularly regarding the authentication of individuals, documents and signatures, and the protection of privacy, as the registration process will include the citizen's name, age, sex, tribe, nationality, address, telephone number, annual income, and known crimes and misdemeanours.

The possibility of retracing a citizen's life from birth to death, and establishing links between personal files, constitutes a great deal of power for those responsible for their management — and for anyone else who may access them, whether by accident or with fraudulent intentions.

The Ministry of Posts and Telecommunications recognises that the 2002 legislation has loopholes and lacunas. The new law proposed by the COMESA-financed consultant includes:

1 ICTs have already been used successfully in the country's elections.

- Requiring service providers that make goods and offer services, as well as media archives available to the public (including texts, images, sound, video), to take measures to combat illicit content (including crimes against humanity, inciting race crimes, and pornography).
- Prohibiting every person, except users, from listening to, intercepting, compiling and distributing communications without the consent of the users. Excluded from this is the data storage necessary for the transmission of the communication.
- Relieving service providers of their legal obligation to monitor the information they transmit or store, as well as their general obligation to research the facts or circumstances of illicit activities without a temporary court order to perform the surveillance.
- Establishing an accessible and high-profile watchdog to allow anyone with knowledge of illicit activities to notify the proper authorities, and to make public the effort to counter these activities.
- Obliging ICT operators to erase or render anonymous all data traffic. However, in the interest of helping criminal investigations, these processes can be deferred for a maximum of one year. They can also be deferred for billing purposes, up until the end of the period of time when the bill can still be contested. This requirement also applies to data showing the location of a user's terminal.
- As a counter-terrorism measure, duly mandated police officers can demand access to saved data.

Nevertheless, the proposed new law has as many legal loopholes as its predecessors. It lacks a comprehensive treatment of ICTs, particularly with regard to the meagre protection afforded to civil liberties and privacy in the construction of governmental databases. It also focuses on legislating and standardising the technical aspects of ICT administration rather than on wider administrative transparency at all levels, which would allow for more rapid network development and, therefore, greater access.

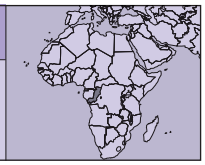
Action steps

At a time when the state is striving to put into place broadband infrastructure, the governmental intranet and community telecentres, as well as attempting to digitise public services for its e-government initiative, it is imperative to, on the one hand, protect individual privacy, while on the other, guarantee the freedom (and wide access) to use information and tools.

The campaign we are undertaking to ensure these freedoms will consist of lobbying government bodies connected to the revision of the 2002 laws or the enshrinement of a new law. At the same time, civil society wishes to establish a supervisory body for ICT development in the DRC that focuses on the right to access in particular. ■

CONGO, REPUBLIC OF

AZUR Développement
Roméo Mbengou and Sylvie Niombo
www.azurdev.org



Introduction

The introduction of democracy in the Republic of Congo following a national conference in 1991 made it possible to work towards the recognition of freedom of expression and access to information as a right. Earlier legislation (from 1991) and the 2002 Constitution guarantee the principle of freedom of expression.

Access to information is also guaranteed by these earlier laws and the 2002 Constitution, and to some extent the issue of access to information is provided for in legislation dealing with freedom of information and communication passed on 12 November 2001. However, Congolese content on the internet remains weak because of several difficulties, one of them being the lack of implementation of the national information and communications technology (ICT) strategy.

Access to online information: Policies, legislation and trends

In a country where telecommunications infrastructure is insufficient, the legislative environment also suffers given that access to ICTs for the population remains limited. To date there is no specific legislation covering online content. This means, for instance, that it is difficult to offer protection to users, such as children, even though these protections exist in press codes (2001).

Article 4 of the 12 November 2001 Law on Freedom of Information and Communication stipulates that "access to information is a right… as is freedom of ideas and opinion. The right to seek, receive and impart information and ideas… within the limitations fixed by the present law, is guaranteed." This law resulted in massive growth in the media industry in Congo, including some 40 print publications, eighteen radio stations and ten television stations.[1]

While the law does not specifically mention online content, it does say that general laws applicable off line to written and audiovisual media are relevant to online communication (Article 173). The law (Article 180) also describes the responsibilities of internet service providers (ISPs). They are responsible for the websites hosted, but are exempt from liability if any contravention of the law lies with a user. However, ISPs may be liable for databases hosted on their servers. Nevertheless, this law has little relevance given that the majority of Congolese websites are hosted on foreign servers, generally in the West.

Article 184 of the law recommends that online information be monitored and that a structure responsible for this be set up. However, this has not yet happened. If this structure was set up, it would make it possible for the government to manage the .cg country-code domain, which at the moment it cannot do, and would facilitate the entry of Congo into the information age.

Government

In 2004, an e-government project supported by the United Nations Development Programme (UNDP) aimed to promote access to public information in Congo using ICTs. An Information Unit, under the Ministry of Planning and Economic Integration, was set up, and an intranet developed. Amongst other things, the e-government initiative enabled members of parliament to access information via an information centre.[2] There were also efforts to develop information websites for ministries within the framework of this project.

Another initiative, the Congo-Site portal,[3] which includes several interactive tools, became one of the first government information sources. Amongst other things, the Ministries for Primary and Secondary Education now publish the results of state examinations on the site, making it possible for thousands of candidates to download the results of their examinations cheaply and efficiently.

An e-employment project aims to train unemployed youth and students who are looking for work using ICTs. The project was set up in 2008 by the Ministry of Labour, Social Security and Employment, the National Office of Employment, the UNDP and the United Nations Economic Commission for Africa (UNECA). Employment information and information on training courses is also available on the National Office of Employment and Labour's website.[4]

A national strategy for the development of ICTs that was formulated with the support of the UNDP in 2004 has not yet been implemented. As a result, brakes have effectively been put on the production of local content.

Private sector

Several private sector information sources are available. These include trade and investment information (on the Congo-Site portal), information about professional organisations and unions such as Unicongo,[5] and the Reperenet website,[6] which publishes information on job opportunities, real estate, products and business-related software. Maigatradingcongo.com (under construction) is geared to be an

1 IREX (2007) Media Sustainability Index (MSI) Africa 2006-2007. www.irex.org/programs/MSI_Africa/rc-fr.asp#3

2 www.cg.undp.org/news.aspx?newsID=226

3 www.congo-siteportail.info

4 www.onemocongo.org

5 www.unicongo.org

6 www.reperenet.com

online retail trading site, while CongoProx Immo[7] offers real estate products and services.

Media

Very few newspapers are published online. Those that are include *Dépêches de Brazzaville*,[8] *Semaine Africaine*,[9] and *Le Choc*.[10] As for audiovisual media, only Congolese national television can be followed online.[11]

Civil society

Civil society organisations publish information on various subjects on the internet through websites and blogs. Civil society organisations work with local communities to promote ICTs, to build capacity and to make it possible for a greater number of people to benefit from the advantages of the internet.

AZUR Development,[12] the Committee for the Promotion of ICTs in Congo (COPTIC), the African Centre for Complementary Schooling, University and the Promotion of Education (CACSUP),[13] the PRATIC Association,[14] and the Network of Community Telecentres of Congo[15] are among the most active in the promotion of ICTs in the country.

Among the many examples of civil society information projects, it is now possible to take online courses in one of the national languages, Lingala.[16]

Culture

On the cultural side, Congolese writers manage websites and blogs. One example is the website of Congolese novelist Alain Mabanckou.[17] It is also possible to find information on the Pan African Festival of Music,[18] organised by the Ministry for Culture and Arts.

The Congolese diaspora has made efforts to put Congolese cultural content online; those abroad are generally more equipped technically and financially than the Congolese in Congo.

ICTs and politics

Politicians also make considerable use of ICTs – the internet in particular. During the election in July 2009, websites, blogs and videos (sometimes on YouTube) were used by political parties in cyber information wars. Because of this, it was a challenge for citizens to determine the veracity of online information and the reliability of the information sources.

Difficulties accessing online information in Congo

Besides the failure to implement the national ICT strategy, other challenges that have resulted in a lack of online content in the Congo include:

- *A lack of capacity:* Professional webmaster training is hard to come by, and little information exists. The largest university of the country, Marien Ngouabi University, still does not have a course specialising in computer science.
- *High costs:* On average, in Congo, internet access of 128 kilobits per second (kbps) costs about XAF 150,000 (USD 300) a month – that is to say, ten times the wages of the average Congolese worker. Website hosting also requires money, as does maintaining a website with regular updates. Website hosting also remains a headache, especially because the .cg domain is managed by someone outside the country. Many civil society organisations rely on blogs and other free platforms.
- *Lack of an ICT culture:* Even when financial and human capacity exists, there is little understanding of the importance of internet content.
- *Limited access to the internet:* The low number of web surfers in the country is a factor when deciding whether or not to produce online information. The internet penetration rate in Congo is very low – only 0.03%.[19] At the same time, while there are 250 cybercafés in the country, they are mainly in the cities of Brazzaville, Pointe-Noire, Dolisie, Owando, Nkayi and Ouesso. The quality and speed of the connection also remain poor. With around XAF 500 (USD 1) it is possible to surf for one hour in Brazzaville and Point-Noire. In other localities, however, one would need at least XAF 1,000 (USD 2) to do so. Internet access is of such poor quality in the country that students in Brazzaville have little choice but to connect via the Digital Campus set up by the Agence Universitaire de la Francophonie, a global network of French-speaking higher education and research institutions based in Montreal, Canada. Connectivity at the Campus is through satellite.[20]
- *High cost of building websites:* This has resulted in many ministries still storing all their information in hard copy. Offices are filled with files, and there are long queues to access information.
- *A weak culture of free software use:* There is almost no promotion of free and open source software or platforms that help with the creation of online content.

7 www.congoprox-immo.com

8 www.brazzaville-adiac.com

9 www.semaineafricaine.com

10 www.sosolecoq.net

11 congo-siteportail.info/pages/Journal-de-20h-de-la-Television-Nationale_ap1448142.html

12 www.azurdev.org

13 www.eces-ecole.org/statuts.html

14 www.congo-reflexionntic2008.com

15 www.telecentrescongo.org

16 lingalaenligne.ifrance.com

17 www.alainmabanckou.net

18 www.fespam.org

19 PRATIC (2009) Mémorandum sur les TIC au Congo. www.congo-reflexionntic2008.com

20 www.cg.refer.org

- *Low interest among donors in projects aimed at increasing access to the internet:* Civil society organisations have trouble finding funds for their projects.
- *A lack of regulations governing online content.*

New trends to improve access to online information

Current trends in the direction of increased access to online information in the Congo have been marked by the government's move to connect to optical fibre and efforts to finalise the national ICT strategy. The telecommunications regulatory framework is also being revised in negotiation with the World Bank.

The arrival of internet connectivity on mobile phones through services offered by three telephony companies (GSM Zain, MTN and Warid) has the potential to increase access to the internet. While this remains expensive, the multiple uses that can result from it should be explored now. The role of civil society organisations in the popularisation of mobile internet access remains crucial.

Action steps

Government

- Develop a specific regulatory framework that supports content creation and access to online information.
- Give internet access to all educational institutions, public administrations and research centres.
- Support the capacity development of civil servants and the general population in the use of the internet.
- Accelerate the deployment of optical fibre to improve internet connectivity.

International organisations

- Support initiatives aimed at creating online content and increasing access to online information.
- Support initiatives that create capacity and help citizens acquire ICT equipment.

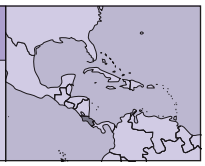
Civil society

- Popularise information and communication technologies through training.
- Contribute to the reduction of the digital divide in Congo by integrating the needs of women and girls in projects.

Concrete actions by all the stakeholders are required so that the Congolese can become producers and consumers of useful content on the internet. It is necessary for these actions to be supported by the government and international organisations. ■

COSTA RICA

Cooperativa Sulá Batsú
Kemly Camacho
www.sulabatsu.com



Introduction

It is important to highlight four major milestones that took place in 2009 and marked the course of the development of information and communications technologies (ICTs) in Costa Rica.

First, national elections will be held on February 2010, which means that 2009 is an election year. As in many other countries, during election year it is common to review campaign promises and see whether the governing party has fulfilled them or not. Some of these promises had to do with the ICT sector.

At the same time, ICTs serve a key role for the two most important political parties that will participate in the 2010 elections. Both use technology for their campaigning. For example, during the year the candidates who will run for office in 2010 are elected for each political party. All running candidates used social networks, blogs and micro blogging (e.g., Twitter) to interact with the citizens.

Another important issue to highlight is that 2009 is effectively the beginning of an open, liberalised telecommunications sector. Until now, a state institution – *Instituto Costarricense de Electricidad* (ICE) – had the monopoly over all telecommunication services, but important changes were made this year in order to prepare for competition.

Finally, 2009 also stands out as a time when ICTs have been used as a citizen space for alternative media and other kinds of information gathering and sharing. It has become evident that social movements are developing capacities and using web tools strategically to consolidate their actions. These online advocacy processes were learned mainly during the referendum on the Central American Free Trade Agreement (CAFTA), but are being adopted by social groups for different struggles; for example, in the case of open pit mining in Crucitas or the fight for water in Sardinal.

Policy environment

The year 2009 is all about strengthening the information society policies that were promised for the 2006-2010 period by the government, among them:

E-government: In this period, which ends in 2010, an Intersectorial Commission and a Secretariat on Digital Government were created by decree.[1] Their main goal is to plan the country's e-government agenda for the next decade, integrating short-term, medium-term and long-term actions. However, this goal has not been met. The 2008 Report on the Information Society[2] states that "this project has lacked the necessary high-level political leadership that would have allowed advancing towards this goal."[3] The low level of priority this important project had during this government period has made it difficult to carry out strategic actions related to digital government.

Short-term actions have been carried out, with support from other institutions (such as the Bank of Costa Rica) and from other governments (for example, Korea). Some of the most important are the possibility of issuing passports and driver's licences at banks, the improvement of state procurement, training in digital government and teleworking pilots.

Digital signatures: In 2009, for the first time, a digital signature certificate was established. The system is not yet available to the general public or institutions. During this period the "root authority" was established – by an agreement between the Ministry of Science and Technology (MICIT) and the Central Bank – which will digitally sign the certificates for the certifying authorities, who will in turn certify the end-users.

Digital inclusion: In the digital inclusion programme the two most important initiatives promoted by MICIT during this government period are the *Centros Comunitarios Inteligentes* or Intelligent Community Centres (CECI) and the digital cities.

- *CECI:* By 2009, 200 CECIs had been launched throughout the whole country.[4] CECIs are spaces offering access to ICTs, most of them consisting of six computers with connectivity. They are set up in partnership with local organisations (municipalities, churches, libraries, development associations, high schools, sport councils, amongst others) to provide services for communities with few opportunities to access ICTs. For the time being, they only offer access. There are no social appropriation processes that could guarantee their future sustainability. In this sense, there is a risk of repeating the mistakes of previous initiatives (e.g., those by Communication without Borders and telecentres, among others) where large investments were made in projects that quickly disappeared.
- *Digital cities:* In 2009, programmes were being developed in four Costa Rican cities, based on AHCIET's[5] model of digital cities: Los Santos, Cartago, Grecia and Alajuela. This initiative is still in the process of being consolidated, including securing inter-institutional agreements and establishing online services, mainly from the local and national government.

Legislative environment

The legal framework for 2009 was focused on the liberalisation of the telecommunications market. It is important to

1 www.gobiernofacil.go.cr
2 www.prosic.ucr.ac.cr
3 www.prosic.ucr.ac.cr
4 www.micit.go.cr
5 www.ahciet.net

remember that this sector was a state monopoly until the adoption of the free trade agreement with the United States (US), CAFTA, which opened the door to private competition.

In the GISWatch 2008 Costa Rica country report,[6] some important regulatory changes were already mentioned; legislation continues to be approved and implemented in 2009. Besides the General Telecommunications Law and the Law to Strengthen the Public Entities of the Telecommunication Sector that were already discussed last year, there is the development of the National Telecommunications Plan and the creation of the National Telecommunications Fund (FONATEL) and the telecommunications regulator (SUTEL).

It is interesting to mention three key initiatives that came up for discussion in the period, regarding intellectual property, telework and the use of free and open source software in state institutions. Although these initiatives are not yet approved, they have generated discussion and created expectations amongst the Costa Rican population, organisations and institutions.

Chapter 15 of CAFTA includes new regulations for intellectual property rights legislation. Regarding ICTs, this year there have been discussions specifically relating to the right to copy software and digital texts, audio and video. The scope of this legislation is yet to be determined, in a country where copying digital material is common practice, as in many Latin American countries.[7]

Telework is being promoted, as well as the regulations that allow this type of labour, focusing mainly on implementing telework in public institutions. Several pilots have been carried out, and the necessary regulations are being developed. The government has yet to ask for input from the public on the issue, which would include issues like international telework and the consequences it might have for the rights of Costa Rican workers.

At the beginning of the year there was important discussion in Congress regarding the use of free and open source software within state institutions, and the issue of technological neutrality in the state was put forward. This would allow free and open source options to be considered on equal grounds to proprietary solutions.[8]

Citizen communication versus active citizenship

In terms of human rights and democracy, ICTs are beginning to play an important role in Costa Rica. Two aspects stand out. This year marks a turning point between what public institutions offer digitally and the expectations citizens have. A similar turning point has been reached in the acceptance of the single vision of social phenomena presented by the mainstream media: citizens each day use ICTs more and more to express positions that are diverse and alternative to the predominant culture. Costa Rica has particular conditions that allow ICTs to play such an important role, among them: good connectivity and coverage (according to ICE branch company RACSA, 40% of the population has internet access),[9] low-cost mobile telephony and low levels of illiteracy (less than 7%).

Article 28 of the Political Constitution of Costa Rica guarantees freedom of speech and Article 46 of the Constitution establishes every citizen's right to receive truthful and adequate information. Nevertheless, on an everyday level, the legislation tends more to protect the communication corporations and their media than citizens' freedom of speech. There are several national mass media outlets, but they are not diverse; instead, they monopolise information and serve the interests and opinions of a single social group. According to one observer: "In Costa Rica the mass media work like a non-elected system of political repression."[10]

In this context, ICTs have become tools for open and diverse alternative media that play a crucial role in disseminating information from different sources. According to the Freedom of Expression Observatory,[11] in Costa Rica there is "little access for the public to voice their opinion about current events through the mass media and a growing use of ICTs to share opinions without intermediaries."

Mass media have begun to incorporate different ICT tools into their publishing and broadcasting activities (24 of the 101 newspapers, 50 of the 146 registered radio stations and 15 of the 69 television broadcasters)[12] without modifying their editorial line or developing new ways of producing information. New media, such as internet-based radio (15 stations) or online newspapers (23) have started to appear, and have become popular.

On the other hand, many organisations and social movements are setting up blogs to disseminate their actions and integrate citizens' opinions and proposals. In these blogs there is use of digital video and audio and mobile messaging for mobilisation and organising actions.[13] The use of electronic mailing lists is supporting local organisational processes, integrating a great diversity of stakeholders at the municipal level in a year when municipal governments will be elected.

Infomediaries have also become important – that is, the role carried out by people and organisations that can access digital resources online and offer them as information resources to populations that, for different reasons, cannot access the virtual space or do not view it as a priority. This function entails translating the language, format and communication media of the downloaded resources. Likewise, these infomediaries capture the information and knowledge produced locally and upload it, making it visible and valuable in the digital space. These processes mean populations without connectivity can also influence online content, and benefit from it as well.

6 www.giswatch.org

7 BSA and IDC (2008) *Global Software Piracy Study*. global.bsa.org/globalpiracy2008/index.html

8 Villegas, J. (2009) MEP descarta adquirir 'software' libre y compra nuevas licencias de Microsoft, *La Nación*, 16 May. www.nacion.com/ln_ee/2009/mayo/16/pais1964943.html

9 www.racsa.co.cr

10 Fumero Paniagua, G. (2006) *El estado solidario frente a la globalización: Debate sobre el TLC y el ICE*, Zeta Servicios Gráficos, San José.

11 Observatorio de la Libertad de Expresión (2008) *Informe al país: El derecho a la información en Costa Rica*, Editorial Juricentro, San José.

12 www.prosic.ucr.ac.cr

13 For example, see: fueradecrucitas.blogspot.com

Young people who are part of social movements have a key role in this process, since they can combine their high level of ICT appropriation with the advocacy actions of a grassroots group or community.[14] In this way, videos that are shared through YouTube are also screened in a community using a DVD player; cartoons that are in a blog end up being published in the local paper; posters or banners published online are then used in stickers or printed on T-shirts.

It is evident that ICTs play a crucial role as alternative media, not only by promoting citizens' rights to information, but also by strengthening participatory processes and creating a more informed and active citizenry. As a result, mainstream mass media are being questioned, and little by little new sources of information are established, enabling citizens to incorporate new perspectives in their decision-making and organisation processes. At the same time ICTs are strongly identified as tools to position issues and/or to make oneself more visible. For the next period of government, one would expect the use of ICTs to be stronger, not only for accessing alternative information, but also as a means of citizen communication that makes visible multiple and diverse voices, including one's own.

State institutions have been making an effort to use ICTs as a means of providing information to and communicating with the citizenry. For the 2008-2009 period there was an evaluation of how this initiative was working,[15] based on analysing the quality of the means of communication, the information provided and the interaction. According to this analysis, seventeen of the 22 state (i.e., national government) institutional websites have improved their performance this year in terms of providing information and services to the population. However, it is important to point out that the one-way information vision still prevails (from the institution to the citizens) and it is oriented towards making institutional processes more efficient, rather than favouring citizen participation in social auditing processes, in monitoring government performance, or tapping into the needs and demands of the population (citizens to institution).

In the public sector, ICTs are thought of as a valuable space to provide information,[16] which is in itself an important advance. But there is still a long road to travel in order for ICTs to become a space to interact with citizens, or for citizens to participate in the definition of a public institution's mission and work.

The use of ICTs by local governments to stimulate two-way communication is low. Some of them have established services like online tax collection or payment for municipal services. But there is still a lot of room to use these tools for an integral active exercise of citizenship.

New trends

Among the new trends it is important to highlight:

- *The development of ICT use in local governments:* This area has not been explored in depth in Costa Rica. So far the emphasis has been placed on using ICTs to strengthen the municipality's management processes, which has happened predominantly in the local governments that have the most resources. The use of ICTs is likely to be expanded to poorer municipalities around the country.
- *Telework:* Telework seems to be a new trend that will develop with greater strength in Costa Rica in the coming years, not only in state institutions, but also in the private sector and at the international level.
- *Mobile telephony:* The commercial competition in telecommunications will make mobile services available that Costa Ricans cannot currently access, such as third generation telephony. This will make a difference, and it remains to be seen what consequences it will have for the country.
- *ICTs as a means of citizen information and communication:* Another trend that one would expect to see strengthened is the use of ICTs as alternative media for citizens. This is especially true if the mass media continue to be owned and run by the same economic and political stakeholders.

Action steps

To build citizenship, organisations with a social vision of ICTs should strengthen the use of these tools within social movements and their own organisations, and encourage social entrepreneurship.

Alternative visions of copyright should be promoted, so that they go beyond intellectual property registrars, and contribute to the collective creation of knowledge. These should tap into local and popular knowledge, giving it value, making it visible, and protecting it from misuse by third parties.

It is important to understand ICTs as a space for creating knowledge collectively and also as a space to build an active, organised, diverse and participatory citizenry. The vision of ICTs as a one-way space only meant to offer information to the population does not foster inclusive processes. It is all about taking advantage of the fact that online digital technologies are two-way streets, unlike other more traditional information and communication spaces. This recommendation applies to both web-based spaces and mobile telephony, which can both be used as means for citizen information and communication. ■

References

Fumero Paniagua, G. (2006) *El estado solidario frente a la globalización: Debate sobre el TLC y el ICE*, Zeta Servicios Gráficos, San José.

Observatorio de la Libertad de Expresión (2008) *Informe al país: El derecho a la información en Costa Rica*, Editorial Juricentro, San José.

PROSIC (2008) *Hacia la sociedad de la información y el conocimiento*, Universidad de Costa Rica, San José.

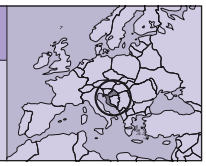
14 For example, see: www.norteenlinea.com

15 www.incae.edu

16 For example, the four most important sections in websites are contact information, general information, institutional publications and activities.

CROATIA

ZaMirNET
Danijela Babic
www.zamirnet.hr



Introduction

The European Council granted the status of "candidate country" to Croatia in 2004, and accession negotiations were opened in 2005. In order to become a European Union (EU) member state, Croatia has to accept the acquis of the Union.[1] The acquis in the social field includes standards in the area of anti-discrimination, amongst others.

The EU promotes the active inclusion of persons with disabilities in society, in line with the EU human rights approach to disability issues. Inclusion is one of the pillars of the i2010 initiative on the information society.

In 2008 the European Commission adopted the Communication *Towards an accessible information society*. The background document to the Communication explains: "We are living in a society where many aspects of our daily life are increasingly dependent on technology-based products, ranging from e-mails and the internet to digital television, automatic teller machines and ever more sophisticated inventions."[2]

Information and communications technologies (ICTs) pervade every aspect of modern life, yet people with disabilities still face huge barriers in accessing ICT-related goods and services. And they may find themselves even more marginalised as these technologies become an integral part of daily life.

Policy environment

In January 2009 the Croatian government adopted a Strategy for the Development of e-Government for the period of 2009-2012. It aims to lay down the foundations for the building of a modern, transparent, efficient and streamlined public service for citizens. The new strategy is in line with the provisions of the Croatian Public Administration Reform Strategy, in particular those relating to the use of ICTs as a key tool. The purpose of the Strategy for the Development of e-Government is to put public services online in order to make them more accessible to end-users.[3]

In 2005, the Croatian parliament adopted the Declaration on the Rights of Disabled Persons,[4] founded on the highest principles of the country's constitution. This Declaration affirmed the right of all citizens to participate equally in all segments of society and enjoy their legal and constitutional rights without difficulty.

In June 2007, a National Strategy on Equal Opportunities for Persons With Disabilities[5] was adopted. Among the identified goals related to the development of an enabling environment for disabled persons under the terms of universal design,[6] the strategy specifically mentions the commitment to "ensure access to information and communication to all disabled persons and ensure the implementation of modern technologies [in this regard]."

The Educational Sector Development Plan 2005-2015[7] aims at improving the education system in Croatia. The plan emphasises that ICTs "will be used to provide for lifelong learning," and that "special educational programmes will be offered to target groups such as... persons with special educational needs."

However, not all public websites are fully accessible to persons with disabilities. At public universities, educational content available online is often developed without consideration for the needs of students with disabilities.

Legislative environment

A key issue when it comes to legislation is access to knowledge for persons with disabilities. Copyright legislation regulates the conversion of books into accessible formats for the visually challenged and others with reading disabilities, recognising the need to maintain a balance between the rights of authors and the larger public interest. Persons who use assistive technology commonly manipulate digital publications (i.e., moving an e-book to a portable device with refreshable Braille display, or copying it to a hand-held device for reading "on the go"). However, such common and legitimate usage may be prevented by digital rights management (DRM).

DRM is a generic term that refers to access control technologies that can be used by hardware manufacturers, publishers, copyright holders and individuals to try to impose limitations on the usage of digital content and devices.[8] Article 86 of the Croatian Copyright Law, adopted in 2003, addresses the use of copyright works by disabled persons: "The use of copyright works for the benefit of people with a disability shall be permitted, where the work is reproduced in a manner directly related to the disability of such people to the extent required by the specific disability, and where such

1 The acquis communautaire is the total body of EU law.

2 European Commission (2008) Commission Communication *Towards an accessible information society*, Background note. ec.europa.eu/information_society/activities/einclusion/docs/access/comm_2008/background.doc

3 www.epractice.eu/en/document/288431, January 2009

4 Official Gazette No. 47/05

5 www.infolex.hr/htm/45521.htm

6 "Universal design is a relatively new paradigm that emerged from 'barrier-free' or 'accessible design' and 'assistive technology'. Universal design strives to be a broad-spectrum solution that produces buildings, products and environments that are usable and effective for everyone, not just people with disabilities." en.wikipedia.org/wiki/Universal_design

7 public.mzos.hr/Default.aspx?sec=3144

8 en.wikipedia.org/wiki/Digital_rights_management

reproduction is expressly of a non-commercial nature."[9] However, uncertainties remain. For example, the implications of Article 86 for the application of DRM and the production of e-books for persons with disabilities in DAISY format[10] are not clear, and more elaborate legislation is needed.

At the same time, while the Croatian Freedom of Information Act (FOIA) was adopted in 2003, and an e-government strategy is in place, Croatia does not have any specific regulations related to web accessibility and database accessibility for persons with disabilities. There is also no legislation which dictates that all public procurement purchases of ICT goods and services must be made with consideration to their accessibility for persons with disabilities.

The need for an accessible internet

Web technologies are an essential means to deliver and access information and services in today's society. Information access is even more important for people with disabilities because most have mobility impairments and are more dependent on the use of ICTs. Web accessibility has become particularly important because of the explosive growth in online information and interactive services provided on the web: online banking and shopping, dealing with government and public services, communication with distant relatives, etc. If web accessibility is not achieved, many people are at risk of being partially or totally excluded from the information society.[11]

Efforts to make websites accessible for users with disabilities result in a better user experience for all. Simple changes that make sites easier to use bring huge improvements for everyone, and economic gains for businesses. More accessible web pages tend to have more hits in search engines, enhanced usability, lower maintenance costs and reduced server load. This is mainly due to the simpler structure of an accessible web page.[12]

A recent assessment of the accessibility of a selection of 29 public and 11 commercial websites in Croatia[13] revealed common accessibility problems such as inaccessible .pdf documents,[14] poor structure and difficult site navigation, a lack of alternative text for images, sound and video files, and anti-spam protection using CAPTCHA[15] without an audio version. The assessment combined manual checking of representative pages on websites with the use of several automatic accessibility evaluation tools. Among public websites tested, the most important information on the Cadastre website,[16] which lists land values and ownership, was completely inaccessible, while the website for the Ministry of Justice has many accessibility problems. Among the commercial websites tested, almost inaccessible were the websites for the daily newspaper *Večernji*,[17] and one of the leading banks, Zagrebačka Banka.[18] In the case of the Cadastre, visually impaired persons could not access land and real estate registries, while the net banking services for Zagrebačka Banka were inaccessible.

People with disabilities often use some kind of assistive technology to interact with the web. Croatia does have legislation in the fields of health and social assistance to support the use of assistive technology by disabled end-users. According to the regulations, visually impaired persons with health insurance will be lent a screen reader, technology for Braille display or electronic note-taker, amongst other technologies, during education or work-related training. Upon completion of the education or training, the assistive technology will be returned to the Croatian Institute for Health Insurance and the persons will be expected to finance their own assistive technology solution.

However, prices of assistive technology such as screen readers[19] are high. For instance, a commercial screen reader (commonly used by visually impaired persons) for the Microsoft Windows platform if purchased in Croatia costs over EUR 1,000, screen readers for mobile phones about EUR 150, and a Braille display[20] or electronic note-taker over EUR 4,000.[21] In comparison, the average monthly net salary in Croatia in December 2008 was HRK 5,410 or approximately EUR 750.

In 2001, the Croatian Association of the Blind addressed the issue by initiating the development of a free and open source software project called Talking Linux for the Blind. The main features of the software relate to speech synthesis in the Croatian language and interface design. However, due to the limited functionality and lack of funds for improved functionalities, Talking Linux was not adopted by many end-

9 Copyright and Related Rights Act, Official Gazette No. 167/2003

10 DAISY, which stands for "Digital Accessible Information SYstem", is a standard for digital talking books. A DAISY book can be read using refreshable Braille display or screen-reading software, printed as a Braille book on paper, or converted to a talking book using synthesised voice, amongst other things. For more information see: www.daisy.org/about_us

11 European Commission (2008) Commission Communication *Towards an accessible information society*, Background note. ec.europa.eu/information_society/activities/einclusion/docs/access/comm_2008/background.doc

12 Ibid.

13 Rudić, C. (2009) An analysis of accessibility of the public websites and public information and communication services. www.pristupacnost.net/public_html/?page=pages,variable,resursi

14 When documents are scanned and converted to .pdf files they are not accessible using assistive technology because the content is not tagged and is therefore not searchable or readable.

15 CAPTCHA (Completely Automated Public Turing test to tell Computers and Humans Apart) is a type of challenge-response test used in computing to ensure that the response is not generated by a computer.

16 www.katastar.hr

17 www.vecernji.hr

18 www.zaba.hr/ebank/gradjani

19 "Software used by individuals who are blind or who have dyslexia interprets what is displayed on a screen and directs it either to speech synthesis for audio output, or to refreshable Braille for tactile output. Some screen readers use the document tree (i.e., the parsed document code) as their input. Older screen readers make use of the rendered version of a document, so that document order or structure may be lost (e.g., when tables are used for layout) and their output may be confusing." www.w3.org/WAI/EO/Drafts/PWD-Use-Web/#screenreader

20 "A refreshable Braille display or Braille terminal is an electro-mechanical device for displaying Braille characters, usually by means of raising dots through holes in a flat surface. Blind computer users, who cannot use a normal computer monitor, use it to read text output." en.wikipedia.org/wiki/Refreshable_Braille_display

21 Perčinić, M. (2009) A study of existing information-communication solutions and improvements of accessibility for blind persons. www.pristupacnost.net/public_html/?page=pages,variable,resursi

users.[22] Still, the development, adoption and use of free and open source solutions remains an important consideration.

All citizens need ongoing access to learning to enable them to work. Technology is playing an increasing role in mediating this learning. Works made available in accessible formats are distributed by the Croatian Library for the Blind. However, current market practices do not support visually impaired persons accessing copyrighted works, and, as mentioned, related legislation such as Article 86 is insufficient. Only one leading publishing house in Croatia, Školska Knjiga, has granted rights for the library to convert their publications to accessible formats.[23]

There have been other efforts to make literary works accessible, but these have been costly initiatives and remained fragmented. At the same time, as already mentioned, persons who use assistive technology commonly manipulate digital publications to increase accessibility and, while doing so, stumble upon digital rights management obstacles.

New trends

Two years after a short workshop on inclusive e-government conducted by ZaMirNET, many stakeholders are even more eager to implement activities in the domain of e-accessibility. This includes the Croatian Employment Service, the Centre for Education of the Blind (Vinko Bek), the Croatian Association of the Blind, the Association of the Blind of Istria County-Pula, the Croatian Academic and Research Network (CARNet), the National and University Library in Zagreb, APIS IT, the Faculty of Organisation and Informatics in Varaždin, as well as several Croatian IT companies, who all want to collaborate to improve the status of e-accessibility in Croatia.

For instance, CARNet, a government agency with the mandate to provide internet infrastructure for the Croatian educational community and to stimulate the use of ICTs in education, organises an annual CARNet User Conference (CUC). Within the framework of CUC, CARNet is organising a web festival. Part of the festival is a web page contest whose goal is to stimulate the development of the Croatian web space by promoting various tools, services and topics. For 2009 the contest topic is web accessibility and usability.

The state-run information systems and technologies support agency, APIS IT, has recently established contact with the Web Accessibility Initiative of the World Wide Web Consortium, and is working to improve accessibility features on www.mojauprava.hr, the central portal of the Croatian government.

Finally, the National and University Library in Zagreb took part in a project that aims to improve e-accessibility at the library.

These examples illustrate the change in the societal climate, which is now more receptive to new initiatives in the area of e-inclusion.

Action steps

- *Raising awareness and understanding of web accessibility among developers and policy-makers:* It is important to improve the awareness and understanding of web accessibility among both developers and policy makers. Poor e-accessibility is often due to limited awareness and competence, and benefits from e-accessibility are often underestimated or simply not considered. The publishers of commercial websites providing services of general interest should also be encouraged by the authorities to make their sites accessible. Reporting on web accessibility implementation is crucial to assess progress. At the same time, a "one-stop-shop" model to find web accessibility-related information was raised at the EU level.[24] In Croatia an example would be the website www.pristupacnost.net, maintained by the Association of the Blind of Istria County-Pula and ZaMirNET.
- *Advocacy for an accessible digital format for each newly published book in Croatia, especially for school and university literature:* Any newly published book has to be submitted to the National and University Library in digital form to obtain an International Standard Book Number (ISBN). However, these books are usually not digitalised in an accessible form (i.e., DAISY format) due to the lack of an agreed standard and a policy gap. Since all printed books today are first prepared in a digital format, it is a total waste of money and time to digitalise a book once printed, and convert it into DAISY format when this could be done *before* printing. This has to be addressed. ■

22 Butorac, D. (2002) Project IPSIS – *Web Portal and Linux for the Blind*, Springer, Berlin/Heidelberg. www.springerlink.com/content/2g3p9kg6nq2ax01n/

23 Although this should be allowed by Article 86, the application of the Article is unclear, and stakeholders are uncertain of its direct implications.

24 European Commission (2008) *Staff working paper on e-accessibility: Status and challenges of e-accessibility in Europe.* ec.europa.eu/information_society/activities/einclusion/policy/accessibility/com_2008/index_en.htm

EGYPT

Leila Hassanin

Introduction

Since the late 1990s the Egyptian government has pursued a policy of rapid expansion in the information and communications technology (ICT) sector, with mobile communications and the internet experiencing the greatest economic growth. Egypt is intent on becoming a regional information centre akin to the Indian model. This economic goal has set up a dichotomy: on one hand the government strongly promotes and supports the spread of ICTs; on the other it is counteracting, with increasing dexterity, the freedom of expression such technologies offer.

Egypt has been governed under the Emergency Law since 1981. This law allows the government to keep a tight grip on freedom of speech and political expression and to invade civil privacy. The law has been extended many times, for different reasons, the last being the monitoring of international terrorism. While the internet was – for a short time – a space where citizens were allowed more freedom of expression than traditional avenues, the government has in the last five years extended its surveillance to cyberspace. Egypt has been listed by Reporters Without Borders[1] among thirteen of the top countries practising internet censorship. The others are Belarus, Burma, China, Cuba, Iran, North Korea, Saudi Arabia, Syria, Tunisia, Turkmenistan, Uzbekistan and Vietnam.

Censorship and privacy

The internet is now used by approximately 20% of the population. Online use, which was initially mostly for email, browsing and research, has since 2004-2005 turned into an active blogosphere for many, especially urban youth. There is also an increase in the use of Flickr, YouTube and Twitter, as well as the all-popular Facebook.

Most of these networking sites are used for social purposes, but activists have found them effective tools for communication, as they allow things like instant messaging and relaying visuals. Activists have been able to coordinate strikes, send help messages, alert others when they have been taken into custody, and send messages from prison. The government has, as a result, begun to monitor and intimidate some of the more outspoken users.

With the increase of online communication and networking sites, the government has incrementally increased its censorship of internet content. For example, the websites of the Muslim Brotherhood[2] and of the labour party El Amal are being blocked. The political wisdom of blocking these sites is questionable: membership of these two groups does not seem to have diminished.

Another new restriction targets public internet access. Since the summer of 2008, to connect to a public wireless hotspot one has to enter private identifiers like an identification number or private phone number. Internet cafés are also collecting the same information from users,[3] which has been strongly criticised by the Arab Network for Human Rights Information.

To some extent the criticism needs to be balanced. One of the reasons for collecting the personal information is that credit card use in Egypt is very limited and the economy is predominantly cash based. The customary credit card number that is taken in most Western countries, and is used as an identifier, is not applicable in Egypt. With this in mind, what is happening in Egypt is not much different from what is happening in many places in the world, even the ones that appear to be less invasive.

However, in the Egyptian case, where in many respects the internet user was able to protect his or her privacy comparatively more than in many other countries, these new monitoring measures are a serious cap on the ability to maintain a latitude of privacy in cyberspace. Conventional internet use through dial-up, digital subscriber line (DSL) or wireless is easily traced and susceptible to official monitoring, especially of targeted individuals or groups, as is the case in most countries. Monitoring the internet is now a specialist task, and has its own divisions in law enforcement units.

On the other hand, the tracking of private information through online spaces for commercial purposes is, at the moment, much lower in Egypt than in most "developed" countries. But with the diversification of the Orascom[4] conglomerate, and the like, this freedom seems on the wane too.

Legislative context

The government is creating more institutionalised measures to restrict freedom of expression, claiming to protect public ethics, but politically curtailing free expression outright. The latest move is a possible broadcasting law that will govern audio and visual media. In July 2008, the independent newspaper *Almasry Alyoum* published an article on draft legislation regarding "audio-video transmissions" that, among other media channels, will affect internet sites.[5] The

1 Egypt was originally listed in 2006 and relisted in 2009; see www.rsf.org/en-ennemi26150-Egypt.html

2 The Arabic site is located on a server in California, United States (US).

3 Mobile use has been subjected to the same kinds of monitoring (see the Egypt country report in *GISWatch 2008*: www.giswatch.org/gisw2008).

4 Orascom comprises Mobinil Mobile Service Co. and Link Telecommunication Company.

5 Al-Galad, M. (2008) Law of "Slaughtering" Satellites … and the "Facebook", *Almasry Alyoum*, 9 July. www.almasry-alyoum.com/article2.aspx?ArticleID=112631

article raised a lot of debate as to its accuracy. The story has been confirmed by some government officials, but denied by others.[6] It seems quite probable that such a law is in the pipeline.

The draft law, made up of 44 articles, would pave the way for the establishment of a new enforcement agency, the National Agency for the Regulation of Audio and Visual Broadcasting (NARAVB).[7] This would govern broadcasting by radio, satellite and websites.

On another front, a new case in cracking down on bloggers involves Tamer Mabrouk.[8] Mabrouk is a blogger who launched an environmental campaign against Trust Chemical Co. in Port Said, stating that the company is throwing untreated toxic chemical waste in the Suez Canal and Lake Manzala that is endangering public health. Trust Chemical Co. filed a defamation suit against Mabrouk and won the case in May 2009, with the judge imposing a fine of close to EUR 6,000 on him. According to Reporters Without Borders, Mabrouk is the first Egyptian blogger who has been sued in court.[9]

A change – this time towards more openness – has been allowing the public to use global positioning systems (GPS). After many years of banning GPS, saying that it was a security risk, the government is finally allowing civilian GPS and navigation systems that will interact, among other applications, with computers and mobile devices.[10]

How effective is online activism?

The historical development of online activism shows that despite government repression, it has increased in Egypt, and is less anonymous than it used to be. For instance, although the blogging community of activists has endured years of surveillance, threats and even torture, it has not diminished; on the contrary, the number of political bloggers[11] is increasing. In fact, it seems that repression of outlets for opinion has helped the profusion of online venting, reporting, networking and political activism in general.

Online political networking and campaigning is especially useful under the pressure of the Emergency Law that legalises the arrest of as few as three people coming together for a political cause.

Initiated in 2005, Baheyya is one of the earliest Egyptian political blogs.[12] Baheyya is still widely read, although its author(s) have never publicly identified themselves, and it is written in English. Political blogs now proliferate, many with the identity of the bloggers declared openly. A good number of the new bloggers are females. The tone of the blogs has become more accessible: everyday occurrences are being talked about, inner thoughts are discussed, and the human side of the blogger is exposed. The language and attitude have also become less "intellectual". Arabic is increasingly being used as the predominant language, rather than English, indicating that the bloggers are not exclusively targeting the "outside world". The messages are intended for national discourses and actions, and not mainly to expose the government to Western readers.

Bloggers like Wael Abbas, Nora Younis, Mohammed Adel and Hossam el-Hamalawy name themselves despite the high personal cost of such openness. It seems that bloggers who openly identify themselves are in fact responding to the reality of censorship and surveillance – which includes arrests and torture. The attitude is: I might as well make my identity public, if you can find out who I am anyhow. By using their real names, and in many cases their photos, it allows bloggers to talk about harassment publicly. The personal commitment is often profound. Younis, for instance, blogs about leaving her apartment door unlocked in an attempt to psychologically pretend that she can live safely.[13]

What happens to activists is often immediately conveyed via Twitter and Facebook: one such incident involved the harassment of Abbas and his mother by a police officer, a neighbour, that led to his arrest.[14]

Interestingly, in the case of Abbas, instead of support by sites from the West, he faced yet more censorship. His accounts were closed by Yahoo, Facebook and YouTube. While the latter has finally reopened his account, a lot of the original video footage has been deleted.[15] This shows the instability of many social networking sites when it comes to their use for the dissemination of human rights information and the voicing of political views. These international sites are caving in, often easily, to national governments' demands, if they are not actually pre-emptive in closing accounts to avoid potential discord with governments. This attitude emphasises the need for activists to use several different sites to disseminate their messages to ensure that communication channels stay open despite a crackdown by some of them.

Facebook's social popularity has meant some activists, like Ahmed Maher, have been able to attract tens of thousands of Egyptian youth by rallying them around a cause.

6 Al-Hawari, M., Farghali, D. and Karnashawi, S. (2008), Contradictory Statements Over 'Audio-Visual Transmission Law', *Almasry Alyoum*, 11 July. www.almasry-alyoum.com/article2.aspx?ArticleID=112863

7 Stanford, D. (2008) Egypt faces new media censorship, *Al Jazeera.net*, 7 August. english.aljazeera.net/focus/2008/08/20088791952617974.html

8 El Haqiqa El Masreya (The Egyptian Truth), blog by Tamer Mabrouk: elhakika.blogspot.com

9 Reporters Without Borders (2009) Tamer Mabrouk is the first blogger prosecuted by a company in Egypt, 26 May. www.rsf.org/Tamer-Mabrouk-is-the-first-blogger.html

10 Crowe, J. (2009) Egypt Allows GPS, *The Map Room*, 14 April. www.mcwetboy.net/maproom/2009/04/egypt_allows_gp.php

11 Egyptian youth, especially in urban areas, are internet savvy. With the spread of mobile phones, most of which have built-in cameras, it soon became easy to voice one's political opinion through blogs and social networking sites, and to post audiovisuals that stress one's point of view on the internet.

12 Baheyya identifies itself this way: "Baheyya is an Egyptian female name that has come to stand in for Egypt itself. The symbolism of course is the handiwork of the gifted duo of Shaykh Imam Eissa and Ahmad Fu'ad Nigm in their haunting song, 'Masr yamma, ya Baheyya'. I make no foolish claims to represent Egypt or all Egyptians, I just like the name." baheyya.blogspot.com

13 Nora Younis' blog: norayounis.com

14 Committee to Protect Bloggers (2009) Wael Abbas Under Arrest, 11 May. committeetoprotectbloggers.org/2009/04/11/wael-abbas-under-arrest

15 Wael Abbas' YouTube account: www.youtube.com/user/waelabbas

One of these causes was a rally to support striking textile workers on 6 April 2008. He used the workers' rally as a spark to form the "April Youth Movement" on Facebook, which among other activities, has been used as a "voice to spread the workers demands."

Twitter has also been successfully used by political activists in Egypt. It has proven especially useful to inform people about upcoming rallies and demonstrations, to organise these events, and to warn about impending police interference. However, unlike Twitter, Facebook's use to gather people around a political cause is new.

The bad news is that on the day of the abovementioned rally to support the textile workers' strike, bloggers were targeted by police, resulting in many detentions. At this point it is not yet clear if this movement will survive the repression it encountered, nor is it evident if it will encourage similar instances of online activism.

Based on recent experience, one is not hopeful. The promising activism that was ignited in the 2005 elections and culminated in mass opposition groups like Kefaya and Shayfenkum has been beaten down. A major question remains: is online dissent potent enough as a political tool to ultimately lead to positive changes? Or is it more of an avenue for venting that dissipates anger without achieving reforms?

Action steps

There are few prescriptive advocacy strategies or tactics available under the present political climate. With the lack of political will to reform, one has to look to alternative sources of support. In Egypt, the internet has proven itself an excellent exposing and "shaming" tool that, with increased use, is hard to suppress. The international nature of cyberspace is a point of strength: as long as online spaces can remain relatively open and receptive to dissenting voices, they are spaces that can counteract censorship. Privacy is a more complex issue.

International online avenues need to resist government pressure to close accounts. Blogs, Facebook, YouTube, Twitter and Flickr are some of the tools used to voice social and political issues, rally activists and offer outlets for gender and minority opinions.

Mirroring blocked sites internationally will assist in keeping the internet a viable space for disseminating dissenting views. Websites can be easily mirrored. If some websites are blocked their content can still be made available with new software.

To combat censorship there are an increasing number of circumvention technologies available: anonymous proxy servers, virtual private networks (VPNs), Sneakernets, Tor (also known as the "onion router"), and Psiphon, among others. More access to mirroring and anti-censorship software is needed, supported nationally and internationally.

Activism is largely spearheaded by young people in their twenties. The economic and employment prospects of this generation will impact on their resistance to the mainstream. If the youth are burdened by significant unemployment, they will tend to find outlets for their frustration that can be found on the internet. To keep these outlets open might be an act of political wisdom.

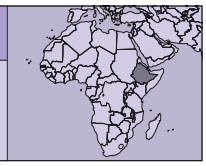
To still believe in the possibility of online privacy seems naïve. On the other hand, to secure a high level of freedom of speech with personal safety could become a struggle of numbers: the more people voice themselves, the harder it will be for authorities to suppress them. Multiple outlets are important. If Google, Facebook, YouTube and the like cave in under government pressure, they might not cave in all at the same time.

Again there is a fine line between policing the internet for public safety, as Interpol and its national equivalents do, and invading privacy and suppressing opinion and voices. At present this line is not clearly defined with regard to the activities of Egypt's General Administration for Information and Documentation (GAID).[16] ■

16 GAID was formed in 2002 by the Egyptian Ministry of Interior and has been policing the internet ever since. It publicly claims to offer protection against pornography.

ETHIOPIA

Ethiopian Free & Open Source Software Network (EFOSSNET)
Abebe Chekol
www.efossnet.org



Introduction

After the change of government in 1991, the Ethiopian Peoples Revolutionary Democratic Front (EPRDF)-led government adopted a new constitution (in 1994), which placed a special emphasis on access to information, freedom of expression and human rights. Under Article 29 of the Constitution, "Everyone shall have the right to freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through other media of his choice."

However, internet availability in Ethiopia is still low. Only 360,000 people had internet access in 2008 – a penetration rate of 0.42%, one of the lowest in Africa compared to the sub-Saharan African average of 3.23% and Africa's average of 5.34%. The government-owned Ethiopian Telecommunications Corporation is the sole internet service provider (ISP) in the country. Internet cafés are a major source of access in urban areas with a rising and active community of bloggers and users of other social networking tools. However, three quarters of the country's internet cafés are in the capital city, and even there access is often slow and unreliable.

This report reviews access to information in Ethiopia, with a focus only on online access to information, and with reference to the relevant policy and legislative environments that are in place.

Policy environment

Ethiopia's National Information and Communications Technology (ICT) Policy was first drafted and submitted to the Council of Ministers in 2002. The policy's vision is "to improve the social and economic well-being of the people of Ethiopia through the exploitation of the opportunities created by information and communication technologies, for vitalising and ensuring the establishment of a sustainable democratic system and good governance, and for achieving sustainable, rapid socio-economic development." Following a recommendation from this process, the Ethiopian ICT Development Authority (EICTDA) was established in 2003, primarily to complete and implement the policy. One of the main pillars of the policy is e-government which aims, among other things, at providing public access to information and government services, enhancing good governance and strengthening the democratic process. The ICT security aspect of the policy also states that it facilitates the enactment of the necessary laws and legislative instruments to govern and regulate cyber-related activities. These include laws relating to intellectual property rights (IPR), data protection and security, and freedom of access to information. The legal and regulatory environment pillar of the policy also aims to ensure the protection of IPR in ICTs.

The other major pillar of the policy is the ICT in Education Implementation Strategy and its corresponding Action Plan, which is a component of a wider Ethiopian national e-education initiative. Both these pillars form part of the ICT for Development 2010 Plan.[1]

The education strategy recognises ICTs as an enabler for widening access to education for the Ethiopian population, for supporting ICT literacy in education, and for facilitating the delivery of education and training at all levels.[2] The education strategy is built on three main streams:

- The National SchoolNet Initiative Programme
- The National ICTs in Higher Education Initiative
- The National ICT Education, Training and Awareness Initiative.

The National SchoolNet Initiative Programme aims at using ICTs to facilitate the teaching and learning processes within primary, secondary, technical and vocational schools. The ICTs in Higher Education Initiative focuses on deploying ICTs within universities, colleges and research institutions. The National ICT Education, Training and Awareness Initiative promotes ICT awareness and literacy, lifelong and adult education, and distance and virtual education and learning. It also identifies strategic goals and draws up a programme and activities for each initiative.

Legislative environment

The government has recently enacted a series of laws in relation to IPR and to freedom and access to information:

- Intellectual property rights (IPR): In the last few years, Ethiopia has enacted a series of new laws pertaining to major areas of IPR, namely, copyright and related rights, including patents[3] and trademarks. In addition, the country is in the process of developing new laws for the protection of geographical indications and for

1 Ministry of Capacity Building (2006) ICT in Education Implementation Strategy and Action Plan, National ICT4D Action Plan for Ethiopia 2006. www.ests.gov.et/ICT%20policy.htm

2 Hare, H. (2007) ICT in Education in Ethiopia – Survey of ICT and Education in Africa: Ethiopia Country Report, *info*Dev/World Bank, Washington.

3 Federal Democratic Republic of Ethiopia (1995) Proclamation Concerning Inventions, Minor Inventions and Industrial Designs, Proclamation No. 123/1995.

"undisclosed information".[4] IPR is receiving government interest and attention primarily through the efforts of the Ethiopian Intellectual Property Office (EIPO). Until the formation of the EIPO[5] in 2003, responsibility for and control over the various areas of intellectual property were handled by different, unrelated government agencies, none of them with the proper authority in the field of IPR.

- Freedom of the Mass Media and Access to Information Proclamation (Proclamation No. 590/2008): This proclamation, in its Article 4 on Freedom of Mass Media, proclaims that "[f]reedom of the mass media is constitutionally guaranteed. Censorship in any form is prohibited." Article 12 of this proclamation on the "Right of Access to Information" states that "[a]ll persons have the right to seek, obtain and communicate any information held by public bodies, except as expressly provided for by this Proclamation." As stated in this article, this right includes access to information from any public body by means of "diskettes, floppies or any other electronic mode or through print-outs where such information is stored in a computer or in any other device."[6]
- Voice over internet protocol (VoIP) users continued to grow, fuelled primarily by the demand for lower cost services and its integration into a number of new services offered on IP (internet protocol) networks. As in many African countries,[7] Ethiopia bans VoIP services. According to the amended Telecommunication Law of 2002, Sub-Article 3 of Article 24 of the Proclamation states that "the use or provision of voice communication or fax services through the Internet are prohibited."[8]

Key issues

Like many other countries in Africa, the spread and use of ICTs in Ethiopia is a function of a number of factors including infrastructure, access and a supportive enabling environment (i.e., the legal and regulatory environment). ICT infrastructure, apart from its operation and maintenance, involves considering non-ICT infrastructure such as transport and electricity. Access is determined by things like public access facilities, the existence of relevant content, and adequate capacity to use ICTs at different levels. The legal and regulatory enabling environment is an important aspect, not only with regard to the specific ICT regulatory framework, but also the overall policy framework that promotes sound economic and political governance.

Increasing convergence across different technologies, in which the internet is becoming the common platform for voice, data and broadcast information, offers potential for cutting the costs of network deployment, along with providing new synergies between products and media. The internet is not only a mechanism for the dissemination of information; it is also a broadcasting system, a peer-to-peer platform, and a marketplace. Similarly, mobile phones are not only used for voice services; they also facilitate internet access, data collection and even financial services. Therefore, increasing convergence in technologies is offering the flexibility for people to get access to information for their socioeconomic development whether through the internet or through the use of mobile phones.

The Ethiopian Telecommunications Corporation (ETC) began providing mobile internet services using general packet radio service (GPRS) in July 2009. GPRS is aimed at adding internet services on the mobile phone for users. ETC announced that the service users have to pay one cent per 10 kilobytes of web use. Given the mobile rate of penetration of 3.72%, this service still benefits a limited number of people with access to the services. However, the government's plan in laying 10,000 kilometres of optical fibre network throughout the country, 4,000 kilometres of which is already completed, will significantly improve access and connectivity in Ethiopia.

Looking at the growth of access, there is an overall trend in Ethiopia toward use of wireless technologies. This explains the relatively slow growth in fixed lines, which remain at 1.07 per 100 inhabitants (2008). This together with high tariffs relative to income levels, and low domestic personal computer (PC) access – a total of 532,000 home PCs (2007) – has lead to relatively slow rates of internet and broadband uptake in the country. By the end of 2008 there were only 40,034 internet subscribers, with around 360,000 estimated internet users, which is 0.42 per 100 inhabitants. This is an insignificant number when considering a population of over 83 million. However, the situation is changing quite rapidly in urban areas with the recent introduction of wireless broadband and the increased use of the internet on mobile phones. Nevertheless, with the low level of connectivity, public access facilities are the most important means of providing communities with access to information.

A number of grey-market operators provide VoIP services in Addis Ababa, and a few other cities outside of the capital. There are periodic shutdowns of operators whose equipment is confiscated.[9] However, today a growing

4 Booz Allen Hamilton (2007) Ethiopia Commercial Law & Institutional Reform and Trade Diagnostic, USAID. "Geographical indication is an aspect of industrial property which refers to a country or to a place as being the country or place of origin of that product. Under Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement. Undisclosed information is also one category of 'intellectual property' as defined in Article 1.2 of TRIPs. Such information has also been referred to as 'trade secrets' or 'know-how', and covers any secret information of commercial value." Source: Department of Industrial Policy and Promotions, Ministry of Commerce and Industry of the Government of India website: www.patentoffice.nic.in/ipr/gi/geo_ind.htm

5 Federal Democratic Republic of Ethiopia (2003) Ethiopian Intellectual Property Office Establishment Proclamation, Proclamation No. 320/2003.

6 Federal Democratic Republic of Ethiopia (2008) Freedom of the Mass Media and Access to Information Proclamation, Proclamation No. 590/2008.

7 United Nations Economic Commission for Africa (2009) Implementing the World Summit on the Information Society Action Lines: Analysis of Country Reports, UNECA, Addis Ababa.

8 Federal Democratic Republic of Ethiopia (2002) Telecommunications (Amendment) Proclamation, Proclamation No. 281/2002.

9 Cohen, T. and Southwood, R. (2004) *An Overview of VoIP Regulation in Africa: Policy Responses and Proposals*, prepared for the Commonwealth Telecommunications Organisation (CTO), London.

number of countries have or are about to legalise VoIP. As a result Ethiopia might move in this direction as part of the privatisation process.

In relation to access, the other key area is the availability of relevant content. With well over half of the websites in the world in English[10] and with only 42% of the adult population able to read and write in Ethiopia, language skills and literacy are key issues that need to be considered in discussions on access to information online. Lagging internet applications and content in Ethiopia have also retarded the development of online access to information. However, when some of the initiatives in the ICT for education strategy are implemented in full, it is expected that access to online information will be widespread.

Access is also determined with the existence of adequate capacity in using ICTs at different levels. In this regard, a recent United Nations Economic Commission for Africa (UNECA)[11] survey on the implementation of the World Summit on the Information Society (WSIS) action lines in Africa reveals that, like many countries, Ethiopia does not have sufficient digital literacy for supporting digital-economy and knowledge-economy activities. However, ICT training is becoming more and more important as the demand for computer literacy and knowledge of data processing and application skills is increasing. ICT training is the second most important activity of ICT firms in Ethiopia.[12] Furthermore, through the National SchoolNet Initiative Programme, all high schools have been provided with computers, which will contribute to the digital literacy in the country. Over 30 government and private universities and colleges are also offering ICT training programmes at various levels.

The legal and regulatory environment is the other key area in the discussion on access to information online. There has been increasing concern in the last ten years about damaging internet content. The kinds of content provoking concern have varied greatly, and ranged from political speeches to material promoting or inciting racial hatred, violence or terrorism (including bomb-making instructions), to pornographic material, including child pornography.[13] Consequently, many governments around the world have sought to address the problem by stating that what is illegal under general laws applies to online content.

Some of the arguments that many put forward for controlling internet content include:[14] the internet is fundamentally just another communications network; there is a range of problematic content on the internet which we cannot ignore; the internet is now a mass media and needs regulation like any other media; and most users want some form of content regulation or control. Others argue against internet content regulation saying that the internet was created as a totally different kind of network and should be a "free" space; the internet is a "pull", not a "push" communications network (in that users actively select content to download); the internet is a global network that cannot simply be regulated; it is a technically complex and evolving network that can never be regulated; and any form of regulation is flawed and imperfect.

Internet penetration in sub-Saharan Africa in general, and in Ethiopia in particular, lags behind much of the rest of the world due to a variety of economic, political and infrastructural reasons. Internet regulation in Ethiopia, as a result, primarily focuses on infrastructure and access-related issues rather than on content regulation, although there are moves to broaden the scope of regulation as the internet spreads.

New trends

To move from policy process to implementation, the Ethiopian government has embarked on activities geared towards the translation of the National ICT Policy visions and objectives into sectoral strategies. Sectoral strategies are tailor-made for the specific needs of each sector and accord each sector the opportunity to build on its strengths and adapt to its needs. To this end, the e-government strategy and plan were developed as one of the key pillars of the ICT for Development 2010 Plan. At the same time, the enactment of legislation and regulations is underway in the areas of e-transactions/e-payments, e-contracts and e-commerce generally.

With regard to ICT-supported learning, there are also initiatives aimed at the development of a centralised digital library for higher learning institutions, as well as the digitisation of learning materials for high schools.

However, with limited internet penetration, the role of community ICT access centres (cyber cafés, telecentres etc.) are of paramount importance in increasing access to online information for the general public. To this end, the ICT for Community Development Strategy, developed under the EICTDA, would potentially promote public access to information online. For instance, the Community Information and Communication Development (CIDEV) Programme under EICTDA promotes the deployment of appropriate ICTs to help ongoing development activities in health, educational and agricultural institutions, and community service providers. In the last three years, the CIDEV programme funded over twenty community ICT projects, among which twelve information/ICT centres from different communities across the country were supported. However, given the limited number of community ICT access centres, access to online information has a long way to go before it reaches a significant proportion of the population.

10 www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx

11 United Nations Economic Commission for Africa (2009) op. cit.

12 EICTDA (Ethiopian ICT Development Agency) (2009) ICT Assisted Development Project Monitoring and Evaluation Report on ICT Laws Enacted and ICT Business Status in Major Towns of Ethiopia (2008), EICTDA, Addis Ababa.

13 Wikibooks (2008) Legal and Regulatory Issues in the Information Economy/Censorship or Content Regulation. Retrieved 5 July 2009 from en.wikibooks.org/wiki/Legal_and_Regulatory_Issues_in_the_Information_Economy/Censorship_or_Content_Regulation

14 Darlington, R. (2009) How the Internet could be regulated. www.rogerdarlington.co.uk/Internetregulation.html

Action steps

In today's global, information-driven society, economic success is increasingly based on the effective utilisation of intangible assets such as knowledge, skills and innovation as key resources for competitive advantage. The term "knowledge economy" reflects the increasing importance of knowledge for economic development – an economy in which knowledge is the key resource. The knowledge revolution manifests itself in many different ways, which includes closer links between science and technology, innovation and competitiveness, education and life-long learning, and increased investments in things such as research and development (R&D) and software development.

Ethiopia's sustainable development can only be ensured through long-term and systematic knowledge- and innovation-based economic development and planning. The availability and application of information is a key driver of a society's ability to create and absorb new ideas. Electronic communication systems are at the centre of this information-transfer process. Therefore, the government needs to increase investment in ICT infrastructure, which is one way of increasing access to information and thereby stimulating growth in national innovation and economic productivity. To this end, public-private partnership is a critical way forward in expanding the ICT infrastructure in Ethiopia. Secondly, public access facilities are of paramount importance. To this effect, a more coordinated effort and support for the roll-out of telecentres is essential to increase communities' access to information for their livelihood and economic development. Thirdly, it is important that priority should be accorded to investing in human capacity development and creating a digitally literate society. Finally, the legal and regulatory environment needs to recognise the key issues of the knowledge economy, such as the regulation of the electronic economy, cyber security, infrastructure policy issues and IPR, which are all key to building the information society. ■

References

Booz Allen Hamilton (2007) Ethiopia Commercial Law & Institutional Reform and Trade Diagnostic, USAID.

Cohen, T. and Southwood, R. (2004) *An Overview of VoIP Regulation in Africa: Policy Responses and Proposals*, prepared for the Commonwealth Telecommunications Organisation (CTO), London.

Darlington, R. (2009) How the Internet could be regulated. www.rogerdarlington.co.uk/Internetregulation.html

EICTDA (Ethiopian ICT Development Agency) (2009) ICT Assisted Development Project Monitoring and Evaluation Report on ICT Laws Enacted and ICT Business Status in Major Towns of Ethiopia (2008), EICTDA, Addis Ababa.

Federal Democratic Republic of Ethiopia, Ministry of Capacity Building (2006) The National ICT for Development [ICT4D] Five Years Action Plan for Ethiopia [2006-2010], Ministry of Capacity Building, Addis Ababa.

Federal Democratic Republic of Ethiopia (1995) Proclamation Concerning Inventions, Minor Inventions and Industrial Designs, Proclamation No. 123/1995.

Federal Democratic Republic of Ethiopia (2003) Ethiopian Intellectual Property Office Establishment Proclamation, Proclamation No. 320/2003.

Federal Democratic Republic of Ethiopia (2008) Freedom of the Mass Media and Access to Information Proclamation, Proclamation No. 590/2008.

Federal Democratic Republic of Ethiopia (2002) Telecommunications (Amendment) Proclamation, Proclamation No. 281/2002.

Hare, H. (2007) ICT in Education in Ethiopia – Survey of ICT and Education in Africa: Ethiopia Country Report, *info*Dev/World Bank, Washington.

United Nations Economic Commission for Africa (2007) WSIS Implementation Guidebook: The NICI development and implementation process. UNECA, Addis Ababa.

United Nations Economic Commission for Africa (2009) Implementing the World Summit on the Information Society Action Lines: Analysis of Country Reports, UNECA, Addis Ababa.

Wikibooks (2008) Legal and Regulatory Issues in the Information Economy/Censorship or Content Regulation. Retrieved 5 July 2009 from en.wikibooks.org/wiki/Legal_and_Regulatory_Issues_in_the_Information_Economy/Censorship_or_Content_Regulation

INDIA

IT for Change
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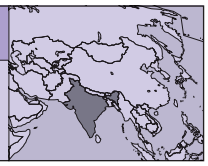


Introduction

With 1.15 billion people, India had around 40 million internet users (less than 5% of the population) and 362 million mobile phone users as of January 2009. The country continues to be the fastest growing market in the world for mobile telephony, with 15.41 million subscribers added in January 2009 alone.[1] This growth is being driven by huge markets that have led to low tariffs and the availability of low-cost handsets. Third-generation (3G) services, which allow voice, data and video to be transmitted at high speeds to wireless devices, will become available after the 3G spectrum bidding process is complete, scheduled for the end of 2009.[2]

Internet connectivity, however, is largely confined to the middle class, arguably because of an absence of contextual applications and content – including computing in local languages. Policy makers are beginning to recognise that this requires a more proactive role by the public and community sectors. The Indian government recently declared that the Universal Service Obligation Fund (USOF), previously used only for telephony, will be used to ensure broadband connectivity to all villages by 2012.[3] Governments at different levels are also taking steps towards supporting the development of much-needed applications and content, *inter alia*, as a part of the Common Services Centres (CSC) scheme discussed below. The USOF may, however, also need to be used to enable communities to develop contextual and local applications and content.

This report discusses key policy initiatives in India – the Right to Information Act; a draft policy on Open Standards in e-Governance; the Protection and Utilisation of Publicly Funded Intellectual Property Bill; and the Information Technology (Amendment) Act – that have strong implications for access to information from the viewpoint of human rights and democracy. It also discusses some key aspects of information and communications technology (ICT) infrastructure, and government programmes for universalising access.

Government programmes for universalising access: Common Services Centres

The Government of India launched the CSC initiative in 2006, with the aim of setting up 100,000 centres in rural areas across the country, each catering to a cluster of six villages. The scheme's cost of INR 57.42 billion[4] will be covered by the central government (INR 8.56 billion), state governments (INR 7.93 billion) and the private sector (INR 40.93 billion).[5] By mid-2009, all 100,000 centres were expected to be operational,[6] but the programme is running behind schedule. The CSCs, aimed at making all government services accessible locally through telecentres run by local entrepreneurs, are an important component of the National e-Governance Plan (NeGP).

The primary assumption of the programme is that a private sector/non-governmental agency-driven telecentre model, with no structured involvement of local government and community-based bodies, can cater for the information and communication needs of the poor and marginalised. However, this flies in the face of long experience in other development sectors such as public health, public education, community development, etc. There is ample evidence that developmental infrastructure, if it is to meet the canons of equity and social justice, should be viewed as "public goods", and not from a commercial perspective.

There are two early indicators of this structural problem with the CSC model. The two Indian states, Gujarat and Kerala, that have the greatest experience with large-scale telecentre programmes, even in the pre-CSC era, have chosen not to adopt the CSC model for their rural development and e-governance activities, preferring to strengthen their existing programmes – e-Gram and Akshaya, respectively. These programmes, while employing local entrepreneurs similar to the CSC scheme, do not see the private sector as "key drivers".[7] Instead, the government's development agencies and community bodies play that role.

While public funding to ensure the universalisation of access is necessary, it should not be used for controlling access to information. Our study of the e-Gram programme revealed that the internet access at their telecentres is provided as an intranet, which allows access only to a small list of websites. Other sites cannot be accessed at these centres.

1 Cell Bharat (2009) India records 15mn mobile subscribers in January 2009, 25 February. cellbharat.com/blog/1889/india-records-15mn-mobile-subscribers-in-january-2009

2 Reuters (2009) India to auction 3G spectrum by 2009 end: Raja, *Expressindia*, 1 June. www.expressindia.com/latest-news/India-to-auction-3G-spectrum-by-2009-end-Raja/469634

3 Indo Asian News Service (2009) All villages to be broadband-enabled by 2012, *Yahoo News India*, 10 July. in.news.yahoo.com/43/20090710/836/tbs-all-villages-to-be-broadband-enabled.html

4 The equivalent of USD 1.276 billion at an exchange rate of INR 45 to 1 USD.

5 www.mit.gov.in/default.aspx?id=661

6 www.egovonline.net/news/news-details.asp?Title=1-Lakh-Common-Service-Centres-by-July-2009&newsid=15591

7 www.csc-india.org/SCAs/tabid/561/language/en-US/Default.aspx

Right to information

The Right to Information Act (RTI, 2005), a pioneering law in India, entitles citizens to request access to any public information which is not classified as confidential by the government or has specific reasons for not being shared. Information relating to rights and entitlements of the people is of significant value to large sections of the population, and the availability of such valuable information freely and in a comprehensive manner in regional languages on the internet can have a major impact on the Indian governance system.

As the number of RTI applications concerning the gargantuan governance system in India are rapidly increasing, there will soon be no way to deal with the requirements of RTI than to proactively put most government information online, obviating the need for servicing individual requests separately. This will arguably be one of the most effective means of making the internet relevant and valuable to most people; an argument which should attract the attention of both policy makers and community-based bodies considering the large-scale provision and use of the internet in rural and other marginalised areas. Already many public authorities have started to share the RTI questions that have been asked of them, along with the responses given, on the internet.[8]

India's new central government[9] has also announced a "public data policy to place all information covering non-strategic areas in the public domain." It would enable citizens to challenge the data and engage directly in governance reform and "[strengthen the] right to information by suitably amending the law to provide for disclosure by government in all non-strategic areas."[10] This policy will require information to be made digitally available since it will not be possible to meet its requirements through traditional paper-based processes.

The number of government websites, as well as the functionalities they offer, has been increasing. One good example is the NREGA[11] programme in Andhra Pradesh state, where detailed real-time information, including transactional information such as work done, wages paid, and assets acquired, is publicly shared through the programme's website.[12] IT for Change's study of the implementation of NREGA's public information systems in Andhra Pradesh show that the beneficiaries of the programme, mostly illiterate, landless labourers, are keen to follow this information on the internet, directly or through community-based organisations that work with them. Many governments have also started providing RTI information over telephones.

Recent court judgments in India have widened the ambit of public authorities from whom citizens can seek information under the Act. Entities receiving substantial public funding, even if not publicly owned, now have obligations if their work has significant public interest implications.[13] This widening of the scope of RTI to private entities will increase the availability of public-interest information in the public domain, a significant part of which will increasingly be online.[14]

Open standards for e-governance[15]

The Department of Information Technology is drafting a Policy on Open Standards for e-Governance. The draft lays down guiding principles for the selection of standards and recommends that e-governance applications should preferably have a single open standard for each application domain, which "should be irrevocably available on a royalty-free basis, for the lifetime of the standard." This is required to fulfil e-governance objectives, which include "ensuring cost-effective e-governance services" and "providing a larger spectrum of choice of solutions and flexibility to users of e-governance systems by avoiding vendor lock-in."

Such a policy has important implications for access to information – e-governance applications that conform to open standards can avoid vendor lock-in and allow citizens to access these applications using different software, whereas if proprietary standards are adopted, they always tend to favour some proprietary software over others. Today, in the absence of any clear open standards policy, a large number of e-governance initiatives require the use of proprietary software for common applications – such as web browsers,[16] spreadsheets[17] and word processing – which can increase the cost of accessing information and constrain citizen/consumer choices. This is also tantamount to citizens needing to pay specific private companies for information which is their entitlement under the RTI Act.

Recently, as the policy draft is nearing finalisation, some large proprietary software companies have been making a strong last-ditch effort against the adoption of single and royalty-free open standards.[18] A newly formed

8 A repository of the requests that have already been answered, presented in a way that is searchable by the citizens, is made available by the RTI site. See: archive.digitalopportunity.org/article/view/125253

9 A new central government took charge in May 2009.

10 ibnlive.in.com/news/full-text-of-presidents-address-to-parliament/94140-3-single.html

11 The National Rural Employment Guarantee Act (NREGA) is Indian legislation that provides a legal guarantee for one hundred days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage. See: nrega.nic.in

12 nrega.ap.gov.in

13 Saxena, P. (2009) *Economic & Political Weekly EPW*, XLIV (16), 18 April, p. 13-16.

14 Bangaladesh, South Africa and Nigeria already have provisions in their own RTI legislation providing for its application in certain cases to non-governmental entities in both the private sector and civil society

15 Although typically referred to as "e-government" (in that it deals with services to citizens and not just internal government ICTs), the term "e-governance" is used by the state as well as in this report throughout.

16 See fyjc.org.in/mumbai/PreordainedMessages/BrowserNotSupported.aspx which is a site for processing online admissions to government colleges in Maharashtra state in India. This site was apparently developed by the Maharashtra Knowledge Corporation Ltd, which is a public sector organisation.

17 incometaxindiaefiling.gov.in/portal/downloads.do

18 See: www.egovonline.net/news/news-details.asp?newsid=16033 and www.dnaindia.com/money/report_members-irked-with-nasscom-over_1274086

alliance of civil society organisations promoting free and open source software is actively opposing such regressive pressures.[19]

The Protection and Utilisation of Publicly Funded Intellectual Property Bill

The government has introduced the Protection and Utilisation of Publicly Funded Intellectual Property Bill in parliament. The Bill aims "to provide for the protection and utilisation of intellectual property originating from publicly funded research."[20] India joins China, South Africa, Brazil and Malaysia in considering this kind of legislation,[21] which is similar to the Bayh-Dole legislation[22] in the United States (US).

Whether the Bayh-Dole legislation has actually provided any impetus to innovation or has only increased the cost of access to information is a moot point. Historically, developing economies have adopted lenient regulations on intellectual property (IP), which has tended to promote their development. It is usually developed/mature economies which seek to protect their competitive advantages by having highly restrictive IP regimes (US *vis-à-vis* Europe in the early and middle 20th century is the best example of such a practice).

In India it is necessary that the results of government-funded research are widely disseminated and freely available in the public interest, without any IP restrictions. Creating an IP regime where universities can commercialise their research carries the serious danger that publicly funded research could shift from areas of public interest, where commercial possibilities are low, to more profitable areas, which may benefit only a small part of the population. Such regimes have seen severe distortions in health-related research, aimed disproportionately at areas with higher commercial potential (like anti-aging medicine) while diseases such as malaria or tuberculosis receive little attention. The other impact that these sorts of IP regimes have is making the research outputs much more expensive. Second-generation drugs to treat AIDS are too expensive for most in developing countries.

The rush for new IP systems that restrict access to information has a lot to do with the emergence of the internet as a globally open and free space for knowledge sharing, and is an attempt to negate the most progressive possibilities offered by the internet. On the other hand, the internet is being used for new ways of not only sharing but also collaboratively developing new knowledge. The Council of Scientific and Industrial Research (CSIR) in India has launched an innovative "open source drug discovery" programme to combat infectious diseases that afflict the developing world. This programme, inspired by open source software development models, works largely through an online networking mode, using the web portal www.osdd.net which provides "data on the pathogens, tools for data analysis, and discussion forum[s] for members to share ideas, [and] projects for students to participate in drug discovery, etc."[23]

Such internet-based collaborative knowledge production is important to ensure its wide non-commercial availability: "The discovery of new/potential drugs will be in the public domain, thus precluding monopoly. The potential drugs will be made generic as soon as they are discovered. This will enable pharmaceutical companies to bring the medicines to the market, and yet keep drug prices competitive."[24]

New trends

The Information Technology (Amendment) Act (2008) has recently been passed, allowing government agencies to intercept email and block websites and web content.[25] The causes for such action include the "sovereignty or integrity of India, the defence of India, the security of the state, friendly relations with foreign states, public order, and preventing incitement to the commission of any recognisable offence relating to [the] above."[26] Apart from these reasons being extremely wide and vulnerable to misuse, the amendment has no provision for the affected party – whose email has been intercepted or whose website is blocked – to be heard before the decision is taken.

Action steps

While the removal of constraints to accessing information (ensuring negative rights)[27] is important, it is as much an imperative to go further with proactive public and community action to ensure universal access to ICT infrastructure and the availability of empowering information on the internet, as well as developing collaborative – free and open – models of knowledge creation, and ensuring protection against undue commercial encumbrances over the free flow of information and knowledge.

In a world where new ICTs promise to transcend many structural inequalities based on access to information, progressive forces are faced with twin challenges: (a) a new thrust worldwide towards restrictive IP laws and practices and their coercive implementation,[28] often through techni-

19 FOSSCOMM.in

20 rajyasabha.nic.in/legislative/amendbills/Science/protection_utlisation.pdf

21 So, A.D. et al. (2008) Is Bayh-Dole Good for Developing Countries? Lessons from the US Experience, *PLoS Biology*, 6 (10). www.plosbiology.org/article/info:doi/10.1371/journal.pbio.0060262

22 The legislation, also dealing with intellectual property arising from federal government-funded research, was pushed forward by two senators, Birch Bayh and Bob Dole. According to Wikipedia: "[I]t gave US universities, small businesses and non-profits intellectual property control of their inventions and other intellectual property that resulted from such funding." en.wikipedia.org/wiki/Bayh-Dole_Act

23 www.domain-b.com/organisation/csir/20080916_csir.html

24 Ibid.

25 Under Section 69 and Section 69A respectively.

26 Ninan, S. (2009) In the name of national security, *The Hindu*, 7 June. www.hindu.com/mag/2009/06/07/stories/2009060750090300.htm

27 See en.wikipedia.org/wiki/Negative_and_positive_rights

28 Digital rights management (see en.wikipedia.org/wiki/The_Digital_Imprimatur) and the proposed ACTA (see en.wikipedia.org/wiki/Anti-Counterfeiting_Trade_Agreement) are examples of such coercive processes.

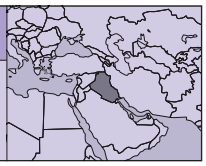
cal restrictions, and (b) states seeking new forms of digital control over citizens' lives in denial of the exciting new opportunities of a free, uninhibited public sphere and free personal expression.

Unfortunately, in India, while different groups engage with some of the issues discussed in this report in a piecemeal manner, there is little recognition of how they connect and reinforce each other in the building of a new social paradigm – euphemistically called an *information society* – that may require a set of coordinated civil society responses. Civil society needs to identify these new, strongly political contours of the struggle for rights, democracy, equity and social justice and organise itself appropriately.

It is mostly not appreciated how the nature of the technical and techno-social paradigms that are being constructed today, largely by the already dominant forces, will determine some basic characteristics of the emerging information society, including its progressive possibilities. The very poor participation of the otherwise very politically aware and active Indian civil society groups in the third meeting of the United Nations Internet Governance Forum that was held in December 2008 in Hyderabad is worrying. It requires considerable theoretical and research work in information society studies from the perspective of a developing country like India to develop new coalitions of civil society actors – from across the domains of civil society work such as technology, governance, access to knowledge, education, health, etc. – for purposeful advocacy and action around key information society issues, that by definition have implications for society as a whole. ■

IRAQ

Alaa Aldin Jawad Kadhem Al-Radhi



Introduction

When speaking about access to online educational materials in Iraq, the roles of multi-stakeholders should be addressed. This includes Iraqi government entities, civil society and the international community. Iraqi higher educational institutions, in particular, have a key role to play in generating educational materials and creating platforms to access them.

However, the current educational and telecommunications infrastructure in Iraq has deteriorated due to the country's political instability for the past three decades. Post-2003, the Iraqi government, in partnership with Iraqi expat academics and the international community, has been trying to modernise the educational system. This includes an international partnership to enhance online educational libraries, and efforts to make more use of information and communications technologies (ICTs). The international community has also tried to support Iraq's universities by donating funds, providing expertise and launching cooperative initiatives.

This support has been helpful, but overall progress is very slow, and frequently interrupted. Greater effort is needed. If the Iraqi government is to play a leading role in information society transformation, then it needs a comprehensive programme of reform. The keys to this reform are the decentralisation of the Iraqi educational system and telecommunications sector liberalisation. Currently both are over-centralised. If decentralised, these entities will have freedom to determine their own policies, regulations and curricula, which will lead to more online content.

Policy environment

The Iraqi ICT policy landscape is far behind its neighbours. The country's Ministry of Communications is in charge of the national telecommunications and internet infrastructure. At the moment internet services rely on traditional telephony (i.e., dial-up), which is outdated. There is also no competition allowed from free-market internet service providers (ISPs) other than the incumbent. The ministry has not yet planned a national ICT policy development process, which is a foundational milestone. A United States (US) vendor[1] proposed an ICT roadmap for the country in 2003, but it was not taken forward.

As a sign of the lack of a coherent policy vision, an e-government project,[2] funded by the Italian government, was one of the early ICT projects with promise after 2003. However, the administration of this project has shuffled backwards and forwards among many Iraqi entities, and little has been obviously achieved.

However, regarding the policy environment that is shaping access to information and knowledge in Iraq, the following key observations can be made, suggesting all is not lost:

- The Iraqi government has adopted constitutional policies regarding censorship and freedom of expression.[3] Diverse civil society bodies (economic, business, human rights, media, etc.) now have the space to work freely online. Many have built their own websites and started to create online content. Despite the technical and administrative instability in the country, there are some success stories. Yet there also remains a long way to go.
- The government also encourages public-private partnerships in nation building – which has implications for developing online content and online content platforms.
- In order to encourage an online culture, it urges citizens to participate online, to give feedback, criticism and suggestions in connection with current and proposed governmental policies via email and online forms. However, it is also noted that the online culture in Iraq is weak due to education levels, technical know-how, and a general sense of desperation and uncertainty in the country.
- The government has drafted, with the aid of the World Bank, three new milestone laws, referred to as "Future of Communication" laws. These are the Telecommunications Liberalisation and Free Market Law, the Communications Sector Law (dealing with privatisation), and the Communications and Media Commission Law (which establishes regulatory conditions in the country).
- With the aid of the international community and expat Iraqi academics, the government held several workshops, study tours and summits in order to develop a vision of higher education reform.[4]

1 ICT roadmap for Iraq proposed by a US vendor in 2003: pws.prserv.net/sadowsky/papers/iraqpolicy.pdf

2 Willan, P. (2005) Italy, Iraq agree to strengthen e-gov't cooperation, *InfoWorld*, 14 January. www.infoworld.com/t/platforms/italy-iraq-agree-strengthen-e-govt-cooperation-348

3 Iraqi Constitution: www.uniraq.org/documents/iraqi_constitution.pdf; www.cabinet.iq/dostor.htm

4 International symposiums on higher education in Iraq: www.wmin.ac.uk/iraq-he; International Conference for Iraqi Experts in the Diaspora: www.parliament.iq/iete; UNESCO International Conference on the Right to Education in Crisis-Affected Countries: portal.unesco.org/fr/ev.php-URL_ID=43845&URL_DO=DO_TOPIC&URL_SECTION=201.html

- In 2008, in light of an improved security situation in the country, the government issued a stimulus package to encourage the return of Iraqi expats and displaced intellectuals so that they can help rebuild their country.[5] This is a step towards enhancing the country's transformation to an information society using their skills to modernise all sectors, with the education sector as a priority.
- That same year, it established a formal investment commission[6] to encourage foreign direct investment. This will help in the rehabilitation and reconstruction of the country, including the development of infrastructure, which will have obvious spin-offs for accessing online information and knowledge.

Legislative environment

The Iraqi parliament[7] is the sole legislative body in Iraq. Table 1 summarises the current status of key legislation that lays the foundations to the country's ICT roadmap.

The table suggests that not much has been done to encourage online content specifically. This is largely due to the country's political and security instability and corruption – all of which have been the focus of legislative debates and processes. Even for legislation that has been passed, not much has been done to implement it on the ground, due to the country's instability.

The parliament has convened various working groups and committees[8] to shape sector roadmaps and form collaborations around certain activities. Online information and knowledge is a cross-cutting concern in a number of these activities. However, many of these activities are not meeting expectations.

Access to online education

Almost all aspects of life in Iraq have deteriorated over the past three decades due to three major wars and international sanctions. As a result, the country has fared poorly in a number of recent information society indices, such as the Arab World Competitiveness Report 2007,[9] the World Economic Forum Global Information Technology Report 2008-2009,[10] and the International Telecommunication Union (ITU) ICT Development Index 2009.[11]

Iraqi universities and institutes have also suffered from being cut off from progress in educational curricula, teaching methods, modern technology and research. This, together with a lack of skilled teachers and lecturers, has had a massive negative impact on the country's educational system.

A further burden has come from outdated telecommunications, very limited internet access, and, up until 2003, a ban on citizens going online. The effect of this can be summarised in one simple statement: massive online ignorance. At the same time, after 2003, the assassination of Iraqi academics and other highly qualified intellectuals[12] had a highly destructive effect on the work of educational institutions and the state in general. Many intellectuals have also left the country because of the dangers they faced.

However, post-2003, there have been various efforts aimed at modernising education using ICTs, developing and sharing e-content, and building the required skills in this regard:

- In 2006, a major online educational project called Iraqi Virtual Science Library (IVSL)[13] was launched to provide free access to thousands of scientific journals from major publishers and a large collection of online educational materials for different science categories. This project is a collaboration with various US government and academic bodies.
- Some Iraqi universities have started to offer partial online educational materials through e-libraries, including theses, research and journals. However, currently only two universities[14] among 23 governmental universities, 18 private colleges and 37 technical institutions[15] are doing this. The poor progress is due to a lack of skills and internet infrastructure and internal policy gaps.
- In May 2006, the United States Agency for International Development (USAID) launched the Iraqi ICT Alliance,[16] an initiative that encourages national and global public-private partnerships to enhance opportunities in the ICT sector in Iraq. However, little has been heard from the project since its unique inauguration launch.
- In 2007, the United Nations Educational, Scientific and Cultural Organization (UNESCO), in partnership with the Iraqi Ministry of Education, launched the Iraqi Schools Text Book Project.[17] The project aimed to give pre-university students (primary, intermediate and secondary) access to official school text books.
- The Iraqi Commission for Computers and Information (ICCI),[18] with the aid of Cisco Systems, has launched

5 www.moheiraq.org/MinistrActivity.ASP?whichpage=13&pagesize=10

6 www.investpromo.gov.iq/?q=en

7 www.parliament.iq

8 www.parliament.iq/english/Iraqi_Council_of_Representatives.php?name=singal9asdasdas9dasda8w9wervw8vw854wvw5w0v98457475v38937456033t64tg34t64gi4dow7wnf4w4y4t386b5w6576i75page&pa=showpage&pid=4

9 World Economic Forum (2007) Arab World Competitiveness Report 2007. www.weforum.org/en/initiatives/gcp/Arab%20World%20Competitiveness%20Report/index.htm

10 World Economic Forum (2009) Global Information Technology Report 2008-2009. www.weforum.org/pdf/gitr/2009/gitr09fullreport.pdf

11 ITU (2009) Measuring the Information Society: The ICT Development Index 2009. www.itu.int/ITU-D/ict/publications/idi/2009/index.html

12 List of Iraqi academics who have been killed, threatened or kidnapped: www.brusselstribunal.org/academicsList.htm

13 www.ivsl.org/enter.html

14 University of Technology: www.uotiq.org and University of Baghdad: www.uob.edu.iq

15 List of Iraqi academic institutions: unesdoc.unesco.org/images/0013/001386/138665e.pdf

16 www.iraqictalliance.org

17 schooltextbooks.org

18 www.icci.edu.iq

Table 1: **Status of key ICT legislation in Iraq**

Law	Status	Notes
Joining the Arab ICT Organization (AICTO)	Under discussion since 2007	Although not a law, this would be a foundational step towards enhancing Iraq's regional knowledge and expertise.
Communications and Media Commission Law	Under discussion since 2008	A new law – replacing the former one set up by the US post-2003 – for regulating communications, licensing and related services.
Telecommunications Liberalisation and Free Market Law	Under discussion since 2008	Provides the platform for telecommunications modernisation and harmonisation.
Communications Sector Law	Under discussion since 2008	A new law that, amongst other things, governs the privatisation of state assets.
Investment Law[1]	Issued in 2008	Encourages foreign direct investment in rehabilitation and reconstruction projects.
7th Amendment of the Iraqi Higher Education Ministry Law[2]	Issued in 2007	Establishes two new universities in two of the least-developed governorates of Iraq, Missan and Muthana.
Amendment of the Iraqi Education Ministry Law[3]	Issued in 2008	Recruitment or employment of higher education degree holders (Master's & PhD) in the Ministry of Education to develop education curricula.
Universities Services Law[4]		Aims to strengthen universities, including working conditions (e.g., salary packages, scholarships, etc.)

1. www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqdjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadkj&file=showdetails&sid=1003
2. www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqdjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadkj&file=showdetails&sid=654
3. www.parliament.iq/english/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqdjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadkj&file=showdetails&sid=8
4. www.parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawqwqdjasdba46s7a98das6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadkj&file=showdetails&sid=1518

the Cisco Academy Training Center (CATC),[19] to enhance the advanced networking infrastructure skills of Iraqi government staff. An e-library has also been developed.

- UNESCO has launched the International University Network for Iraq (IUNI),[20] a campaign calling for global collaboration to help Iraqi universities modernise.
- Some Iraqi expat academics are doing their best to assist their homeland through knowledge transfer, advice and links to global partners. Conferences and site visits have been held at higher education institutions. Two major Iraqi non-profit bodies founded by expats are leading these efforts: the Iraqi Higher Education Science and Technology Organisation (IHESTO)[21] and the Network of Iraqi Scientists Abroad (NISA).[22]
- Two international universities have opened branches in Iraq's Kurdistan region (the safe area in northern Iraq): the American University of Iraq-Sulaimani (AUI-S)[23] in Sulaimani and the Lebanese French University (BMU)[24] in Erbil. Their curricula content is online.
- Some Iraqi ministries have started building their own websites offering some online educational materials; these are the Ministry of Higher Education,[25] Ministry of Communications,[26] Ministry of Planning and International Cooperation,[27] and Ministry of Science and Technology.[28]

However, despite these initiatives, several challenges remain. The Iraqi Ministry of Higher Education is over-centralised, like other state-run entities, which is a burden on the university system. In addition to outdated policies and regulations, and its total control of the education system, the ministry still does not accredit and approve the certificates of online/distance learning universities.

At the same time, while the Iraqi government's 2008 stimuli package encouraged the return of Iraqi expat intellectuals, many of them have not yet returned home due to ongoing threats to their security and uncertainty.

Bearing in mind the anticipated growth in subscribers in the country, mobile offers a good platform for online educational content, especially for students and researchers. However, the three mobile operators currently operating in Iraq have not yet provided online data services. Moreover, their voice-only services are generally of poor quality.

19 www.icci.edu.iq/Cisco/cisco%20academy.html

20 portal.unesco.org/education/en/ev.php-URL_ID=39422&URL_DO=DO_TOPIC&URL_SECTION=201.html

21 www.wmin.ac.uk/iraq-he

22 nisa-iraq.org

23 www.auis.org

24 www.bmu-me.net

25 www.moheiraq.org

26 www.iraqimoc.net

27 www.mop-iraq.org/mopdc

28 www.most.gov.iq/english/index.php

New trends

Various stakeholders in Iraq are proactively working towards developing online information and making the necessary technological changes in the country. The country's constitution, post-2003, supports this in theory. A turning point occurred in August 2008, with relatively better security conditions in the country due to efforts at reconciliation, striking political accord, a lessening of sectarian violence and fighting, and the formulation of legislation. Since August 2008, and in the wake of people feeling safer, more online information by civil and governmental bodies has appeared.

People have started to use their real names online, provide contact details, and make other data available. Citizen participation online is increasing with relatively better services such as electricity and the availability of the internet. The media and defenders of human rights and the freedom of expression, in particular, have flourished. Many have built online content aimed at citizen education using international funding.

Yet the Iraqi parliament is currently in a policy and legislative bottleneck, with fragmented policies seemingly having very little impact. National elections happen on 30 January 2010, and the country will have a new parliament. It is widely expected that major investments, reconstruction programmes and technological modernisation will happen after the elections.

While there are two new pieces of legislation awaiting debate and approval – dealing with the decentralisation of the higher education ministry and the privatisation and liberalisation of the telecommunications sector – a clear ICT policy is also needed. Citizens are waiting for a major scaling up in internet access, access to online courses, and the widespread availability of ICT training programmes. Legislation aimed at stimulating investment is in place, but the country awaits major investment initiatives to launch big projects successfully. The Iraqi government will not be able to develop online information projects without international aid. The Iraqi people are counting on international knowledge transfer in this regard.

Action steps

The following action steps need to be taken to improve access to e-content in education in Iraq:

- There is a need for an overall post-conflict reconstruction strategy, which includes improving electricity supply, internet availability, and other basic infrastructures.
- There is an urgent need for a coherent ICT policy to guide the development of the information society in Iraq.
- There is a need for capacity building for education policy formulation, planning and management.
- There is a need to decentralise the higher education sector.
- Greater emphasis needs to be placed on teacher training.
- International investment is needed to develop online content. ■

JAMAICA

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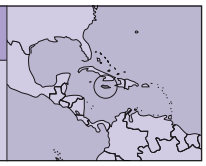

Introduction

Jamaica is among the countries regarded as being the more advanced in terms of their policy and legislative frameworks for accessing information. The country enjoys a free media and constitutional protection of freedom of expression. There is an operating Access to Information Act (2002), and electronic communications tools such as mobile phones have helped to make basic voice communication a reality for a wide cross-section of Jamaicans. However, effective access to online information for Jamaicans remains a major challenge. There is still a relatively low level of broadband access for the majority of citizens and over 70% of households still do not have access to a computer.[1] These factors are serious constraints on the government's move to improve democracy through e-government programmes. In this country report, we define e-government as "the use of the internet and internet-based technologies for seamless transactions online between government agencies, citizens, business and other government agencies."[2] It is argued that e-government programmes can spur demand for information and communication technologies (ICTs) and internet access among Jamaicans from all socioeconomic backgrounds.

Key access statistics

Jamaica enjoys multi-modal connectivity to the internet. A submarine cable, owned by Cable and Wireless, links the region to North America through the Montego Bay Freeport in western Jamaica. Another network called Fibralink (owned by Columbus Communications) connects the Americas Region Caribbean Optical Ring System (ARCOS) system, based in the Dominican Republic, to three landing points in Jamaica. In addition, the Trans Caribbean Cable Network 1 (TCCN1), a submarine cable established by Trans Caribbean Cable Company (TCCC), links the Caribbean region to the United States, Mexico and South America.[3]

In terms of wireless connectivity, mobile telephony service providers currently offer mobile WiMAX services, but mostly to high-end clientele in the main urban areas of Kingston and St. Andrew. In the case of household broadband penetration across all socioeconomic groupings, levels are dismally low at approximately 13%.[4] As fixed lines are the primary means for household internet connectivity, a fixed-line teledensity of 14.3%[5] foreshadows the relatively low wired internet uptake. Slow take-up of the internet could also be attributed to the fact that most Jamaicans are lacking affordable hardware for internet connectivity, with a national stock of only 6.7 computer units per 100 people in 2006.[6] While there is potential for expanding access via mobile broadband, and through the new triple-play communications provider Flow, widespread, effective access will remain elusive without adequate public policy planning provisions and resource allocation.

The limited access to ICT hardware in Jamaica is likely to be further compounded by the reintroduction of a general consumption tax (GCT) on all purchases of computers effective 1 April 2009.

Policy environment supporting online access

Jamaica has a fairly advanced ICT policy environment, which has matured since the liberalisation of the telecommunications sector in 2001. The main policies guaranteeing access to government information using the internet and other means are:

National Information and Communications Technology (NICT) Strategy

The National Information and Communications Technology Strategy is the main policy document underpinning Jamaica's ICT sector development. E-government, which is a critical dimension of the strategy, is identified as having the potential to help advance Jamaica's social and economic development by simplifying government processes. The plan envisages this through systematic growth in ICT applications and by making information more widely available to Jamaicans through innovative and easily accessible online information systems. Other relevant aspects of the NICT Strategy crucial to the e-government dimension include the need for low-cost computers to encourage e-inclusion; the expansion of information literacy, education and training; and fostering e-business through training and reform of conventional industry approaches.

Internet treaties and intellectual property

Jamaica has signalled its commitment to adopting the internet as a key component of business and social life through its accession to the World Intellectual Property Organization (WIPO) Internet Treaties in 2002. This move was aimed at stimulating demand for products and services by limiting

1 Dunn, H. (2007) *Mobile Opportunities: Poverty and Telephony Access in Latin America and the Caribbean: Jamaica Country Report*, TPM/DIRSI. www.dirsi.net/en/node/105

2 E-Jamaica (2009) Local and Global Trends in E-Government. www.e-jamaica.gov.jm/about/trends.htm

3 Gordon, V. (2007) Jamaica Connectivity Report. cms.ict4djamaica.org

4 www.budde.com.au

5 Ibid.

6 World Bank (2006) ICT at a Glance: Jamaica. devdata.worldbank.org/ict/jam_ict.pdf

barriers to trade in cyberspace and providing legal protection and recourse for those who ply their trade in intellectual property online.

Telecommunications Policy

The Jamaican government's Telecommunications Policy (2009) seeks to build on the pervasiveness of mobile communications devices as gateways to promoting wider access to and use of the internet. Internet access and telecommunications policies are interlinked in a strategy to move from mainly mobile voice to a digital broadband network capable of accommodating expanded e-government traffic, data network activities and increased video content in line with the demands of converged next-generation networks, Web 2.0 and beyond.

Legislative environment

In Jamaica, there are two main laws underpinning access to online information and access to ICTs in general. These are the Access to Information Act 2000 and the Electronic Transactions Act 2007.

Access to Information Act 2000

The Access to Information Act guarantees every Jamaican the right to access specific government information through both electronic and non-electronic means. Part II of the Act, termed "Right to Access", makes it clear that electronic means of accessing information from the government – including the internet – should be an option available to all citizens. While the Act makes certain exceptions for national security and other sensitive information, it has proved to be useful in exposing government excesses and in increasing vigilance and accountability. One major national newspaper regularly publishes information gleaned from government agencies under the Access to Information Act. While the stated intention of the government is to abolish the age-old Official Secrets Act, this remains on the books as an apparent safeguard against a new brigade of campaigners for even more freedom of information.

Electronic Transactions Act 2007

This is an important piece of legislation, which supports Jamaica's e-transactions policy, and is meant to stimulate greater business confidence and demand for online services. However, detailed regulations and intensive public information campaigns relating to the Act and its provisions still remain absent or inadequate.

Jamaica's e-government framework: Advancing democracy through access to public information online

In Jamaica, the process of citizen access to online government services through digital means is at an embryonic stage. Most of the information about services offered by the government is still in an analogue state, requiring physical searches and in-person presence for successful transactions.

There are some notable exceptions. The government maintains a strong central website operated by the Jamaica Information Service (JIS),[7] and many departments, such as the Broadcasting Commission, the Office of Utilities Regulation and the Customs Department also operate interactive website services. For several years now, citizens have been able to obtain their birth certificates, marriage certificates and other personal records at a faster rate through an online applications system. However, payment and collection of the items ordered often involve attendance at the office and queuing for long periods. Some forms and tax services records are available online but the process is still experimental and underdeveloped.

Various rating organisations have revised downwards the scores for Jamaica's e-readiness and e-government frameworks. The United Nations E-Government Report 2005 noted that Jamaica led the Caribbean region with a 0.5064 score on its index, followed by Barbados with 0.4920, Trinidad and Tobago with 0.4768 and the Bahamas with 0.4676. The Jamaican government's information gateway site (JIS, mentioned above) was especially praised in the report for its well-organised information on all facets of government activity. However, the 2008 E-Government Report indicated a major drop in Jamaica's ranking from 59th in 2005 to 85th in 2008. Barbados now leads the region, followed by Trinidad and Tobago, the Dominican Republic and the Bahamas completing the top four in the Caribbean region.

Reviving the momentum and establishing an effective e-government framework in Jamaica is inextricably linked to increasing physical access to internet connectivity, especially by the lower socioeconomic strata. The government needs to re-energise its will and strategies to develop the sector and to create the vision to steer its expansion in ways that can encourage democracy. To accomplish this goal Jamaica must immediately address its bureaucratic and fragmented ICT regulatory regime, improve multi-sectoral coordination among relevant public sector agencies and expand incentives for ICT training and service provision among citizens.

There are a number of ways in which access to online government information for citizens needs to be improved:

Updating outmoded regulatory laws and systems

As an example of the need for policy and legislative reform, the transitional Telecommunications Act 2000 and the Broadcasting and Radio Rediffusion Act 1949, even as amended, have outlived their usefulness and should be replaced. The existing telecoms act, for example, does not speak to data services and does not stipulate any minimum standards for internet services to households by ICT services providers. These laws must be amended to mandate ICT services providers to offer reasonable and reliable access to ICT data services across the island. By making basic internet facilities

7 www.jis.gov.jm

available to households of all socioeconomic backgrounds, an increase in demand for more e-government services could be expected. Overall entrepreneurial and educational activities will also increase as people consume relevant information over the internet.

A related idea is that Jamaica needs new legislation to protect and improve data security, as well as to guard against unauthorised interception of electronic communications and to prohibit computer misuse.

Improving policy coordination in e-government initiatives

At the level of information, technical expertise and maybe financial resources, there could be more coordination between present e-government initiatives in Jamaica. While JIS operates an effective internet portal through which citizens can access information on government services, programmes and activities, another portal, e-Jamaica,[8] sponsored through a partnership between the Government of Jamaica and the Inter-American Development Bank (IDB), is meant to be the main e-government internet access point. However, the e-Jamaica website contains mainly dated information and information of a limited range. The JIS seems better resourced and consistently displays up-to-date online information.

While a dynamic society such as Jamaica need not rely on a single source of government information, care has to be exercised to rationalise limited government resources to the best possible effects. Since the JIS is an executive agency of the government, it may be the best entity to help facilitate and coordinate such e-government initiatives. An optimal strategy could well be to create more synergy between the e-government project and the JIS in terms of knowledge and the sharing of technical expertise. Outright integration or at least better role coordination between the two would help ensure that Jamaicans can gain greater access to government information online in a seamless and coordinated manner.

Improving capacity-building initiatives

An educated population provides the best opportunity for e-government. In Jamaica, illiteracy levels of about 20% and information illiteracy handicap the uptake of e-services. Building the capacity of citizens to use ICTs and manage information is an important dimension of strategies aimed at promoting democracy and human rights and at radiating the benefits of online information services to all citizens. The Jamaican government initiated an e-learning programme in 2006 to help students gain better passes in their end-of-high-school and university qualifying exams. This project is funded from the financial resources generated by a Universal Access Fund, and involves building out ICT infrastructure across some 186 high schools, and the provision of instructional technologies and audiovisual materials.

While this project is a step in the right direction, there remains inadequate attention to the development of teacher support and the pedagogical requirements of e-learning as distinct from conventional educational delivery. While promoting examinations-based objectives, the programme does not seem to sufficiently emphasise the intrinsic potential of ICTs as tools that the students can use to become better citizens and to improve their lives. The implication is that even though students have been taught about how to use the computer, they still might not have certain knowledge about how they can use these tools to become more involved in government processes and to access opportunities and information through e-government programmes.

The government has also partnered with the IDB to establish community access points (CAPs) across Jamaica. These CAPs are intended to "enable low-income citizens to gain access to information and services that are available online, such as employment exchange, market information, distance learning and technical assistance."[9] Currently, there are only twelve CAPs across the island. By systematic expansion enabling wider access to online information, this programme can help advance human rights in low-income communities.

For more effective growth, the CAPs programme will need to reform some of its qualifying criteria for community participation. Among the onerous provisions are the requirements for prospective CAPs communities to identify and refurbish the intended location for the project, identify a management structure for the operation of the CAP, and shortlist potential managers and/or supervisors. Alternative selection processes are needed for identifying communities as access points in order to realise the full potential of the programme.

New trends

The emergence of third-generation (3G) mobile services is an important development, since it offers people an avenue of high-speed access to online information through alternative channels other than traditional desktop computers. These emerging mobile services are demanded by upwardly mobile sections of society, but are less utilised among lower-income citizens as cost constraints pose a formidable challenge. However, considering the half-life of technology and a highly competitive market, we anticipate that over time the now expensive internet-enabled 3G mobile technologies will be reduced to more affordable levels for low-income Jamaicans, thereby opening up additional avenues for mobile access to e-government services.

Action steps

Among the immediate to medium-term ways in which Jamaican policy makers can assist citizens to exercise the right to online information are the following:

8 www.e-jamaica.gov.jm

9 Office of the Prime Minister (2009) ICT Investment Reaching Schools, Communities, Businesses. www.jis.gov.jm

- The Jamaican government must move swiftly to mainstream more government services online, by designating a lead strategist to expand e-government infrastructure and content services.
- A combined initiative of government, the private sector and civil society is needed to drive a public education campaign, making Jamaicans more aware of their right to access information, including through the internet.
- The government should update existing legislation and organise greater policy coordination of agencies, departments and projects aimed at making internet services widely accessible, including for inner-city and rural communities.
- The government should remove the retrograde GCT on computer purchases and provide low-cost loans for computers and ICT training.
- There is a need for a more widely available management and information literacy training programme that could help further establish small cybercafés and telecentres in rural and low-income urban areas.
- There is also a need to increase adult literacy training services, and expand information literacy programmes into the primary and secondary education curricula to help unemployed persons and young adults seek out business opportunities online and generate content services.
- The government must create new laws to control cyber crime, policies to encourage greater business uptake of online services delivery and regulations to give effect to the recently adopted Electronic Transactions Act. ■

JAPAN

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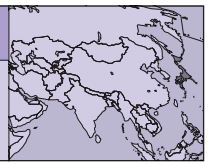

Introduction

An act set up to establish an environment in which minors can safely and securely use the internet became effective on 1 April 2009 in Japan. Among other provisions, it mandates all mobile operators to provide filtering as a default service to minors. Internet content providers are expected to follow suit voluntarily. The original draft proposed by the members of the ruling Liberal Democratic Party (LDP) called for the establishment of a special committee directly placed under the prime minister to define what is harmful, and to set standards for the filtering and rating of content on the internet.

The opposition Democratic Party (DP) had prepared a similar draft, but given pressures from advocacy groups and industry, took a position against direct state involvement. As a result, the Act passed in congress acknowledges the private sector to be primarily responsible for the quality of content, as per a consensus reached by all parties.[1] However, most mobile operators *voluntarily* introduced filtering services before the enforcement using the rating service provided by a private company, NetStar.

This move symbolises the growing concern and pressure to "do something" over the use of internet and mobile, and says farewell to the open and liberal use of the internet in Japan.

Policy environment

The policy regarding the use of online resources is described in the u-Japan Policy Package established in 2004.[2] There are two categories of policies under the package. One is to promote the use of and access to online resources. These policies promote economic and social development by building nationwide information infrastructure and accelerating the use of online resources to stimulate economic growth and facilitate social and human development.

Another category concerns regulatory policies to suppress or control illegal, harmful or "unfavourable" use of online resources. The sentiment behind this is that "the online world is becoming too wild and we need to control it to achieve a safe and secure society." This rationale has become stronger in the last few years.

The u-Japan Policy Package consists of three pillars: 1) the development of ubiquitous networks, 2) the advanced use of ICTs and 3) upgrading an enabling environment. The first category of policies are placed under the first two pillars, while regulatory policies fall under the third pillar.

The policies to promote online access are found under the pillar of "advanced use of ICTs". These policies aim to get "80% of the population to appreciate the role of ICTs in resolving social problems by 2010." To this end, promoting the "creation, trade, and use of content" and promoting "universal design" are two key policies identified. The former includes the creation and usage of digital archives, while the latter includes the following four items aimed at senior citizens and persons with disabilities:

- The development of advanced agent technology
- The enhancement of user interfaces
- Ensuring information accessibility
- Building support systems for the elderly and disabled.

Legislative environment

Constitution of Japan guarantees the secrecy of communication

Article 21 of the Constitution of Japan guarantees the secrecy[3] of communication in addition to other rights as follows:

> Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.[4]

Given this constitutional protection, the Telecommunication Business Act also protects the secrecy of communication and prohibits censorship by service providers. Violation of the secrecy of communication can be punished by up to two years in prison. Yet, due to recent social pressure, exemptions to the strict protection of the free flow of information have been added to the law. Two examples are the Act on Interception of Communication for Criminal Investigation, enforced in 2000, which allows law enforcement officials to wiretap online communication; and the Act on Liability Limitation for Internet Service Providers (ISPs), enforced in 2001, which gives certain immunity to ISP liabilities – for example, if they follow the formal procedures to provide notice

1 Since opposition parties hold the majority of votes in the senate, the ruling party alone cannot easily pass laws.

2 "u" was taken from "ubiquitous network". For more details, see: www.soumu.go.jp/menu_seisaku/ict/u-japan_en/new_plcy_pckg.html

3 The word "secrecy" is used in the constitution, which means more than privacy. Any communication, including letters and telephonic conversations, should be "secret" for the parties involved. This means no censorship is allowed in principle. This is a response to the Second World War, when the military government opened private correspondence, censored it and punished the author if it criticised the government.

4 In Japan, the attempt to control online communication had been kept relatively modest. Behind this was the constitution, which guarantees free speech, no state censorship and the secrecy of communication established during the post-war democratisation process. This was promoted by the occupying forces of the Allies and supported by Japanese citizens.

to the actor who posted illegal content online, and take the content down if the actor does not respond within a certain number of days.

Personal data protection

Another significant move is the full enforcement of the Act on the Protection of Personal Information in 2005. This Act was introduced mostly as a result of growing social pressure to deal with "a remarkable increase in the utilisation of personal information due to development of the advanced information and communications society." It aimed to "clarify the responsibilities of the State and local governments" and "prescribe the duties to be observed by entities handling personal information regarding the proper handling [of this information]."[5]

It severely limits the use of personal information and intends to prevent its improper use and unintended leakages as well as its theft. Since there is no direct penalty imposed by law, there is still little to deter those sending spam, committing online fraud and "phishing".

To ban or not to ban: Mobile use by children

As mentioned in the introduction, the Act enforced in April 2009 – also known as the Net Content Regulation Act for Minors – forces all mobile operators to provide default filtering to minors. While filtering itself is not new in other countries, Japan followed Korea on the issue of compulsory filtering for mobile operators, indicating the special situation around the use of mobile internet in Japan.

Internet as an integral part of mobile usage

Thanks to a flat rate for packet services, 75% of all mobile users access the internet via their phones, and almost all mobile phones have a "hot button" to connect directly to the net. In fact, the use of web browsers and internet email, as opposed to short message service (SMS), has become an integral part of mobile usage. This trend is especially visible among the youth who may not have personal computers (PCs) of their own, and want to retain the privacy and secrecy of their communication with their friends from their parents' purview.

There are different kinds of mobile services targeted at the youth. Most popular among males are the game sites where a vast number of downloadable games are available. Among the sites, "Moba-ge-town" is the most popular, where, in addition to games, other types of services and downloads such as social networking, news, novels, music, horoscopes, online shopping, etc., are also provided. The users do not have to pay any subscription fee, yet they can download and play as many games as they like.[6]

What makes Moba-ge-town attractive is the bulletin board and other social networking functions that let users communicate with each other and build an online community. The registered number of users exceeded 10 million in April 2008, of which 40% are teenagers, 60% male and 40% female.[7]

Another popular service is "profile exchange", or "prof" for short, where users exchange their profiles including personal appearance and preferences for things like music, movies, artists, fashion, books and authors, and food. It is a simplified version of social networking and is highly popular among teenage girls. Zenryaku Profile, run by the internet company Rakuten, is the most popular site, with 5.5 million registered users.[8]

Children victims of crimes through mobile use

Many cases have been reported in which children became the victims of crime using mobile web services, such as being lured into prostitution or raped. These minors mostly used mobile dating services with the intention of finding sexual partners.

In November 2007, a sixteen-year-old high school girl was found dead in a hotel room that had been set on fire. It was found that a 30-year-old man had killed her in an attempt to commit a lovers' suicide (he had failed to kill himself and was rescued). It was revealed that they met through Moba-ge-town social networking services (SNS), bringing the dark side of mobile SNS to the attention of politicians.

Less than a month after this sensational case, the Minister of Internal Affairs and Communication (MIC) Hiroya Masuda made a formal request to all mobile operators and their industry association to voluntarily introduce default filtering service to minors (those under eighteen). It was speculated that behind this unusual request was growing political pressure from members of congress who were determined to introduce strict content regulation and even a ban on all mobile use by children. The stock price of DeNA, the company that operates Moba-ge-town, dropped sharply right after the idea of banning all mobile use for children started to spread widely in political circles.

In December 2007, immediately after Minister Masuda's request, Congresswoman Miho Takai from the opposition DP party revealed her plan to introduce mandatory filtering for minors. In March 2008, similar yet stricter draft legislation was proposed by a congresswoman from the ruling LDP party, Sanae Takaichi. This would give the national government the authority to set the standard for content rating and filtering to be adopted by all mobile operators and to make it compulsory.

Moves to introduce strong measures continued. Prime Minister Yasuo Fukuda indicated his intention to ban the use and possession of mobile phones by children in April 2008, a proposal supported by some LDP members of congress. In January 2009, the Ministry of Education and

5 Quote from the Act itself: www.japaneselawtranslation.go.jp

6 The site generates its revenue from advertising.

7 The annual revenue of DeNA, the company that operates Moba-ge-town, is USD 370 million, of which 85% is from advertising and other income from Moba-ge-town. See:www.dena.jp/en/ir/pdf/FY08Q4%20Operating%20Results.pdf

8 The registered number includes all previous cumulative registrations and does not reflect the exact current number in use.

Science issued a formal notice to all education commissions requesting them to prohibit students in primary and secondary schools from carrying and using mobile phones during school hours.

All of this was perceived largely as an attempt to introduce state-based censorship over the internet, and some citizens' groups started to protest. The Movement for Internet Advanced Users (MIAU), an advocacy group focusing on freedom of speech and rights for internet users, issued a statement against the draft legislation on 23 April 2008. The WIDE Project, a research consortium focusing on the technical aspects of the internet, also signed the statement prepared by MIAU, together with numerous academics and activists.

What is unique is that the technical internet community and private companies joined in the protest. From the internet and mobile industry, Microsoft Japan, Yahoo Japan, Rakuten, DeNA and NetStart also published a joint statement against the draft. The Japan Internet Service Providers Association (JAIPA) voiced their strong concern for fear of government-driven censorship and extra burdens placed on ISPs. They launched extensive lobbying efforts in an attempt to sway members of congress. The Japan Newspaper Association also submitted a statement against the strong measures.

The concession between the LDP and DP that deleted the state-based rating enforcement from the final Act was achieved partly due to this unusual alliance between citizens' advocacy groups and the industry.

As a consequence of the new Act, two non-profit organisations, the Content Evaluation and Monitoring Association (EMA) and Internet Rating Observation Institute (I-ROI) were established by the private sector in 2008. EMA conducts extensive evaluation of mobile sites and provide certificates, which in turn are accepted by rating service providers and mobile operators, to grant access to these sites for minors. While many major mobile sites have obtained certificates from EMA, the outlook for private sector-driven control is not so positive.

New trends: More control ahead

Despite the certificates, the number of victims falling prey to crime through the use of mobile services did not show a significant decrease, according to statistics released by the National Police Agency.[9] There has, however, been a clear shift in the number of crimes through the use of different mobile services: fewer crimes are committed using dating services, but more using mobile SNS sites in general.

The police have now tightened their grip on the dating services by establishing a special law to oblige dating services to register with them. Minors are not allowed to use the services, and verification of users' age by sending a copy of a driver's licence or the use of a credit card is enforced. As a result, attempts by young people to look for sexual partners have moved from dating services to general social networking or profile exchange services.

In April 2009, the police made a strong request to eight major SNS providers to strictly verify the ages of their users so that minors cannot read harmful content online. It is speculated that the police will further enhance the regulatory measures to mandate the monitoring of all communications related to social exchanges between men and women across all internet service providers, and not only mobile service providers.

In short, the new moves by the authorities are a challenge to *all* online content and services across the entire gamut of the internet. In part it was true that the mobile market had attracted much attention from children, and some of the problems looked peculiar to mobile use. Yet if we zoom out a little, one can see that the attempt to constrain online speech and interaction does not apply only to mobile use, but is rather aimed at the internet as a whole.

Action steps

Rather than severely punishing the criminals, the police tend to consider mobile operators and ISPs as the source of social problems. The danger is that this sentiment is widely shared by the majority of the public as well as some hardline politicians.

Advocacy must now pay full attention to this new trend and further explore and consolidate an alliance between citizens' groups and service providers, as well as with parent-teacher associations, the media, academics and the youth themselves.

There also exists a need to provide adequate guidance to minors, help for children who suffer from cyber bullying or addiction to mobile use, or are harassed in online encounters with strangers. A Network Safety Centre (*Net Anshin Centre)* was launched in June 2009 to provide help via telephone and online interactions as well as to organise seminars in all municipalities in the Oita prefecture, a local province in the Kyushu Island of Japan.

There are similar grassroots activities addressing mobile use by minors in local communities. A networking effort to link these activities is essential. ■

References

Aizu, I. and Bayer, J. (2009) Beyond Network Neutrality: State of Play in Japanese Telecommunication Competition, *Telecommunication Journal of Australia*, July. www.epress.monash.edu/tja/about.html

Toda, K. (2008) Even "watered down" Internet Control Law Leaves Gap with Industry: Unconcealed anxieties over national control among Microsoft, Yahoo, Rakuten, *Nikkei Business Online*, 23 June. business.nikkeibp.co.jp/article/eng/20080623/163334

9 "Criminal Cases with Dating Services in 2008", available only in Japanese, at: www.npa.go.jp/cyber/statics/h20/pdf46.pdf

JORDAN

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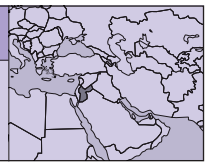

Introduction

This part of the world (the so-called Arab world) has a long tradition of secrecy when it comes to accessing information. Five centuries ago, the invention of printing played a vital role in curbing the authority of the church, and new technologies such as the internet and satellite television can play a similar role. These "freedom technologies" weaken hegemonic ideologies.

The internet first became available in Jordan in the mid-1990s, giving Jordanians unprecedented opportunity to seek, receive and impart information regardless of national borders. It also exposed the public to views other than those that had been sanctioned by the government, and gave people the opportunity to become "newsmakers". Bloggers are potential competitors to the traditional media outlets, especially in closed societies.

As a result, Jordan has tried to adjust its policies governing information and communications technologies (ICTs) so that it can use the new information tools and at the same time exert some measure of control over their content.

The most recent survey on ICT use[1] showed that 94% of Jordanians have mobile phones,[2] 39% have access to the internet and 64% use the internet to access information.[3] The government recently exempted computers from sales tax (which stands at 16%). Jordan also reduced the tax on internet services from 16% to 8% in 2008, while the Ministry of Information and Communications Technology (MOICT) aims to ensure that half of the population has internet access by 2011.

However, the authorities also blocked access to the *Arab Times*[4] inside Jordan after it published a number of articles criticising the Jordanian government.

Policy, legislation and censorship

At the advent of democracy in 1990 Jordan adopted the National Charter, which outlines general guidelines concerning questions of authority, rights and responsibilities of citizens and the state. The National Charter, along with the Jordanian Constitution, provides a compass for the national debate on fundamental issues.

Section four of the National Charter provides that:

> Freedom of thought and expression and access to information must be viewed as a right of every citizen, as well as of the press and other mass media. It is a right enshrined in the Constitution and should under no circumstances be abridged or violated. The state must guarantee free access to information to the extent that it does not jeopardise national security or the national interest.[5]

Jordan is also party to the International Covenant on Civil and Political Rights (ICCPR),[6] which entitles each person to seek, receive and impart information regardless of national boundaries.

The Jordanian government is committed to promoting the adoption of ICTs in all sectors. For example, it hopes that by placing its own procurement documents online it will act as a model for other industries to follow suit. The government understands the benefits to the country of having a highly skilled ICT workforce and is working to promote and grow research and development capabilities in public universities and research institutes, as well as forming joint ventures between the public and private sectors. At the same time, access to internet content in Jordan remains largely unfettered, with filtering selectively applied to only a small number of sites. However, this access is provided by tolerance of the government rather than rule of law.

The government officially claims that there is no censorship when it comes to the diverse sources of online news available in the country, email or any other kind of internet content. Nevertheless, it recently shut down 36 internet cafés in the capital Amman because they permitted customers to access pornographic sites.[7] It also blocked access to the *Arab Times*, as mentioned earlier.

Regulations governing internet cafés were issued at the end of 2001. According to the regulations the government is responsible for issuing licences. They also stipulate that internet café owners must be "Jordanian men of good repute", who have never been charged with immoral crimes or fraud. Internet café owners are obliged to register the names and identity numbers of users, and to keep a monthly record of the websites browsed by visitors.

Media laws and regulations encourage some measure of self-censorship in cyberspace, and citizens have reportedly been questioned and arrested for web content they have authored. There are two particularly well-known cases. Former member of the opposition Tujan Faisal was jailed by the government because she accused Prime Minister Ali Abu Ragheb of corruption. She was referred to State Security Court for having published the article in question online.[8] Meanwhile, a former member of parliament, Ahmad Alabadi,

1 Conducted by the General Department of Statistics in May 2008.

2 Mobile internet has not been introduced in Jordan yet.

3 www.moict.gov.jo/downloads/final%20report.pdf

4 www.arabtimes.com

5 www.kinghussein.gov.jo/charter-national.html

6 The ICCPR was published in the Official Gazette on 15 June 2006.

7 www.sarayanews.org/home.asp?mode=more&NewsID=14208&catID=39

8 www.islam-online.net/arabic/news/200240/25/erticle15.shtml

was sentenced to a two-year jail term for slandering the government in May 2007 on the *Arab Times* website.

Despite the absence of a clear definition of who in government is responsible for monitoring the internet, it is obvious that security services are doing this. In one or two cases the security services have detained the owners of websites for a short period.

Accessing official information

Jordan was the first country in the Arab world to adopt a Freedom of Information Law (in 2007). The Law on Access to Information No. 47 of 2007 (FOIL) applies to all citizens, including journalists.

FOIL establishes an official set of mechanisms for requesting documents and information from public institutions, and is an important step in ensuring that Jordanian citizens can fully enjoy the rights granted by the constitution. The law outlines a process for review, by the High Court of Justice, of requests that have been refused.[9] If a request to obtain information has been denied, a request for the issue to be considered by the High Court of Justice must be received within a limited time (the law encourages citizens to report to the Information Commissioner if a public institution refuses to disclose information within 30 days). The High Court of Justice has the authority to refuse a request for information or may refrain from responding to the request.

Currently, the law states that information can be withheld where issues of national security, personal freedom and public health are concerned – areas that critics of the law say could be interpreted to include nearly all information requests.

It is a unique law in the Arab world; and while it has been in force since June 2007, just three complaints have been lodged with the Information Commissioner (one each by a journalist, lawyer and researcher).

Alongside FOIL, Jordan's national e-government initiative aims to drive the nation's transformation into a knowledge society founded on a competitive, dynamic economy. The initiative launched an e-government portal[10] in the last quarter of 2006 as the official website for the Jordanian government. The portal includes procedures when dealing with all governmental entities, available to users 24/7. E-services are available online for a number of governmental entities.

Accessing online educational materials

Although the government provides schools with computers and encourages the growth of the internet in Jordan, connectivity prices remain prohibitively high for many Jordanians.[11]

Access to online information and educational resources is available to some university students. The Ministry of Education recognises that access to online information, including the World Wide Web, is vital for students, but it recognises that there is a shortage of infrastructure in rural areas.

Academic libraries in Jordan are moving from print to electronic information resources, offering access to online databases, setting up local area networks, sharing information on CD-ROMs, and linking online. All nineteen Jordanian university libraries are linked to the internet, according to a 2005 online information review.[12] A total of fifteen (83.3%) had developed collections of databases on CD-ROMs.

However, a lack of skilled staff, a shortage of funds and insufficient hardware are the main obstacles to accessing online information, as are outdated databases, high costs and poor user skills. Solutions suggested by the review include intranet development, training, and sharing subscription expenses to online databases.

New trends

Online information will present new challenges and opportunities to the government as public access to different forms and types of media increases. As citizens become information producers as well as consumers, the gate-keeping powers of major news organisations will also diminish; they will have less power to set the news agenda or manipulate the public's understanding of events.

There are some plans to increase access to online education in universities and schools. Offering free textbooks online to students to use in classrooms is becoming popular at a number of universities, and the trend could help students save thousands of dollars over the course of their college career.

The World Bank has also helped the Greater Amman Municipality to establish the Jordan Public Information Centre (PIC) in February 2006. The PIC offers internet access to the Bank's and other development partners' online resources, including free downloads of thousands of World Bank project documents and reports. Access to the PIC is open to the public, free of charge.

Action steps

- Decrease internet connection fees. The cost of internet access is prohibitively high.
- Improve the necessary infrastructure to facilitate access to the internet, especially in rural areas.
- Educate civil society and the public in general regarding their access to information rights, and how to actively exercise these rights (e.g., using FOIL).
- Amend FOIL to allow applying for information electronically (i.e., by email, not just in writing).
- Expand the mandate of FOIL to include more institutions.
- Introduce online databases and e-books for students and researchers in more universities. ■

9 2007 FOI Law, Article 17(A).

10 www.jordan.gov.jo

11 opennet.net/research/profiles/jordan

12 Younis, A. (2005) Local online information systems in Jordanian university libraries, *Online Information Review*, 29 (1), p. 54-74.

KAZAKHSTAN

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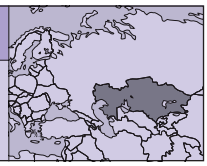

Introduction

Kazakhstan has declared the development of the information society in the country as one of the key priorities for the development of the country as a whole. The state understands the importance of access to online information or access to information by means of modern information and communications technologies (ICTs) as a prerequisite for the development of the information society in the country. Numerous achievements have been made in this area, including establishing a regulatory and legal framework, as well as investments in physical access infrastructure. However, the development of Kazakhstan's information society is behind the overall economic development of the country, and the recent economic turbulence has exposed this gap. Limited access by the population to online information is one of the hindering factors for the development of the country's information society. There are many reasons for this, but the main ones are underdeveloped ICT infrastructure (despite the investment in this area), high internet prices, low computer literacy and a lack of content. Recently imposed legal restrictions on online information sources have the potential to further limit the development of the information society in Kazakhstan.

Policy environment

Initiated by President Nursultan Nazarbaev in 2001, the first state policy that was concerned with development of the information society was the Programme on the Formation and Development of National Information Infrastructure for 2001-2003. This further led to the E-Government Concept in 2004, two e-government programmes for 2005-2007 and 2008-2010, two Telecom Sector Development Programmes for 2003-2005 and 2006-2008, and the Programme on the Reduction of Information Inequity for 2007-2009. These state programmes have significantly contributed to the development of the information society in Kazakhstan by establishing both a regulatory framework and physical infrastructure for accessing online information, facilitating the creation of new information resources, and promoting internet use by the population. The progress in implementing these programmes has recently slowed down due to funding limitations caused by the troubled economy.

Kazakhstan tends to align itself with its regional counterparts in terms of its policy and regulatory framework, and to harmonise its policy and regulatory instruments with international standards. For instance, this was the case with its e-signature and e-document regulations, where the public key infrastructure[1] approach is used. There are, however, cases when the state has taken a less popular approach – for instance, with regulation of the internet and online media, where it is taking a controlling and restrictive role. That said, the government is usually open to international best practices and tends to evaluate various choices carefully.

Legislative environment

The Constitution of the Republic of Kazakhstan provides for the right of citizens to receive and distribute information as long as it does not contradict any laws. The Constitution also forbids censorship of any kind in Kazakhstan. However, it lacks provisions for the right of citizens to access information.

There is no law on information or access to information in Kazakhstan that provides a clear framework for information dissemination. A law that is supposed to regulate all aspects of information in the country, including access, has been in the works for a few years and there is no indication when this law may be passed. This law will have a significant effect on the development of an information society in the country.

The Law on National Security has provisions that forbid "distribution of printed products, TV and broadcasts of foreign mass media in the territory of the Republic of Kazakhstan, the content of which undermines national security." While such laws are necessary, they do provide opportunities to limit access to information when there are no clear guidelines on access to information and ensuring it as a right.

A law on mass media and its implementing regulations govern all aspects of mass media, which include internet resources such as websites and blogs. According to this law, both owners of mass media and authors are liable for the information they provide. The state reserves the right to limit access to mass media which provides information that is prohibited by law.

Current state of access to information in Kazakhstan

Kazakhstan's access infrastructure is under development and, despite investment in this area, is currently one of the limiting factors affecting individuals' access to information. A lack of competition in the telecoms sector and inefficient regulation result in high internet tariffs. Low levels of computerisation in schools and universities prevent computer literacy levels from rising. However, ongoing investment in physical infrastructure, rapid growth of mobile communications and cheaper computers will allow for better access to information in the future.

Internet penetration in Kazakhstan is believed to be about 10%, according to expert estimates. The government has not reached consensus on the exact figure, with various

1 One of the common approaches to e-signatures, where open and closed key pairs are used to authenticate the e-signature holder. This is believed to be more secure, but is costly to implement.

agencies quoting anywhere from 12% to 15% of the population using the internet in 2009. Computer literacy levels in Kazakhstan were estimated at a little less than 10% in 2007, while computer penetration was no more than 5% that year. While the estimates for 2009 vary, all sources agree that these figures have not exceeded 15%. This significantly limits opportunities for access to online information by the population at large. The government had plans to increase the levels of internet and computer penetration along with computer literacy to at least 20% by 2010. However, the current slump in economic growth has adjusted these plans: state funding aimed to increase these numbers was significantly reduced.

The first Telecom Sector Development Programme (2003-2005) was instrumental in establishing modern telecom infrastructure in the country. The second programme (2006-2008) was meant to accomplish some of the goals that were set but not achieved by the first programme, as well as a list of new goals aimed at continued development of the telecom sector. Telecom sector deregulation, liberalisation, increased competition and infrastructure development are among the top priorities of both programmes. Although some of the targets have not been achieved (or have been achieved only nominally), the programme is contributing significantly to the development of ICT infrastructure in the country.

In line with the State Programme on the Development of E-Government in Kazakhstan for 2008-2010, some government agencies already provide interactive services, with a certain degree of success. For example, it is already possible to submit tax forms electronically and to check whether tax payments have cleared the system, or whether there are any tax liabilities outstanding. All of this is done in real time using digital signatures, which sets Kazakhstan apart from many other countries. It is estimated that over 80% of businesses in Kazakhstan submit their tax reports electronically. The implementation of the e-tax system has certainly motivated many businesses to harness ICTs, and has become a driving force for the computer training of many accountants and businesspeople. However, the e-tax system is still far from achieving its goals of efficiency, ease of use and transparency. At the same time, the newly created e-government portal provides a limited number of information services, and the ones provided are of little relevance to the majority of the population. The quality of these services is also low (i.e., the information is not provided in full and does not go into the necessary depth; the language is also sometimes difficult to comprehend).

In an effort to promote e-government services and increase access to communication infrastructure and information resources, the Programme on the Reduction of Information Inequity in Kazakhstan was approved by the government in 2006. The three main goals of the programme are a 20% computer literacy rate, a 20% internet penetration rate and an increase in the role that information systems play in the life of an average citizen. The programme also allows for opening public access sites and the installation of information kiosks that will provide access to government websites and portals.

ICTs are also the most efficient way to ensure access to information in rural areas where towns are separated by large distances and the population density is very low. It is much easier (and less expensive) to create one access point in a village, train the people in using it and provide access to a central e-library book database, than to invest in physical library infrastructure, publish books and ensure the timely delivery of periodicals. E-government can provide services to citizens regardless of their location very quickly. E-government services mean citizens avoid queues, and, most importantly, eliminate contact with government clerks, and in this way minimise the possibilities of corruption.

A lack of local content limits access to online information through language barriers (there is very little content in the Kazakh language). The majority of the websites in Kazakhstan are hosted abroad, despite significantly lower tariffs offered by internet service providers (ISPs) for accessing content hosted in Kazakhstan.[2]

The overall environment remains favourable for the development of an information society in the country. Rapid economic growth in recent years, high literacy levels, the president's long-term vision and new government programmes are among the key factors for an increase in computer and internet penetration in Kazakhstan. Government spending on new local content (publishing books and textbooks, creating websites), and additional funding for schools and libraries have created the necessary environment for the information society to develop. Increased disposable incomes have allowed Kazakhstanis to invest more time and money in educating themselves and their children, which in turn increases the hunger for information. State programmes have a potential to provide access to key government services in the near future for all, but especially for underserved and vulnerable groups.

New trends

The government has recognised the phenomenon that is the internet, and the potential of information sharing through things like online conferences – it has conducted a number of online conferences in real time with the public.[3] Blogging is gaining popularity as well: all government cabinet members now have public blogs, and some are very active. There is, however, also anecdotal evidence of the blocking of websites run by political opposition groups due to controversial information being posted online, sometimes by the website

2 It is much cheaper to access a locally hosted website, as providers differentiate internet access prices by the origin of traffic.

3 One example is the president's annual question and answer session with the general public of Kazakhstan. Questions for the session are taken via internet (e.g., email, online forms), short message service (SMS), telephone calls, letters, and live feeds using correspondents placed in all major towns in the country. The president's answers are broadcasted on radio, television and the internet. This ensures wide participation in the session by a diverse range of groups. There have also been numerous live online conferences conducted by government representatives on various online forum boards.

hosts and sometimes by others in comments sections. Most of the opposition websites hosted in Kazakhstan have had to be moved abroad. Anonymiser proxies[4] were then advertised by the opposition as a way of overcoming government internet protocol address filtering. Blogging is gaining popularity with various non-governmental organisations (NGOs) and opposition groups that are using them as an alternative to news services.

The recent changes to Kazakhstan's law on the media mean that all websites are considered "mass media" and are now subject to state regulations in terms of content published on them. This provision also covers content posted as comments on websites such as blogs, making website owners liable for content posted on their sites by third parties.

Action steps

- It is necessary to expand the range of interactive information services provided through the e-government programme, focusing on high-demand services first. The quality of services should also be improved.
- Kazakhstan needs to ensure that citizens' freedoms and rights are respected, including the freedom of expression and speech and the right to access information.
- Multimedia question and answer sessions between senior state officials and citizens should be replicated elsewhere, so that citizens can become properly informed about various government procedures. Combining different media types allows the impact to be maximised, and ensures all groups involved are covered. For instance, while radio may not be appealing to young internet users, the elderly rural population will never choose another option.
- Disabled and marginalised groups require particular attention to familiarise themselves with the information society. The government needs to identify these groups very specifically and allocate resources to include them in its information society programmes.
- It is necessary to develop online local content. Everything from news and entertainment portals to e-commerce websites need to be developed and popularised in the country.
- Although obvious, it is necessary to increase computer literacy and internet penetration in Kazakhstan. ICTs should play a key role when it comes to access to information.

There are two simple key success factors that encompass enormous difficulties when implementing programmes: making sure the demand for information is there and then ensuring that information can be delivered. The situation in Kazakhstan revolves exactly around these two factors. Citizens are reluctant to search for information, even when it is available, as they are simply unaware that this information exists and that it can benefit them directly. At the same time, the means for information delivery are very limited or non-existent. To be successful in meeting the information needs of the population it is first necessary to show that useful information is there and that it can benefit the individual directly. Then it is necessary to provide the information in the most effective and efficient way, which will be different for different groups. ■

References

Constitution of the Republic of Kazakhstan

State Programme on the Formation and Development of National Information Infrastructure of the Republic of Kazakhstan for 2001-2003

State Programme on the Development of the Telecommunications Sector in the Republic of Kazakhstan for 2003-2005

State Programme on the Development of the Telecommunications Sector in the Republic of Kazakhstan for 2006-2008

State Programme on the Formation of E-Government in the Republic of Kazakhstan for 2005-2007

State Programme on the Development of E-Government in the Republic of Kazakhstan for 2008-2010

4 Essentially a website that reroutes traffic.

KENYA

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Introduction

The year 2009 is a turning point for Kenya and the development and opportunities offered by information and communications technologies (ICTs). Three submarine cables are expected to land during the year. The first, The East African Marine System (TEAMS), landed in June and will be operational by September. The second, Seacom, is expected to land by the end of the summer,[1] and the third, the Eastern Africa Submarine Cable System (EASSy), by the end of the year or early 2010. These fibre-optic cables will bring massive changes in bandwidth availability, and are expected to lower prices as international connectivity shifts from relying only on satellite to almost four terabits over fibre. Lower prices and greater availability are expected to increase access to the internet as well as promote the continued spread of sophisticated mobile applications and services,[2] and consequently improve opportunities for the creation of and access to information and knowledge.

The advent of the internet and ICTs in general in Kenya has already created significant opportunities for greater access to information and knowledge. While internet use has grown modestly (about three million Kenyans – approximately 8% of the population – have access to the internet), the use of mobile phones has grown exponentially and is currently estimated at 13 million subscribers, over one third of the population. With no restrictions on the types of applications providers can offer, the availability of internet access via mobile phones continues to increase with users enjoying more sophisticated mobile services.

In addition, the lack of restrictions on the types of internet applications and information services, and lack of government control and regulation of internet infrastructure, has helped increase the widespread use of ICTs to access and produce knowledge and information via blogs, short message service (SMS), instant messaging services, chat rooms, social networking sites, etc. The internet now plays a major role not only in education, but also political expression and debate. For example, during the post-election conflict from December 2007 to February 2008, the internet became an important medium for political debate among residents and Kenyans living in the diaspora. SMS, blogs and websites were an essential source of information, opinions and images. Innovative ways of capturing news and events as they unfolded – for instance, by using mobile phone cameras and uploading images onto the internet – increased access to information during those critical months. The downside of this increased access to information, however, was the use of the same media to spread messages of ethnic hatred, intimidation and calls to violence.

It is important to note that while the government did place some controls on live reporting by the traditional media, it did not attempt to restrict the use of online services to access or disseminate information during that period. The government also used the SMS services of two major mobile providers, Safaricom and Zain, to urge Kenyans to desist from using SMS to send messages of violence and hatred. The government's access to mobile subscriber databases suggested that the government had the potential to monitor mobile phone usage and control the content mobile networks carried. More recently, the president directed the minister of information and communication to put in place a system that would ensure that all mobile subscribers are registered within six months, while expressing concern that there was an increase in crime perpetrated through mobile telephony.[3]

Policy and legislative environment

The convergence enabled by digital technologies has made it possible for any given medium to deliver any type of content online. This potential is reflected in recent amendments to Kenya's communications legislation, as well as regulatory reforms in the ICT sector, that have led to a new licensing framework that is technology neutral. Legislative reforms have introduced and encouraged competition, which has resulted in reduced costs, improved access to infrastructure and better quality of service.

Kenya's key policies and legislation impacting on access to online information include the following:

- The Public Archives and Documentation Service Act (1966) created the Kenya National Archives and Documentation Service (KNADS) and made provisions for the preservation of public records and archives. The Government Printer and all heads of government ministries, agencies and departments are obliged to provide the director of KNADS with two copies of any published or generally circulated document or report produced by their offices. The Act does not, however, expressly recognise the rights of citizens to access these public archives, nor does it require the information to be made available in electronic format.

1 Kinyanjui, K. (2009) Seacom link promises new telecoms era, *Business Daily*, 23 July. www.businessdailyafrica.com/Company%20Industry/-/539550/628294/-/u8x1cvz/-/index.html

2 The Mobile Broadband Wireless Access (MBWA) Working Group (www.ieee802.org/20) notes that the demand from developing countries has been fuelling huge growth in mobile broadband. These countries have leapfrogged from fixed-line infrastructure to using mobile broadband technologies to deliver internet access to the mass market.

3 KBC (2009) Kibaki orders registration of mobile subscribers, *Kenya Broadcasting Corporation*, 21 July. www.kbc.co.ke/story.asp?ID=58728

- The Official Secrets Act (1968) permits the concealment of information assumed to be exempt from public disclosure for the preservation of state secrets and state security. A new proposed Freedom of Information Bill, to be put before the Kenyan Parliament later this year, proposes to repeal the Official Secrets Act. The Bill seeks to provide all persons in Kenya with the right to access information held by public authorities and private bodies performing a public function. The main objectives of the Bill, as outlined in the preamble, are the general right of access to information in the government's possession, the proactive dissemination of information, and the right for persons to correct their personal data held in government records, as well as introducing the principle of maximum disclosure.
- The Statistics Act (2006) established the Kenya National Bureau of Statistics for the collection, compilation, analysis, publication and dissemination of statistical information and the coordination of the National Statistical System. The Act is not clear on making this information accessible online, and its provisions might be limited by some conditions of the Official Secrets Act.
- The Kenya Communications Act (1998), which mainly addresses the progression from a market monopoly to a liberalised telecommunication sector, unbundled the Kenya post and telecommunications sectors, allowing more service providers to enter the telecommunications market and, as a result, increasing access to various ICT services, including the internet.
- The Copyright Act (2001), which provides copyright protection, was initiated mainly to comply with World Trade Organisation (WTO) obligations, and restricts access to information. There is little awareness of more flexible copyright concepts, particularly for educational material, that could prove productive in a developing country like Kenya. The Kenyan government has, however, taken steps to make educational materials more accessible, evidenced by the subsidies it provides for a range of books and teaching materials and the current initiatives to encourage the uptake of e-learning.[4]
- The National ICT Policy of Kenya, approved by the cabinet in March 2006, aims to introduce e-commerce, e-government services, e-learning and the utilisation of ICTs in health delivery.
- The Kenya Communications (Amendment) Act (2009), currently being implemented, aims to streamline and converge the regulatory framework governing the communications sector. It includes provisions concerning electronic transactions, broadcasting, and the country's domain name system, and introduces content regulation. However, the Amendment Act is not specific on the issue of online content; the current interpretation is that the Act refers to all forms of content, whether offline or online.

Key issues regarding online access to information and knowledge in Kenya

- *Affordability and infrastructure:* The extent of access to online information and knowledge remains low nationally and disproportionately low in rural areas, due to poor telecommunications infrastructure and a lack of electricity. Where there is electricity, the grid is unreliable and poorly managed. While costs are expected to drop with increased access to broadband, access to online information and knowledge may remain low due to competing economic and social priorities, both at the macro level and the micro or household level. Accessing broadband will still cost too much for the average Kenyan.
- *Vulnerability of the media:* Access to and expression of information in Kenya is generally free. However, the online portals of mainstream media outlets continue to practise some level of self-censorship for various reasons, including the still-existing defamation laws. These media organisations own substantial physical infrastructure that could be subject to state interference, and are also vulnerable to other forms of disruption and sabotage. For example, this was the case of the Standard Media group, which had its office premises raided by the former National Alliance of Rainbow Coalition (NARC) government and its communication equipment confiscated in the name of national security.
- *No policy protecting or promoting online content:* There is no clear national policy on electronic access to information and knowledge, and while the constitution protects freedom of expression as well as freedom to communicate ideas and information, it also provides the government with the power to place restrictions on "privileged" information, and act against defamation in the interests of public order, safety, morality, health and defence. Furthermore, legislation such as the Public Archives and Documentation Act and Statistics Act do not explicitly address issues of online access to the information they help collect.
- *Punitive legislative framework:* Punitive criminal defamation laws remain and restrict access to information and knowledge. For example, most local media houses will not publish content either on paper or online that would be subject to the defamation law that has in the past been used very punitively.

4 Section 26(a) of Copyright Act No. 12 of 2001 "excludes the collection of literary works of not more than two passages from a single work if the collection is designed for use by an educational institution. If an educational institution is to make course packs or a compilation of material for teaching purposes, it would have to seek the authority of the rights holders. Reproducing or downloading material without the rights holder's authority would amount to infringement of copyright." Ouma, M. (2008) Law, Technology and Access to Educational Material, paper presented at the Third Annual Access to Knowledge (A2K3) Conference, Geneva, Switzerland, 8-10 September. www.aca2k.org/.../180_Yale%20A2K3%20Geneva-September%202008.doc

- *Restrictive copyright laws:* Restrictive copyright laws infringe on access to information and knowledge. While Kenya's 2001 Copyright Act has some general exceptions and limitations meant to provide balance between access by users and rights of owners, these are limited. For example, there are exemptions related to digital rights management in the case of computer programmes where copies are required for interoperability. However, the act also makes it illegal for anyone to circumvent technological protection measures. Furthermore, the way in which the law (Section 26(a) of Copyright Act No. 12 of 2001) describes such technological protection measures seriously limits access to e-books, articles, databases, and other educational material.

New trends

Access

Digital villages[5] are being established to speed up and increase the availability of online access for Kenyans all over the country. These initiatives are being implemented by various stakeholders, from the private sector's ICT villages, to civil society projects such as those by the Arid Lands Information Network, to the government's *Pasha* e-Centres, which are being initiated by the Ministry of Information and Communications and the Kenya ICT Board. These projects will have far-reaching effects for broad-based online activities in agriculture, health, education and commerce, among others. For example, the *Pasha* e-Centres are set up in each of the country's 210 constituencies. The centres are intended to bring the benefits of affordable broadband bandwidth, made available by the TEAMS international submarine cable and the national terrestrial cable (the National Optic Fibre Backbone Infrastructure, NOFBI), to rural Kenya. NOFBI is connecting major towns, cities and district headquarters and will connect to the international TEAMS cable. Both the international and national fibre initiatives are being established through public-private partnerships involving local entrepreneurs.

Legislation

The Kenya Copyright Board, together with other stakeholders, is currently reviewing the Copyright Act with the aim of revising exceptions and limitations to ensure a balance between copyright protection and access to knowledge. Examples of flexibilities under consideration are the inclusion of specific exceptions for the visually impaired, more flexibility for non-commercial library and educational use, and a limitation on the use of technological protection measures, especially on educational material.

A Freedom of Information Bill will be put before the Kenyan Parliament during its current (2009) term. The Bill proposes to create a citizen's right to public information and to foster the proactive provision of information by public bodies. It also imposes obligations on private bodies to release information to a citizen where the information is necessary for the enforcement of a citizen's rights.

Action steps

- There is a need for various policies and regulatory frameworks to be put in place, among them a freedom of information law and cyber crime and consumer and data protection legislation.
- There is also a need to speed up the review and amendments of the Copyright Act, to ensure that exceptions are defined in a way that will facilitate access to knowledge and information, among others.
- The implementation of a universal access strategy is a priority for increasing affordable access to the internet and online information and knowledge.
- There is a need for public awareness on the right to access online information and knowledge, the right to access public information, the right to privacy and protection of personal data, and the right to change personal data held by the government, among others.
- There is a need to find practical solutions to problems associated with the (mis)management of records and information in the public sector, and access to and use of public information. ■

References

African Copyright and Access to Knowledge Project: www.aca2k.org

Communications Commission of Kenya (2008) *Annual Report 2007-2008*. www.cck.go.ke

Freedom House (2009) *Freedom on the Net: A Global Assessment of Internet and Digital Media – Kenya*. www.freedomhouse.org/printer_friendly.cfm?page=384&key=209&parent=19&report=79

Kenya ICT Board: www.ict.go.ke

Ouma, M. (2008) Law, Technology and Access to Educational Material, paper presented at the Third Annual Access to Knowledge (A2K3) Conference, Geneva, Switzerland, 8-10 September. www.aca2k.org/.../180_Yale%20A2K3%20Geneva-September%202008.doc

U.S. Department of State (2009) *2008 Human Rights Report: Kenya*. www.state.gov/g/drl/rls/hrrpt/2008/af/119007.htm

5 Digital villages are e-centres providing a suite of services to the public via computers connected to the internet, digital cameras, printers, fax machines and other communication infrastructure.

KOREA, REPUBLIC OF

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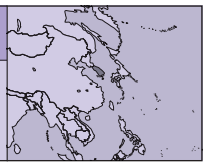

Introduction

There had been a candlelight vigil protest every day for over 100 days from 2 May 2008, demanding a renegotiation of a United States (US) beef import agreement. The public opposition to the government decision to lift the ban on the import of US beef – which was believed to be exposed to mad cow disease – kept growing and spread to other policy areas such as education, public health, media and privatisation. The internet played a critical role in forming public opinion against the beef deal and encouraging public protest.

As criticism over the beef import negotiation spread through the internet, the Korean government said the internet was the origin of "negative public opinion against the government."[1] The Korean Communications Standards Commission (KCSC), a deliberation authority, issued recommendations to delete articles that were critical of the government, and prosecutors and the police investigated the articles. Since 2008, when current President Lee Myung Paik was sworn in, administrative control of internet content has been getting tighter and the number of criminal cases against authors has been increasing. This not only violates the freedom of expression of those who posted messages on the internet, but has a seriously chilling effect on the general public.

Policy and legislative environment

The Republic of Korea is one of the top-ranking countries in terms of access to broadband internet. The number of Korean internet users reached 36.19 million in June 2008. Internet users make up 77% of the whole population.[2]

The internet is a medium through which people's voices can be heard – in direct contrast to traditional media like newspapers. Raw voice is communicated on the internet without being filtered by an editor, and this sometimes can threaten a government and disturb social norms. The Korean government had tried to regulate what is said on the internet. The current system for internet content regulation was established before the present government came into power.

Internet real name system

In June 2007, 37 major internet sites including information portals and government websites were forced to adopt a system that verifies a user's identity when posting articles or comments on bulletin boards. This was under Article 44-5 of the Act on the Promotion of Information and Communications Network Utilisation and Information Protection, also known as the Network Act. The sites subject to the Act were determined by their daily number of visitors, set at either 200,000 (for internet journals) or 300,000 visits per day (for portals). As public opinion criticising the beef import negotiation spread in 2008, the Korean government and the governing party, the Grand National Party, revised the enforcement ordinance of the law, decreasing the number of daily visitors necessary to qualify for this system to 100,000 visitors per day. This increased the number of sites to 153 in November 2008. YouTube refused to adopt the internet real name system. Instead it banned users whose country content preference was set to South Korea from posting any content in April 2009.

Temporary internet message blocking

Internet messages criticising the government and powerful individuals have been deleted indiscriminately on the grounds of defamation. This measure – so-called "temporary blocking" – has been taken under Article 44-2 of the Network Act, which requires online service providers to temporarily block messages that are subject to complaints from persons who claim their reputation damaged by the messages. "Temporary" can mean up to 30 days.

Comprehensive administrative censorship on the internet

KCSC considers the legal implications of messages posted on internet bulletin boards, and messages are routinely deleted. KCSC decides the legality of messages under Article 44-7 of the Network Act, and sub-paragraph (3) of Article 21 of the Act on the Establishment and Operation of the Broadcasting and Communications Commission. It reviews messages in terms of their harmfulness to minors, as well as according to the general objective of promoting sound communication ethics under sub-paragraph (4) of Article 21. Online service providers and others maintaining bulletin boards are notified about KCSC deliberation decisions. These are only formal recommendations, but the notified party almost always follows the instructions because the Korea Communications Commission (KCC) can issue administrative orders to delete messages without a court decision under Article 44-7 of the Network Act.

Prosecutions based on dissemination of false information

Since 2008, punishment for the dissemination of false information has increased under Article 47 of the Framework Act on Electronic Communications. According to the law, a person who publicly makes a "false communication using

1 Korean Communications Standards Commission (KCSC): www.kocsc.or.kr

2 Internet Statistics Information System (ISIS), National Internet Development Agency of Korea (NIDA): isis.nida.or.kr/eng

electronic communication facilities for the purpose of derogating public interest" shall be subject to imprisonment of up to five years or a fine of KRW 50 million (almost USD 42,000).

A violation of freedom of expression

The internet content regulation system in Korea has been criticised as being unconstitutional and violating users' rights to freedom of expression.

Internet real name system

Korean human rights groups say the internet real name system violates the freedom of expression and the right to anonymity of all users. The right to anonymity has been one of the essential tools of free speech. Forced self-identification will curtail opinions critical of the government and powerful individuals. The National Human Rights Commission of Korea (NHRC) objected to the internet real name policy in February 2004, pointing out that "the internet real name policy is clearly censorship, presuming that all people who would post to a bulletin board would circulate false information and/or libel. [It] violates freedom of expression under Article 19 of the Universal Declaration of Human Rights and Article 21 of the Constitution by restricting freedom of expression and the right to form opinions based on anonymity on the internet."[3]

Temporary internet message blocking

An emergency measure like temporary blocking may be necessary in that messages on the internet can be copied and disseminated in real time, or are always accessible. However, the current temporary blocking measure system is problematic in that there is no way for posters to file objections against the measure. Even Korean copyright law guarantees the right to object when messages are deleted on grounds of copyright infringement.

The temporary blocking measure has been misused by the government and powerful individuals to control critical expressions. Temporary blocking measures have been applied to:

- Messages containing a video from a television report which criticised the brother of the police chief. This was done on request of the police in May and July 2008.
- A three-line message describing a governing party lawmaker "dead drunk and causing a nuisance" and including a link to his personal homepage (blocked in October 2008).
- A message that criticised government party lawmakers and contained scraps from news reports on an eviction gone wrong. The reports detailed how a person evicted at a redevelopment project was accidentally burnt to death during a police raid sent to break up a sit-in (blocked in April 2009).
- Many internet messages criticising violent methods used by the police to suppress this year's May Day demonstrations on the grounds that they defame policemen (blocked in May 2009).
- Internet messages posted by lawmakers of opposition parties and citizens criticising the owner of a government-friendly newspaper, based on the allegation that he had been offered sexual intercourse with an actress who killed herself in March 2009 (blocked in April 2009).

Comprehensive administrative censorship

Korean human rights groups have said that deliberations by an administrative body on messages posted on the internet and their deletion without a court decision would be unconstitutional. KCSC can censor a potentially unlimited range of materials, including but not limited to defamatory materials and materials aiding and abetting a crime. This makes freedom of speech in Korea vulnerable to government suppression as suggested below:

- In May 2008, KCSC made a recommendation to an online site to "purify language and refrain from exaggerated expressions" on the grounds that a message called the president "2MB"[4] and a "sly person".
- In July 2008, KCSC recommended deleting lists of advertisers who had advertised in three major pro-government newspapers. The lists were made by citizens who wanted to promote an advertising boycott of the newspapers. The users who posted the lists, together with human rights groups, launched a suit against the deliberation of KCSC and Article 44-7 of the Network Act on the grounds that they were unconstitutional. They were in turn accused of interfering in business operations and charged. In February 2009, 24 of the accused were convicted of this at their first trials. However, the judge decided that posting lists of advertisers and promoting a boycott on the internet was legal, which means KCSC's decision could be different from that of the judge. The Constitutional Court's decision is still pending.
- In January 2009, KCSC recommended the deletion of a message that criticised remarks by the governor of Gyeonggi province, requesting him to step down from office, on the grounds that they defamed him.
- In April 2009, KCSC recommended the deletion of messages by environmental activists criticising waste cement, on the grounds that they defamed cement companies.

3 National Human Rights Commission (2004) Opinions to the National Assembly about Politics-related Law and its Revision, 17 February. www.humanrights.go.kr/04_sub/body02.jsp?NT_ID=24&flag=VIEW&SEQ_ID=554728&page=1

4 "2MB" has two meanings. One is the initials of President Lee Myoung Baik ("two" and "Lee" are pronounced the same in Korean, which gives you "2MB"). The other insinuation is that the president is not intelligent, because the memory capacity of his brain is only two megabytes.

Prosecutions based on dissemination of false information

Article 47 of the Framework Act on Electronic Communications, which was enacted in 1983, was hardly used for over twenty years until the current president took power in 2008. His prosecutors began to use the law, but applying it only against citizens critical of his policies.

A teenager was prosecuted because he proposed a student strike by posting messages on the internet and sending out mobile text messages. The court found him not guilty at his first and second trials. The case is now in the Supreme Court.

Citizens who posted rumours, such as allegations of the rape and murder of citizens by policemen during violent crackdowns, were criminally charged on the grounds of circulating fabricated stories. Some of them were found guilty.

A citizen known to the public by his user name "Minerva", who posted articles on the internet criticising the government's foreign currency policy, was arrested and detained with the charge of spreading fabricated stories. He was found not guilty by the court in his first trial in April 2009, and is now being charged in a high court.

New trends

New legal provisions which would violate freedom of expression and make it easier for investigation agencies to trace citizens' activities on the internet were awaiting approval at the time of writing this report.

Expansion of the internet real name system

In 2008, the government proposed an amendment to the Network Act in order to expand the scope of sites subjected to the Act. According to the bill, the criterion of sites, which is set as the sites whose daily average users exceed 100,000, is subject to the enforcement ordinance. If the bill is passed, the government can expand the scope of sites arbitrarily by revising the enforcement ordinance without recourse to the National Assembly.

Cyber insult offence

In 2008, amendments to the Criminal Code and the Network Act were proposed by the governing party to control the internet through the creation of a so-called "cyber insult" offence. This punishes the crime of insulting a person on the internet more heavily than the crime of insulting a person elsewhere, which is already provided for in the Criminal Code. A criminal investigation could also be initiated without complaints from the victims. Korean human rights groups argue that the insult law itself should be abolished because it could be misused to suppress speech critical of the government or powerful individuals. Moreover, under the cyber insult law, police and prosecutors could monitor the internet looking for messages insulting others, especially the government and powerful individuals, and apply pressure on the posters through investigations without any complaints being lodged.

Obligation of online service providers to monitor content

In 2008, the government proposed an amendment to the Network Act which would impose an obligation on service providers to monitor the content of their services. This would mean online service providers have a legal responsibility for any illegal content or statement. This would inevitably strengthen private censorship to avoid their legal responsibility.

Action steps

To protect users' rights to freedom of expression on the internet, Korean human rights groups have made the following demands:

- Abolish the internet real name system.
- Abolish KCSC's administrative deliberation of internet messages.
- Abolish prosecution and punishment for the dissemination of false information.
- Stop criminal prosecution against internet messages which criticise the government and powerful individuals.
- Amend the temporary blocking measure system by agreeing to allow objections.
- Stop legislation which violates freedom of expression or restricts free expression, such as the cyber insult offence and the proposed obligation on online service providers to monitor content. ■

References

Korean Progressive Network Jinbonet (2009) Violation of Freedom of Expression in South Korea since 2008. act.jinbo.net/webbs/download.php?board=policy&id=1664&idx=1

Korean Progressive Network Jinbonet (2008) Privacy & Human Rights 2007, Country Report: Republic of (South) Korea.

National Human Rights Commission (2004) Opinions to the National Assembly about Politics-related Law and its Revision, 17 February. www.humanrights.go.kr/04_sub/body02.jsp?NT_ID=24&flag=VIEW&SEQ_ID=554728&page=1

People's Solidarity for Participatory Democracy (2009) Urgent Appeal to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. act.jinbo.net/webbs/download.php?board=policy&id=1609&idx=2

KYRGYZSTAN

Civil Initiative on Internet Policy
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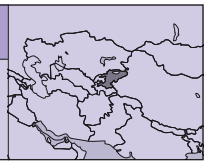

Introduction

Internet penetration in Kyrgyzstan is amongst the highest in Central Asia, and internet access mostly remains free of control. However, the communication infrastructure in Kyrgyzstan is dependent for its access on neighbouring countries, particularly Kazakhstan. Given that the repressive policies in Kazakhstan block access to some popular information internet sites, the main provider in the country, Kyrgyztelecom, is subject to internet filtering by Kazakhtelecom, since it purchases international traffic from the latter.[1]

According to the results of a survey held in 2009, the total number of internet users in Kyrgyzstan is about 760,000 people.[2] This amounts to about 14% of the population. Most internet users are young people below the age of 30 (75% of the total number of users). Around 40% use the internet for education and news, while 33% use it for entertainment, communication and making contacts.

There are 1,500 top-level domain names registered on the local domain in Kyrgyzstan.[3] Russian-language websites remain the most popular (90%), compared to sites in Kyrgyz (8%) and sites in English (2%).

The high level of infrastructural development needs to be noted. Mobile communications has been the fastest growing area in telecommunications, with growth rates reaching about 20% in Kyrgyzstan. However, the quality of online state services has not changed in the last five years.

Political background

The introduction of e-government in Kyrgyzstan is moving slowly compared to international standards. According to a United Nations (UN) review, our position is decreasing in the world ranking that measures commitment to e-government programmes. Our country fell from 66th place in 2004 to 102nd place in 2008.[4]

In 2002 the state announced information and communications technology (ICT) development as its main priority in the National Strategy for Development of Information and Communications Technologies in the Kyrgyz Republic.[5] State regulation in the field of communications has created favourable conditions for the establishment of a competitive communications market that has resulted in the rapid development of infrastructure. However, while there is a rather comprehensive set of legislative materials, such as laws, decrees, regulations, resolutions and instructions, most of them have never been used in practice and exist only on paper. Likewise, there is a big gap between the value attached by the country's senior officials to e-government and the practical results.

In 2006, the first attempts were made to restrict access to websites from other countries, and to adopt a separate law on the regulation of the internet. Although this proposal was denied, such attempts demonstrated to civil society that officials have changed their attitude when it comes to the development of the internet in the country.[6] In 2007 the issue of state control of the internet was raised again. One of the draft laws directly affects citizens' rights to privacy in communications. Another draft law was proposed recognising internet publications as mass media (the draft proposed that all the websites with the .kg domain or hosted in Kyrgyzstan should be registered with the state authorities as mass media). However, as a result of a public campaign, these attempts were also denied.

At this moment existing legislation does not allow the national security authorities to organise supervision of the internet. However, there is a tendency at the government level to supervise traffic at the level of the internet service provider (ISP)[7] – and there is a risk of policy change. For instance, the National Security Service held a meeting with service providers to voice their displeasure with the criticism of their proposals expressed in forums and chat rooms.

The most shining example confirming the risk of policy change is a decree from the president on April 2009 re-delegating the administration of the national domain from a private Kyrgyz company to a state body.

Legislative framework

The first law on access to information was adopted in 1997, called "On Guarantees and Freedom of Access to Information". At that time public activity and advocacy in this area were very low, and citizens exercised their right to information very rarely. As the practice shows, provisions in this law were mostly applied by the mass media in attempts to access official information.

The disadvantages of the law were obvious. It did not set deadlines for the provision of information, include tools

1 www.24.kg/community/2009/07/06/115860.html

2 Civil Initiative on Internet Policy (2009) *Survey of Internet Audience in Kyrgyzstan.* www.internetpolicy.kg/en/archive/reports2

3 Ibid.

4 Global E-Government Readiness Report 2005 and UN E-Government Survey 2008: www.unpan.org/egovernment5.asp and www.unpan.org/egovernment.asp

5 www.ict.gov.kg/index.php?name=EZCMS&menu=2501&page_id=71.

6 Before liberalisation, KyrgyzTelecom carried out filtering of voice traffic in order to limit access to non-Kyrgyz providers offering internet protocol (IP) telephony service, to thereby compel the use of local providers. Voice traffic was filtered in all the standard ports on all popular non-Kyrgyz providers of IP telephony. Allegedly, Cisco (PIX) and Huawei (Eudemon) products were used for filtering voice content.

7 svodka.akipress.org/news:17511

for appealing a denial of an information request, or establish measures sanctioning officials who failed to execute their obligations to provide information. Relations among state bodies on issues of access to information were complicated. Officials often just failed to observe the law and did not bear any responsibility.

After nine years (i.e., in 2006) amendments were made to the above-mentioned law due to the adoption of a new law on access to state information. These amendments differentiated the information requests by category of information. Now legal issues on any requests for state information are regulated by a special law called "On Access to Information Handled by State Bodies and Local Self-government Bodies of the Kyrgyz Republic". Information held by the non-government sector are considered as falling under the earlier adopted provisions of the law of 1997.

The goal of the new law (2006) is to ensure the implementation and protection of the right to access state information. The law recognises that information on the activities of state bodies should be publicly accessible to civil society and the obligation to provide information is delegated to all state bodies. The new law stipulates liability for infringement of the rights to access information. Its provisions also require documents to be placed on official websites, and information may be requested via electronic communication channels.

The state recognises that activities of state bodies are open, transparent and public. Any restriction of access to information is prohibited, except for cases when the requested information refers to state secrets, confidential information or commercial secrets. A citizen or a legal entity whose rights are infringed has a right to lodge a complaint to a higher official, the Ombudsman, or judicial bodies.

Implementation of this provision is confirmed by the judicial practice. In 2007-2008 state officials were brought to administrative liability under the law for violation of the right to access information.

One of the problems in modern society is accessing information from commercial entities, since business owners can hide behind the notion of a "commercial secret". Legislation passed in 1998 remedies this, and defines a commercial secret as data related to production, technologies and financial activity, the disclosure of which would harm the economic interests of the organisation. According to this legislation, not all information may be referred to as a commercial secret, and the law establishes requirements in this regard.

State access to personal information is established by the law "On Personal Information" (2008). The legislation provides broad power to state bodies on issues of managing personal data by significantly narrowing citizen rights over this data.

The right to access public information

The state's attitude to the right to access information is confusing and contradictory, and it is unclear what actually reflects its true political position. On the one hand, state bodies have adopted the law on access to information, but on the other hand the state has tried to introduce restrictions to internet access.

Considering practical implementation of the law, it should be noted that development and adoption of the law on access to information, including issues of access to internet resources, were the result of the state needing to comply at the time with the requirements of international financial institutions, since during that period of legislative development financial support for Kyrgyzstan was being considered. Civil society also took an active part in drafting the law, and strengthening provisions to ensure the viability of the document. The effectiveness of the law is confirmed by court decisions in 2007-2008 which held state employees accountable for refusing to provide information.

Ministries and agencies have also only taken first steps in ensuring online access to information, although they have successfully addressed the infrastructural tasks of equipping staff with modern computer equipment (providing quality access to the internet for civil servants is still an issue).

While state bodies are actively creating websites, the quality of the sites is not always good. On most sites, information is not frequently updated and advanced interactive tools, including search functions, are rarely incorporated. The sites also have complicated and confusing structures that hinder searching for information

Standard procedures for placing information online began to be adopted from 2004. These standards established general requirements regarding the composition of data to be placed on government websites. However, the procedures do not include any criteria for completeness nor requirements regarding the efficiency with which state documents are published online. As a result, the content on state websites does not comply with citizens' requests or needs.

An assessment of the procedures shows that they mainly address issues of automated systems for certain ministries. However, the opportunities of using information technologies to facilitate interaction between citizens and state bodies has not been considered. There is also a problem with inadequate funding for state bodies to maintain websites.

Other challenges in implementing the law concern general access to the internet. Recent surveys show that 77% of internet users live in the Kyrgyz capital (Bishkek).[8] Therefore a big part of the rural population has no access to internet resources due to underdevelopment of infrastructure, computer illiteracy and other economic and social reasons.

New trends

As mentioned, in April 2009 the government announced the re-delegation of the right of administration of the national domain from a private company to a government body. The attempt of the state to establish government control over the administration of the national domain may be considered as an attempt to supervise internet resources, since

8 Civil Initiative on Internet Policy (2009) op. cit.

no violations were identified in the activities of the previous administrator. Currently, there has been no guarantee of transparency in decisions adopted by the state on the administration of the domain.

Through monitoring internet access during the pre-election campaign for the president of the Kyrgyz Republic in June 2009, it was established that there is no access to several information resources hosted in foreign countries, and to some services offered by Google. It was also determined that this restriction is connected to the restriction of traffic by the service provider in Kazakhstan, Kazakhtelecom. Technical interruptions were recorded in internet services, including web portals. Restrictions on accessing information tended to affect information from opposition parties or political movements only. One Kyrgyz provider restricted access to the website of the independent public newspaper for one month.[9] Before the pre-election campaign it was established that websites of leading information agencies were blocked for one day.

Currently, online forums and chats impose strict rules for the registration of participants. This is in case political issues are to be discussed. Partly because of this, forums and chats are not so popular anymore and many information agencies have shut them down.

Another trend has been attempts by the government to use technologies to track user traffic.[10] This suggests that the government wishes to control internet content, and indicates that state policy is changing.

Action steps

The issue of access to online information is critical in Kyrgyzstan. For the time being, limited access to the internet means that the traditional media serve as the main information source in the country. Nevertheless, the country is in transition, and the government's desire to control internet content is a concern.

A significant portion of internet users are young people.[11] However, young people are weakly involved in the political process, mainly using the internet for entertainment. Consequently, the government's attempts to restrict access to online information are not widely publicised, a fact which may affect further development of government policy on access. Awareness raising among young people is critical as a result. ■

9 www.24.kg/community/2009/07/06/115860.html

10 svodka.akipress.org/news:17511/

11 Civil Initiative on Internet Policy (2009) op. cit.

MEXICO

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Introduction

Mexico's diversity and wealth are not being leveraged in the process of building the country's information society. What could be a remarkable information society emanating from its people and its rich and varied cultures – potentially translating into a wealth of content – appears instead to be restricted. The homogenous construction of Mexico's information society is a result, on the one hand, of the population's uneven access to communication media and to information and communications technologies (ICTs). There is low broadband access due to high costs, and unequal access to technology on the basis of socioeconomic, gender and age differences: 41% of internet users have a high socio-economic level, 58% are men, 42% are women, and 79% are under the age of 40.[1] At the same time there are notable differences in access between rural and urban communities, resulting in restrictions for indigenous communities. Nevertheless, the main factors impacting negatively on the diversity of sources and content, and on people's participation and freedoms, are increased political control, market monopolies in communication media and ICTs, and pressures exerted by the country's powerful organised crime syndicates.

Personal data: Protection and control

A fundamental limitation in Mexico continues to be the need for a clear, inclusive digital policy. We have witnessed some initial efforts in recent months to create a number of laws associated with the use of ICTs. Some may result in positive opportunities to generate participatory processes. However, it seems that others may be aimed at creating stricter controls over the population – with authorities using the argument of the prevailing lack of security in the country.[2]

Recently, two agreements on the protection of personal data were reached in Mexico's House of Representatives. In December 2008 the House approved the inclusion in the country's constitution of the right of all Mexicans to the protection of their personal data, and the right to access, correct and delete this data.[3] Months later, a decree was established that obliged the National Congress to issue a law on the protection of personal data. This should be ready during the first quarter of 2010.[4]

Two viewpoints are reflected in the process of developing this legislation: first, there is the commercial perspective that looks at the business advantage of collecting personal information; second, there is the need to limit this practice to protect human rights.

The Ministry of Communications and Transportation has made modifications to the Federal Telecommunications Act, using the argument of the prevailing security situation in the country. The aim of the changes has been to create a National Registry of Mobile Phone Users.[5] The amendments oblige all licensed operators to keep a record of users of mobile phones, based on collecting personal data such as name, home address, nationality, telephone number, and other data contained in voter identification cards. Proof of home address, and even fingerprints, using ink or in electronic or digital form, are also needed. The amendment also spells out the following obligations for mobile phone companies: to keep copies or electronic records of the documents used in recording personal information, and to protect the databases in which such information is located; to keep a record of communication, such as voice transmissions, voice mail, conferences, data, resending or transferring calls, and message or multimedia services used, including the date/hour/duration of communication and geographic location of telephone lines. Mobile operators are required to turn over the data to the Attorney General's Office within 72 hours when an investigation is underway, and to immediately block the numbers of mobile phones reported missing or stolen. As can be expected, citizens are very worried and are refusing to participate in the registration process. This refusal cannot last very long, however: as soon as people sign a new contract or buy a new mobile phone, they will have no other choice but to participate in the national registry.

In addition, President Felipe Calderón announced the creation of a new citizen identification document in July 2009.[6] He proposed that it should be up and running by 2010, and that it will include personal data such as the biometric identity of every Mexican citizen. Fingerprints and information on an individual's retina, iris, facial patterns,

1 World Internet Project (WIP), Mexico: www.wipmexico.org.

2 A 2008 Amnesty International annual report dealing with human rights says that levels of violence have increased in Mexico due to criminal networks. There has also been an increase in the number of tortures, mistreatment, arbitrary detentions, and illegal searches of houses. There are now 45,000 soldiers fighting drug trafficking and 6,000 people died in violent incidents in 2008. Alcántara, L. (2009) El despliegue militar en México trae violencia: AI, *El Universal*, 28 May. www.eluniversal.com.mx/primera/33048.html

3 Notimex (2008) Elevan a rango constitucional la protección de datos personales, *Notimex*, 4 December.

4 Diario Oficial de la Federación (2009) Decreto por el que se adiciona la fracción XXIX-O al artículo 73 de la Constitución Política de los Estados Unidos Mexicanos, 30 April. www.dof.gob.mx/nota_detalle.php?codigo=5089047&fecha=30/04/2009

5 Diario Oficial de la Federación (2009) Decreto por el que se reforman y adicionan diversas disposiciones de la Ley Federal de Telecomunicaciones, 9 February. www.dof.gob.mx/nota_detalle.php?codigo=5079751&fecha=09/02/2009

6 El Universal (2009) ¿Para qué servirá la Cédula de Identidad? *El Universal*, 28 July. www.el-universal.com.mx/notas/615448.html

veins in hands and palm geometry are examples of the physical characteristics that may be contained in biometric identity. The proposal has led to various discussions in the political sphere, and some sectors of society are asking if such a new system is truly necessary, if the high costs involved are truly merited, and, especially, if such excessive control over the population is appropriate.

Communication rights: A lack of guarantees for freedom of expression and freedom of the press

Over 60 years after the signing of the Universal Declaration of Human Rights, one would expect that the state would be concerned only with fine-tuning the instruments guaranteeing freedom of expression. Unfortunately, the situation in Mexico is far from such a utopia. Freedom of expression is a national demand. The state's obligation to establish the conditions for this right to be fully realised, by establishing public policies that secure the right, is not being fulfilled. And not only is the state failing to guarantee this right, it is participating in one way or another in limiting it.

In a recent publication in Mexico, the World Association of Community Radio Broadcasters (AMARC) classified the attacks on community radio.[7] This classification is useful in bringing visibility to the increasingly widespread limitations imposed on freedom of expression:

Attacks associated with omissions by the state

- Carried out by individuals, with the state failing to exercise its obligation to prevent and investigate.
- Carried out in a context of social conflict that has not been addressed by the state, and sometimes with the state's acquiescence.

Attacks associated with state actions

- Committed directly by state agents.
- "Institutional" attacks, disguised as legal actions.

There is no doubt that the lack of regulations in Mexico facilitates violence against journalists. In a 2009 report, Freedom House states that the freedom of the press is deteriorating in Mexico due to increased violence and pressure exerted by federal and local authorities against journalists.[8] The report adds that the government lacks the political will to establish the necessary legal reforms to protect journalists. In a recent meeting between civil society organisations, the United Nations Rapporteur for Freedom of Expression, and the Special Rapporteur for Freedom of Expression appointed by the Inter-American Human Rights Commission, it was concluded that freedom of expression in Mexico is damaged by official silence and inaction.

The federal government attributes 78% of attacks against the press to individuals and organised crime. However, groups defending freedom of expression state that the authorities (at all levels of government) are responsible for at least 49% of the attacks. Whether attacks are associated with the state through omission or commission, it has now been acknowledged that Mexico ranks first in the world, even above Iraq, in the number of attacks against and murders of journalists.[9] And this does not even include the constant aggression against community and free radio stations and other alternative communication initiatives.

Creating an information society by decree?

There are some, although only a few, official initiatives in Mexico dedicated to supporting the creation of an information society. For example, there is an Information Society Coordinating Office within the Ministry of Communications and Transportation that has existed for years, but is not well developed.

More recently (in 2009), the House of Representatives developed and approved a decree for issuing legislation on the development of an information society. It seeks to establish a comprehensive digital strategy, with the aim of promoting access to and use of ICTs, and developing an information society in which the generation, processing and transmission of information becomes a fundamental source of the country's productivity. It considers the creation of an interministerial commission (that is, only at the governmental level) for the development of the information society, including defining it and deciding on its attributes. The decree also considers the creation of an advisory body (we understand this to be more plural in nature) that would be responsible for measuring the impact of the national digital agenda. Approval by the National Senate in the next legislative session is required for this law to be passed.

The approval of various other laws which weave the framework for Mexico's information society is also underway. Some of these will serve to even further limit the freedoms already under siege in the country, and barely leave a glimpse of possibility for creating participatory entities. It is fundamentally necessary to establish independent, specialised, autonomous entities– which may be citizen-led in nature – specifically to assist in defining regulations and to then monitor the way in which the resulting structures and initiatives function.

Action steps

Experts say that social networks operating online have become excellent forums for facilitating positive citizen networking and that these networks have promoted citizens' empowerment. It would seem, therefore, that Mexican society is restricted and is not taking advantage of these powerful tools. According to the most recent study on the habits of internet users in Mexico,[10] the online social tools

7 AMARC (2009) *Bases para una Política Publica en materia de Libertad de Expresión y Medios Comunitarios*. amarcmexico.org

8 La Jornada (2009) La libertad de prensa en México está cada vez peor, afirma Freedom House, *La Jornada*, 4 May. www.jornada.unam.mx/2009/05/04/index.php?section=politica&article=018n2pol

9 Norandi, M. (2009) Documentan 142 agresiones contra periodistas en 2009, *La Jornada*, 22 July. www.jornada.unam.mx/2009/07/22/index.php?section=politica&article=015n1pol

10 AMIPCI (Asociación Mexicana de Internet) (2009) Hábitos de los Usuarios de Internet en México. amipci.org.mx/estudios

least used by the population include virtual community sites and peer-to-peer networking.

It is vital for Mexican society to recuperate its confidence and its rights. In addition to the general violence perpetrated by organised crime, violations of the freedom of expression, and attempts to control personal data, freedoms on the internet are also limited. Added to the criminalisation of hard-hitting journalism and the daily attacks on journalists and media, the first legal complaint has been filed against an online journalist.[11] In the first half of 2009 a candidate for mayor in the northern state of Monterrey initiated legal proceedings against the journalist, the director of *Reporte Índigo,*[12] an electronic magazine that has significant impact in Mexico. The magazine published comments allegedly made by the candidate regarding his relationship with a group of drug traffickers operating in the region.

Currently, discussions are underway on proposals for legislation on the protection of personal data, the National Registry of Mobile Phone Users and the citizen identification document, as well as on the push for legislation on the development of an information society. The way in which these issues are being positioned makes it appear that human rights are not being considered in the creation of an information society. The work in Congress disregards the critical problems of restricted freedoms and abused rights. What is happening with the trampled-on freedom of expression, with the right to privacy? What is happening with the vital diversity required in content and technology, with a multilinguistic focus, with the defence of Mexico's multicultural reality? It appears these aspects are not considered to be a part of the information society being discussed in the Mexican Congress.

Clearly, legislation on the development of an information society must include communication-related rights. And the implementation of such legislation must signal a positive step forward in the development of citizen rights in society generally. The legislative initiative should reconsider some elements neglected so far, including broad participation by society in the lawmaking process and the country's cultural diversity. Free technologies should also be considered. If these aspects are not included, and especially, if a link is not established between ICTs and human rights, the information society created will quite possibly remain as limited and obsolete as many other decrees have made Mexico today. ■

References

Alcántara, L. (2009) El despliegue militar en México trae violencia: AI, *El Universal*, 28 May. www.eluniversal.com.mx/primera/33048.html

Alcántara, L. (2009) Débil protección del Estado a periodistas, *El Universal*, 20 July. www.el-universal.com.mx/sociedad/3638.html

AMARC (2009) *Bases para una Política Publica en materia de Libertad de Expresión y Medios Comunitarios*. amarcmexico.org

AMIPCI (Asociación Mexicana de Internet) (2009) *Hábitos de los Usuarios de Internet en México*. amipci.org.mx/estudios/

Campaña (Campaña Permanente de Protección a Periodistas en México) (2009) *Primera denuncia contra el periodismo digital*. www.libertad-expresion.org.mx/noticias/primera-denuncia-contra-el-periodismo-digital

Diario Oficial de la Federación (2009) Decreto por el que se reforman y adicionan diversas disposiciones de la Ley Federal de Telecomunicaciones, 9 February. www.dof.gob.mx/nota_detalle.php?codigo=5079751&fecha=09/02/2009

Diario Oficial de la Federación (2009) Decreto por el que se adiciona la fracción XXIX-O al artículo 73 de la Constitución Política de los Estados Unidos Mexicanos, 30 April. www.dof.gob.mx/nota_detalle.php?codigo=5089047&fecha=30/04/2009

El Universal (2009) ¿Para qué servirá la Cédula de Identidad? *El Universal*, 28 July. www.el-universal.com.mx/notas/615448.html

La Jornada (2009) La libertad de prensa en México está cada vez peor, afirma Freedom House, *La Jornada*, 4 May. www.jornada.unam.mx/2009/05/04/index.php?section=politica&article=018n2pol

Norandi, M. (2009) Documentan 142 agresiones contra periodistas en 2009, *La Jornada*, 22 July. www.jornada.unam.mx/2009/07/22/index.php?section=politica&article=015n1pol

Notimex (2008) Elevan a rango constitucional la protección de datos personales, *Notimex*, 4 December.

11 Campaña (Campaña Permanente de Protección a Periodistas en México) (2009) *Primera denuncia contra el periodismo digital*. www.libertad-expresion.org.mx/noticias/primera-denuncia-contra-el-periodismo-digital

12 www.reportebrainmedia.com

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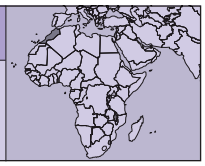

Introduction

In late 2008, Mohammed Erraji, one of the bloggers who criticised the Moroccan king's social policies, was sentenced to prison.[1] This case attracted considerable attention in the international community and among local human rights activists, who furiously condemned the decision. They said it implies a significant change in the status of internet freedom in Morocco.

Access to information and freedom of expression are two key criteria of good governance in democratic regimes. These two elements have a positive impact on citizens' inclusion in the democratisation process of the country; they also guarantee the required level of transparency related to the government's decisions and the right to know. Morocco is one of the Middle East and North Africa (MENA) region countries which has not yet adopted a law to guarantee access to information. As for the notion of freedom of expression and opinion, the country's Press Code imposes clear restrictions on the type of information journalists are allowed to publish.

The introduction of new technologies, specifically the internet, has prompted the creation of new channels to disseminate information. Yet, despite new e-government initiatives, which are aimed primarily at efficient service delivery, efforts to establish reliable online platforms for accessing information as a right are minimal in Morocco. They do not reflect positively on the transitional phase to democracy the country has been undergoing for a decade. This raises several questions about the extent to which public institutions and administrations in the country are transparent.

Policy context

Access to online information in Morocco in general is very limited. The reason can be linked to the fact that the government does not realise the potential of building an open knowledge society, and the ways in which the internet can be used as the main driver to do this. As a result, there are no policies in place to protect intellectual property online. Morocco also does not have an organisational framework as far as access to online educational materials is concerned.

The government has, however, expressed a specific interest in e-government in an attempt to reinforce its relationship with the citizens and to boost the perception of the government as a positive force. Morocco established a strategic committee for developing new technologies back in 1998 as part of its initiative to launch an e-government plan. This committee was reinvigorated in 2004, and was placed under the supervision of the economic affairs minister.[2]

Article 9 of the Moroccan Constitution[3] grants citizens the right of freedom of opinion, of expression in all its forms, and of public gathering; and, outside of the Press Code, Morocco's policy regarding online freedom of expression does not obviously impose any restrictions on online content. However, the widespread use of the internet and the increase in blogging activity have changed the way online freedom of expression is perceived.[4]

Censoring online content in Morocco can be considered a continuation of the country's policy regarding freedom of expression in the offline world, which still imposes restrictions on material criticising the monarchy, religion and national integrity. Besides clamping down on bloggers, the government is also closely monitoring the websites of the Islamic party Al Adl Wal Ihsan,[5] as well as websites discussing disputed territory in Western Sahara, since it is believed to jeopardise the kingdom's integrity.[6]

Legislative context

The legislative framework in Morocco still lacks provisions specific to online media in general. This can be linked to the lack of integrating new technologies in the communication infrastructure and the lack of planning and coordination of information management.

The Moroccan Press Code, in its new version (2002),[7] grants a series of rights related to freedom of expression and opinion, yet imposes restrictions on publishing information criticising the monarchy, Islam and the country's integrity, and, more specifically, the Sahara issue. Article 38 of the Press Code lists all electronic means of distributing information on the above-mentioned issues, including the internet. Infringing this law means authors will be subject to a prison sentence and a fine.

Access to what exactly?

One can sum up the critical issues relating to access to information in Morocco as follows:

1 Rachid, J. (2008) A turning point for Internet freedom in Morocco, *Menassat*, 12 September. www.menassat.com/?q=en/news-articles/4611-turning-point-internet-freedom-morocco

2 National Seminar on the Right to Access Information: Law, administration and justice *(Le droit d'accès a l'information, la loi, l'administration et la justice: Travaux d'un seminaire national),* December 2008, p. 16.

3 www.al-bab.com/maroc/gov/con96.htm

4 Islamic Human Rights Commission (2007) Freedom of Expression in Morocco: Retraction of freedom of expression in Morocco: The Case of Al-Adal Wa Al-Ihsan (Justice and Spirituality Movement), 10 August. www.ihrc.org.uk/show.php?id=2888

5 Sami, G. (2009) Morocco blocks four opposition websites, *Global Voices Advocacy*, 22 January. advocacy.globalvoicesonline.org/2009/01/22/morocco-blocks-four-opposition-websites

6 For more information see: en.wikipedia.org/wiki/Western_Sahara#Dispute

7 www.mincom.gov.ma/NR/rdonlyres/3451DD5C-F7DB-45D3-A927-D1EB691AD635/904/CodedelaPresse.pdf

- Restrictions on the free flow of information in the Press Code
- The absence of a clear policy to make information available online
- Priority on political stability over the right of the media and citizens to access information
- Weak online platforms to access government and private sector information.

Even though Morocco has adopted universal human rights in its constitution, it usually scores very low in the ranking of countries promoting free speech. It has also been criticised for imposing fines and prison sentences within the ambit of the Press Code on publications judged as jeopardising public order. Most newspapers censor themselves to avoid sanction. The editorial line of most newspapers is defined according to the limits imposed by both the constitution and the Press Code, except for a few newspapers that manage to report on citizens' concerns in a sarcastic way. They are perceived by the general public and intellectuals as delivering constructive criticism of the regime and government institutions.

An increase in the level of internet use in Morocco gives citizens the opportunity to express their views concerning state economic and social policies, and other key issues facing the country.

Blogging has flourished in the last decade. Moroccan citizens have become more involved in reporting directly about issues they face on a daily basis. This helps us understand the views of people from all regions of the country. These views are of people who are far from the centre of decision making and power, and usually do not have any access to influence decision-making processes.

Cyber activists are aware of their rights to access information online, and the need to have more space to express their views. However, the state policy agenda does not necessarily reflect the ambitions of the blogging community. Access to major websites like YouTube,[8] Google Earth and Google Maps[9] was interrupted previously, but was reactivated shortly after fierce protests by internet users on their blogs or via prominent activist websites like Global Voices.[10]

New trends

A new trend in Morocco regarding access to online information is the establishment of e-government services. A committee responsible for deploying an action plan for integrating governmental services in an online platform to strengthen the government-citizen relationship has been set up. The action plan's main objective is to set up the parameters of an e-government system. The system aims to simplify procedures when using public services by, for instance, informing the public about deadlines and the documentation required in various processes. The plan also aims to convert certain procedures to be available online including the registration and management of public tenders.[11]

The plan elaborates extensively on the parties to be involved in the e-government initiative. It defines the role of central and territorial administrations in facilitating administrative procedures, and the sectors the project will be covering.

A report from a national workshop on the right to access public sector information pointed out that the e-government plan does not initially provide a legal background or any obligations regarding key elements constituting an e-government project, namely ratifying legislation with regards to electronic signatures, data protection and electronic archives.[12] However, these parameters were tackled in a recent document covering the legal framework of the e-government plan.[13]

Morocco is building its e-government platform slowly but surely. Two main websites have been launched. Maroc.ma[14] and Service-Public.ma[15] are the outcome of a joint project involving several governmental departments. They include general information for the public and the public sector on administrative procedures, and information on available public facilities. There is also the intention to create independent websites for cities and the different regions of the kingdom to provide online services for citizens.

Action steps

The internet offers the potential of creating new economic opportunities for least-developed countries like Morocco. National policies should be adjusted to accommodate the digital age by:

- Introducing effective legal mechanisms to protect the right to access online information and freedom of expression.
- Encouraging online freedom of expression and having fewer restrictions on content.
- Deploying the necessary platforms to convert administrative procedures to online services, and making the available services widely available by providing information in Arabic, which is the official language in Morocco.
- Launching campaigns to build citizen trust in online procedures.
- Updating official websites with the necessary information to keep citizens and the private sector informed about new bureaucratic procedures.
- Encouraging more transparency in public administrations, including disclosing contact details for civil servants, information on budgets and costing, and any other key information. ■

8 Sami, G. (2007) Block of Youtube: the Moroccan blogosphere react, *Global Voices Advocacy*, 28 May. advocacy.globalvoicesonline.org/2007/05/28/block-of-youtube-the-moroccan-blogosphere-react

9 York, J. (2008) Morocco: Censorship Update, *Global Voices*, 24 January. globalvoicesonline.org/2008/01/24/morocco-censorship-update

10 globalvoicesonline.org

11 National Seminar on the Right to Access Information (2008), op. cit., p. 16.

12 Ibid., p. 17.

13 IDARATI (2006) National e-government programme for an integrated and socially responsible e-administration 2005-2008 *(Programme national e-gouvernement 2005-2008: Pour une administration électronique intégrée et citoyenne)*, Version 4.5, 25 January, p. 5.

14 www.maroc.ma

15 www.service-public.ma

NAMIBIA

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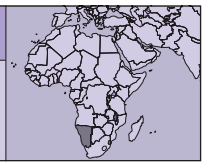

Introduction

Information in Namibia is being accessed in various ways, online access being the least popular mode. The main obstacles to online information access are the cost of access (through computers or internet-enabled mobile phones), the cost of usage and lack of skills. Therefore any advocacy around online information access would need to address these three obstacles simultaneously. The cost of access and usage is the outcome of policy and regulatory choices and the resulting telecommunication market structure.

In this report the telecommunication sector as the access provider will be discussed first. The next section discusses Namibia's policies and regulatory environment. This is then followed by a section on how Namibians access information.

Namibia's telecommunication sector

Namibia's telecommunication sector will develop from a fixed monopoly and mobile duopoly to a converged oligopoly in 2009. A second mobile licence was awarded in 2006 to CellOne. The market entry of CellOne and the resulting competitive pressure has reduced access and usage prices for consumers and led to a rapid increase in subscriber numbers.

However, the institutional set-up and the regulatory environment have been everything but ideal. Two different ministries were responsible for the regulatory supervision of the sector, one for fixed-line telephony and one for mobile telephony. The absence of an independent regulator with authority to regulate the entire sector meant that CellOne's market entry has been a risky endeavour. Namibia has since then accelerated telecommunication sector reform with an information and communications technology (ICT) ministry responsible for the entire sector, established in 2008. In 2009, parliament passed a Communications Bill which is expected to become an Act before the end of the year. An interconnection dispute was also resolved in 2009. The year 2010 will most likely see the conversion of the existing licences of Mobile Telecommunications Ltd (MTC), CellOne and Telecom Namibia into service and technologically neutral licences. This will increase the competition within the sector, which in turn will lead to lower prices, expanded service delivery and more investment. In particular, broadband access and usage and international calls can be expected to drop by a large percentage in price.

Telecom Namibia is the only fixed-line operator in Namibia and is owned by Namibia Post and Telecom Holdings (NPTH), which in turn is owned by the state. NPTH is also a majority shareholder of MTC, which was awarded a mobile telecommunication licence in 1996. In July 2006, 34% of MTC was bought by Portugal Telecom. MTC still has about an 87% market share and subscriber numbers are increasing. CellOne launched its services in April 2007. Telecel Globe, a subsidiary of Orascom Telecom, bought 100% of CellOne in January 2009.

Telecom Namibia launched a mobile service in late 2006/early 2007 called Switch, based on code division multiple access (CDMA). Switch was restricted to fixed-wireless until May 2009 due to political pressure. CellOne and MTC had argued that Switch would be illegal and lobbied the government to stop Telecom Namibia from providing mobile services. However, this is not the case, and Telecom Namibia "voluntarily" restricted its service to fixed-wireless due to the political pressure.

MTC and CellOne use global system for mobile (GSM) to provide mobile telephony, while Telecom Namibia uses CDMA. Telecom Namibia has a statutory licence but not a statutory monopoly. It remains a *de facto* monopoly until an additional fixed-line licence is awarded, breaking Telecom Namibia's monopoly. The new telecommunications act, expected for the end of 2009, and the expected licence conversion, is likely to end Telecom Namibia's monopoly and allow CellOne and MTC to also offer fixed-line services. Neither MTC nor CellOne is likely to enter the fixed-line market. They would, however, be likely to establish their own international voice and data facilities. MTC's home phone, which was launched in 2009, is a fixed-wireless product that is based on GSM.

End-user internet access is available in the form of modem dial-up, integrated services digital network (ISDN), asymmetric digital subscriber line (ADSL), leased lines, Wi-Fi hotspots, line-of-sight wireless and third-generation (3G) mobile or CDMA. Telecom Namibia provides Namibia with international bandwidth through the SAT-3 cable via the Cape Town landing point and via satellite. Namibia is a non-landing consortium member of SAT-3. Telecom Namibia joined the West African Cable System (WACS) consortium. MTC and CellOne are expected to join Telecom Namibia as sub-consortium members and Botswana might join as well. Very small aperture terminal (VSAT) satellite is used by MTC and internet service provider (ISP) MWeb, among others, to provide additional bandwidth. Further international bandwidth is obtained by ISPs leasing capacity from South Africa. MTC and CellOne were awarded international data licences in 2008. Potentially, this will further increase Namibia's international data capacity.

Key challenges for the years ahead include building the institutional capacity of the new independent telecommunications regulator. The sector currently relies heavily on international management and technical expertise. The

regulator would be well advised to seek secondment from a well-established regulator in another country as well to build up the institution and build sustainable capacity on a staff and institutional level.

Creating a market structure that creates access opportunities for all Namibians at affordable costs will be a formidable task. The existing laws and policies state this as an objective, but provide little guidance on how to attain it.

Namibia's policies and regulatory environment[1]

Article 21 of the Namibian constitution protects the freedom of speech and expression, including the freedom of the press and other media. Namibia does not have a freedom of information act. It was discussed on several occasions but was sidelined over the finalisation of the new Communications Bill.

The Namibian Communications Commission (NCC), established in 1992, reports to the Ministry of Information and Communication Technology, and is solely funded by the government. The NCC will become a fully-fledged independent regulator for the entire ICT sector with the passing of the Communications Bill. The new Bill makes the regulator financially independent of government, allowing it to collect licence fees to fund its own operation and the universal service fund. The Bill was passed by parliament in July 2009 and was expected to become an Act later in the year.

New ICT policies dealing with broadcasting, telecommunications, information technologies (IT), licensing, and ICTs in general were finalised in early 2009. They are fairly vague with respect to freedom of expression and access to information.

The Overarching ICT and Broadcasting Policy (2008), which governs these different policies, refers in its introduction to the "ability to collectively deliberate and participate in the democratic governance of their country through freedom of expression and access to information via a pluralistic range of media and media institutions of diverse ownership and control." This statement is repeated in the foreword of the broadcasting policy.

Section 10.2 of the overarching policy deals with e-government, and states that the aims are to enhance service delivery and democratic participation (this is also referred to in section 8.1 of the IT policy). Section 10.5 stipulates that the government of Namibia will provide internet access to its citizens through information kiosks, multi-purpose regional community centres and other community projects. Section 10.6 declares the government's intent to address the e-skills issue.

The overarching policy and the telecommunications and broadcasting policies also only contain fairly vague sections about universal access. It will be left to the new regulator to define concrete objectives and design strategies to attain them. The new Communications Bill only deals with procedural matters, as it should.

Access to information in Namibia

This section makes use of a national representative household and individual e-access and usage survey conducted at the end of 2007 in Namibia by Research ICT Africa. The survey was conducted to determine household and individual ICT usage and access.

The survey targeted households and individuals aged sixteen years or older. It revealed that below 7% of Namibians sixteen years or older had an undergraduate or post-graduate degree as highest education. About 16% had no formal education. Linked to that are 17% of Namibians who cannot read or write. Another 21% have difficulties reading a newspaper. Meanwhile, 14% of Namibians sixteen years or older stated that they participate in decision making at local level (i.e., at village or municipal levels).

The radio remains Namibia's number one mass media communication technology, with 70% of Namibians listening to the radio regularly compared to about 40% who watch TV. Both radio and TV serve predominately for entertainment; 17.2% of those who watched TV and 22.7% of those who listened to the radio followed local news. Less than 10% watched educational programmes. Of those who do not watch TV and do not listen to the radio, most just cannot afford it. For 66% of those who do not watch TV, lack of electricity within the house was the main obstacle.

In conclusion, access to information through TV, newspapers and other print media is limited in Namibia. The radio remains the best channel to reach Namibians.

Online access to information in Namibia

The survey also showed that only 26.7% of Namibians sixteen years or older know what the internet is and only 8.8% actually use it. In total only 5.5% of Namibians sixteen years or older have an email address. Breaking these figures down into income categories indicates part of the problem. Among the lower three quartiles in terms of income only 16% knew what the internet was and only 4% used it. For the top income quartile the figures are 60% and 25% respectively.

Internet is predominately accessed at work (35.3%) followed by internet cafés (24.3%), home (21.7%) and educational institutions (15.7%), while 6.7% of internet users also access the internet using their mobile phones. It can be expected that mobile internet access will gain a greater share as the internet access of choice given mobile penetration rates in Namibia.

Only 10.7% of all internet users access local government information and services online. That is less than 1% of Namibians sixteen years or older, given that only 8.8% use the internet in total. This is hardly surprising since government websites offer very little updated content and interactivity.

The main reasons stated by Namibians sixteen years or older who know what the internet is but do not use it are a lack of access to a computer (63%) and not knowing how to use a computer (15.3%).

1 See Namibian Communications Commission (NCC): www.ncc.org.na

Namibian ICT usage and access survey results		
		Share
Do you participate in decision making at village/city/ municipal level?		13.90%
Share 16+ with mobile phone or active SIM card	National average	49.30%
	Urban	53.20%
	Rural	15.80%
Highest level of education	None	15.65%
	Preschool	1.32%
	Primary	18.80%
	Secondary	53.17%
	Tertiary	6.77%
	Traditional	2.29%
	Vocational	0.84%
	Remedial	1.16%
Can read a letter or newspaper	Easily	61.60%
	With difficulty	21.20%
	Not at all	17.10%
Can write a letter	Easily	58.00%
	With difficulty	25.00%
	Not at all	17.00%
Individuals 16+ watching TV		39.24%
Programmes being watched most	Entertainment	50.53%
	Educational programmes	9.15%
	Local news	17.20%
	International news	6.71%
	Politics	1.57%
	Sports	11.24%
Why people do not watch TV	House has no electricity	65.60%
	Cannot afford a TV set	56.90%
Individuals listening to radio		70.40%
Do you own a personal radio which you can use at any time?		62.40%
Programmes being listened to most	Music	22.40%
	Politics	3.60%
	Educational programmes	4.6%
	Programmes on local issues	22.70%
	Sports	3.50%
	News	22.70%
Those that listen to a public broadcaster		92.40%
Main reason for not listening: "I cannot afford a radio and no one I know has one"		40.70%
Internet activities	Accessing the news	42.46%
	Sending and receiving emails	45.33%
	Playing online games	16.26%
	Finding information I am interested in	48.61%
	Downloading/listening to music	28.27%
	Making internet phone calls (VoIP)	2.31%
	Education, as part of a course I was registered in	17.91%
	Education in general	18.76%
	Online banking	2.52%
	Chatting and exchanging messages	11.09%
	Paying bills online using credit cards	1.60%
	Researching as part of a training course or my education	11.70%
	Accessing local government services online	10.72%
	Getting information for a friend or family member	10.09%

Action steps

The government of Namibia does not use the internet effectively to interact with its citizens. Access and usage costs of the internet are too high for it to become an effective channel for information access. The intensity of telecommunication sector reform will accelerate in 2010. The new regulator needs to be established and institutional capacity built while critical issues need to be addressed immediately. Important issues include licence conversions, number portability, new licence and spectrum fee regimes and the establishment of a universal service fund. In 2009 Namibia set a precedent in the region for resolving interconnection disputes. Maintaining this momentum could provide an opportunity for Namibia to lead in the harnessing of ICTs for economic and social development in Africa. Additionally, the e-skills gap needs to be addressed urgently.

Many examples exist of how governments can increase service delivery through the internet. Providing e-services would also provide an incentive for the uptake of internet use, in particular for mobile internet access. ■

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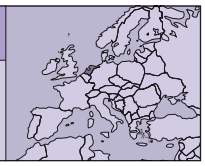

Introduction

The Netherlands is a small European country with more than 16 million inhabitants and a high population density. It is a welfare state with relatively high taxes and a fairly even income distribution. In past decades the undressing of the welfare state has been substantial, giving way to a stronger involvement of private enterprises and a withdrawal of the state in many domains. Income inequity has increased over the past decades.

The Dutch are well known for their tolerant and liberal values and attach a high value to freedom of expression. Recently, however, this freedom has been contested, suggesting an ambivalence in Dutch society. This was illustrated by reactions to the release of the movie *Fitna*[1] by the Dutch politician Geert Wilders. A majority of the population say that the freedom of expression should be protected more strongly than it is now. On the other hand most also agree with the statement that this freedom should not imply that people get hurt in their religious feelings.[2]

Digitisation of Dutch society has been rapid and substantial. A vast majority of people (85%) have internet connections, most of them broadband (80%), making the Netherlands one of the leading countries worldwide in broadband penetration.[3] The spread of the (broadband) internet is virtually complete, especially amongst families with children: at the end of 2005 almost every family had a broadband internet connection. More than half (55%) of the country's teenagers have a personal computer (PC) in their own room.[4]

In recent years, the Dutch have begun spending more time on the internet at the expense of time spent watching television, listening to the radio and reading printed media. However, newspapers are also read on the internet, while listening to the radio and watching television via the internet have become more popular in recent years. This convergence of media has led to the same content being offered across different channels. The merging of radio, television, telephony and internet services is also happening in mobile media.[5]

Policy environment

In the Netherlands, access to online information is not only supported by a high diffusion of internet connections, but also by many organisations, businesses and (increasingly) citizens providing online content. Moreover, the Dutch government contributes to a high quality of available information, supports the European Safer Internet Programme and is in favour of net neutrality, the principle of letting all internet traffic flow equally and impartially, without discrimination.[6]

The government bears some responsibility for internet safety, taking a leading role compared to industry and schools. In 2008 the government, in collaboration with business, started the programme *Digivaardig & Digibewust*, the Dutch programme promoting e-awareness, e-inclusion and e-skills. This programme aims at the e-inclusion of all Dutch people by promoting safe internet use and media literacy.

In line with the liberal values in Dutch society the government is committed to the freedom of expression in the online environment, as elsewhere, as long as these expressions stay within the limits of what is legally acceptable (see the section on the legislative environment below). This also holds for the protection of privacy on the net. Although there is fairly little concern among citizens about threats to their privacy, the data protection law is available to penalise the abuse of personal information.

The Dutch government is seeking to use ICT tools to reduce administrative burdens and improve service delivery. Internationally, the Netherlands is at the forefront in these tasks. In line with the traditional Dutch focus on participative and inclusive government, featuring broad citizen consultation and involvement, the Netherlands has developed ambitious programmes and activities that aim to increase user take-up of e-services.[7] In order for citizens to reach a fast, efficient and customer-focused government, policy is directed towards the development of a basic infrastructure, which includes electronic access to the government, e-authentication, basic registration and services (e.g., applying for a passport). However, the take-up of e-services is rather slow, partly due to insufficient skills of the Dutch, and also due to a lack of user orientation in e-government services.[8]

1 According to Wikipedia, "the film shows selected excerpts from Suras of the Qur'an, interspersed with media clips and newspaper clippings showing or describing acts of violence and/or hatred by Muslims." en.wikipedia.org/wiki/Fitna_(film)

2 SCP (2009) *Continu onderzoek burgerperspectieven*, kwartaalbericht 2009/1, SCP, The Hague.

3 CBS (2006) *De digitale economie 2006*, Centraal Bureau voor de Statistiek, Voorburg/Heerlen.

4 Duimel, M. and de Haan, J. (2007) *Nieuwe links in het gezin. De digitale leefwereld van tieners en de rol van hun ouders*, SCP, The Hague.

5 De Haan, J. and Adolfsen, A. (2008) *De virtuele cultuurbezoeker; publieke belangstelling voor cultuurwebsites*, SCP, The Hague.

6 Lange, P. (2008) Net neutrality, in Finlay, A. (ed.), *Global Information Society Watch 2008*, APC, Hivos and ITeM, p. 17-19. www.giswatch.org/gisw2008

7 OECD (2007) *e-Government Studies Netherlands*, OECD Publishing, Bedfordshire.

8 Van Deursen, A., Van Dijk, J. and Ebbers, W. (2006) Why E-government Usage Lags Behind: Explaining the gap between potential and actual usage of electronic public services in the Netherlands, *Lecture notes in Computer Science*, 4084, p. 269-280.

Legislative environment

In the Netherlands a broad range of laws cover a number of topics regarding safety in the information technology society. There is no specific law covering the right to access information. This is part of the fundamental rights of freedom of expression and the freedom to gather information. The following legislation is relevant to information and communications technology (ICT) security and to protecting the rights and privacy of the individual in the digital media:

- The Data Protection Law *(Wet Bescherming Persoonsgegevens)* is the main piece of legislation that governs the protection of personal data. It provides a way in which individuals can enforce the control of information about themselves.
- The Intellectual Property Law protects owners who are granted certain exclusive rights to a variety of intangible assets, such as musical, literary and artistic works; ideas, discoveries and inventions; and words, phrases, symbols and designs. Common types of intellectual property include copyrights, trademarks, patents, industrial design rights and trade secrets. Copyright *(Auteurswet)* in the Netherlands has been internationally standardised, lasting between 50 to 100 years from the author's death, or a shorter period for anonymous or corporate authorship.
- The Telecommunication Law *(Telecomwet)* regulates telecommunication. This legislation promotes the best possible organisation and operation of the market for electronic communications, and includes a strong consumer orientation. The law is also relevant in cases such as the prohibition against unsolicited digital advertising.
- The implementation of the European Commission e-Commerce Directive (the basic legal framework for electronic commerce in the Internal Market) is part of the Civil Code. This directive applies specifically to information on suppliers of commercial services and the establishment of electronic contracts.
- Felonies such as sexual offences are penalised by the Criminal Code. Images (or a carrier of these images) of sexual behaviour by minors (people aged under eighteen) can be punished with imprisonment of four to six years maximum or a heavy financial fine.

Access to online cultural education

In Dutch schools the pupil-computer ratio in primary and secondary education was approximately seven pupils per computer in 2006/2007, and 87% (primary education) to 95% (secondary education) of all computers are connected to the internet. Today schools focus on the improvement of the quality of ICT infrastructure, on substantive digital applications, on online educational materials and on supporting teachers in their use of technology.[9]

Culture is a field which lends itself particularly well to the development of educational services. The Netherlands is one of the leading countries in the digitisation of cultural materials. Projects aim at creating, managing and improving access to digital content, collection management (i.e., managing digitised images of paintings in databases with metadata), regulating intellectual property issues and creating standards.[10]

More and more digitised material is becoming available which can be used to create interesting educational applications. Important organisations in the use of ICT in education are *Kennisnet/ICT op school* (Knowlegde Network/ICT at school), SURFnet, *Erfgoed Actueel* (the Netherlands Institute for Heritage) and Waag Society.[11] *Kennisnet/ICT op school* and SURFnet are responsible for infrastructure and also jointly develop internet applications aimed at innovation in Dutch education. *Cultuur en School* and *Erfgoed Actueel* are specifically concerned with cultural education, with a view to encouraging interest in art and cultural heritage and raising historical awareness. Waag Society also plays a pioneering role as a centre of expertise on culture and ICTs. It gathers and disseminates knowledge on the use of ICTs for cultural education purposes, and on developing innovative applications for education.

Several projects aim at increasing the digital accessibility of cultural heritage in education. The *Cultuurplein* ("culture square") portal[12] contains a great deal of background information on art and culture. The site aims to be the central hub for everything that has to do with culture and education in the Netherlands, and seeks to support teachers and cultural institutions in integrating cultural activities into teaching practice. By providing advice to teachers (including the sharing of knowledge) and promoting expertise at cultural institutions, the site aims to encourage the use of digital technology.

The *Kennisnet* portal[13] offers a wide range of educational information and teaching packs for both teachers and pupils. Information on architecture and design has been made accessible for education and applications are being developed that are designed to bring pupils into contact with documentary and other film genres in an active way. Cultural heritage is also presented to pupils in an exciting and playful way; archaeological information, for example, shows pupils how people used to live, from prehistoric times up to and including the Middle Ages.

Education is becoming an increasingly important focus for archives, which are developing supplementary digital teaching material and digital teaching packs. Although museums have always developed numerous educational activities, for the time being they offer relatively few digital teaching packs. Several projects by the Naturalis natural

9 Kennisnet (2007) *Vier in balans monitor 2007*, Kennisnet/ICT op school, Zoetermeer.

10 De Haan, J., Mast, R., Varekamp, M. and Janssen, S. (2006) *Bezoek onze site; over de digitalisering van het culturele aanbod*, SCP, The Hague.

11 www.waag.org

12 www.cultuurplein.nl

13 www.kennisnet.nl

history museum show a possible way forward. The *Geheugen van Nederland* (Memories of the Netherlands) project also makes cultural heritage from archives, museums and libraries accessible for education, including via online lessons. Libraries, for their part, compile packs on individual subjects which are dovetailed to the core objectives of educational targets. These packs provide information on all sorts of topics in the form of links to websites, articles and film clips.

Film and video are of great value in education, and exploring the didactic potential of streaming media should make wider application possible in the future. The Teleblik project makes thousands of hours of streamed content from the public broadcasters accessible for education. The public service broadcaster itself is a major content provider for children.[14] Commercial broadcasters, with websites like Jetix,[15] also provide a lot of content that can be used for education.

The growing amount of cultural content on the internet is giving rise to new questions in relation to digital applications in education. Does the available material match the existing curricula? Do teachers have enough time, energy and knowledge to incorporate this material into their lessons? Do pupils manage to navigate their way through this material? The general impression, which is not supported by any systematic research, is that not much material is coded to be used within specific educational programmes, that teachers lack sufficient time, energy and knowledge, and that pupils are easily satisfied with the first results of their query on Google.

New trends

A strong new trend is the rise of Web 2.0, a collection of applications that share the potential of social interaction. These applications give users the possibility to add information to the web. They will no longer be merely consumers of digital content, but also producers. Users become authors themselves.

This trend has led to a substantive deepening of existing internet use and means that people will begin making use of various kinds of different content. Because the content created by users is not constrained to textual information, audiovisual information is added in increasing amounts to the web as music and self-made film clips are shared with others.

In the Netherlands the social networking site Hyves[16] has attracted many people, in particular the youth. As is the case elsewhere in the world, Twitter is the latest fashion in information exchange.

Web 2.0 also creates opportunities for musicians and other artists to offer (trailers of) their music and other forms of creative expression on the net. MySpace is currently a popular website in the Netherlands, where large numbers of users maintain weblogs and profiles.

The expansion of social networking sites, as well as of online worlds – such as World of Warcraft[17] and Second Life[18] – leads to an increasing need for management of all the different identities people have to deal with. Identity management is nowadays especially relevant for young people in the Netherlands. Banking, shopping and dealing with the government online means there is a need for reliable authentication devices. At the same time, the use of virtual identities, nicknames and avatars in online worlds, forums and games, begs for safety regulations.

Another but related trend is the improvement of media literacy. In the Netherlands media literacy is often called "media wisdom", which refers to the skills, attitudes and mentality that citizens and organisations need to be aware, critical and active in a highly mediatised world.[19] Most Dutch media education initiatives are directed at the internet and audiovisual media. However, the converging of different media platforms makes it hard to distinguish separate media. TV, mobile and internet are converging, and virtual worlds and "real" worlds also seem to be merging.

Action steps

Some of the main issues that need special attention are:

- *Media literacy:* In October 2006 the Dutch cabinet stressed the importance of this topic and saw the need for a centre of media expertise and a code of conduct for the media. The centre was established in May 2008. Many different organisations are involved in activities that aim to achieve the goal of increasing media literacy.
- *Identity management:* Due to a combination of technological and social developments we can see an increasing convergence of new technologies and services. Steps need to be taken in order to support the identity management of citizens and to increase their sense of online security.
- *Improved internet safety:* Cyber bullying, cyber crime (hacking, phishing, viruses, etc.) and inappropriate and illegal content are prolific. Good organisations and campaigns have already been established. However, this is an ongoing task and there is still work to be done. ■

14 See, for example: www.zapp.nl

15 www.jetix.nl

16 www.hyves.nl

17 www.worldofwarcraft.com

18 secondlife.com

19 Raad voor Cultuur (2005) *Mediawijsheid, de ontwikkeling van nieuw burgerschap*, Raad voor Cultuur, The Hague.

References

CBS (2006) *De digitale economie 2006,* Centraal Bureau voor de Statistiek, Voorburg/Heerlen.

Duimel, M. and de Haan, J. (2007) *Nieuwe links in het gezin. De digitale leefwereld van tieners en de rol van hun ouders*, SCP, The Hague.

De Haan, J. and Adolfsen, A. (2008) *De virtuele cultuurbezoeker; publieke belangstelling voor cultuurwebsites*, SCP, The Hague.

De Haan, J., Mast, R., Varekamp, M. and Janssen, S. (2006) *Bezoek onze site; over de digitalisering van het culturele aanbod*, SCP, The Hague.

Kennisnet (2007) *Vier in balans monitor 2007*, Kennisnet/ICT op school, Zoetermeer.

Lange, P. (2008) Net neutrality, in Finlay, A. (ed.), *Global Information Society Watch 2008,* APC, Hivos and ITeM, p. 17-19. www.giswatch.org/gisw2008

OECD (2007) *e-Government Studies Netherlands*, OECD Publishing, Bedfordshire.

Raad voor Cultuur (2005) *Mediawijsheid, de ontwikkeling van nieuw burgerschap,* Raad voor Cultuur, The Hague.

SCP (2009) *Continu onderzoek burgerperspectieven, kwartaalbericht 2009/1*, SCP, The Hague.

Van Deursen, A., Van Dijk, J. and Ebbers, W. (2006) Why E-government Usage Lags Behind: Explaining the gap between potential and actual usage of electronic public services in the Netherlands, *Lecture notes in Computer Science*, 4084, p. 269-280. Krakow: Springer-Verlag.

NIGERIA

Fantsuam Foundation
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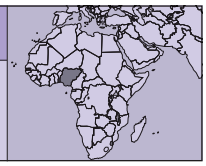


Introduction

When a Nigerian delegation went to lobby the United States (US) State Department to allow a state visit by the Nigerian president, the request was turned down. A photo-op with US President Barack Obama would have done a lot to underscore the legitimacy of President Umar Musa Yar'adua's regime. The US government cited the current status of governance in Nigeria, and the several electoral challenges being faced by the Yar'adua administration, as reasons for their decision.

This cold treatment in March 2009 was followed by another disappointment on the international scene when Nigeria was denied an invitation to the G-20 summit: a gathering that was attended by leaders from developing as well as developed countries. Then came the announcement that in July President Obama and First Lady Michelle Obama would visit Accra, Ghana, rather than Nigeria, on Obama's first visit to Africa since becoming president. These incidents, coming so close together, suggest an increasing international isolation of Nigeria, and some observers believe this is a direct result of the levels of corruption in Nigeria, of which the state's failure to pass a recent Freedom of Information Bill is a symptom.

Online public information dissemination is still in its infancy in Nigeria. There are various reasons for this. For instance, the level of internet penetration is still relatively low; although Nigeria has the second largest number of internet users in Africa, internet penetration is only 6.8%.[1] Other factors include the size of the country – 923,768 square kilometres – and its sparse communication and power infrastructure. However, access to online information is critical in the fight against government corruption and the birth of a transparent and accountable Nigerian state.

Policy environment

In theory Nigerians have the constitutional rights of freedom of speech and expression.[2] Section 36 of the 1999 Nigerian Constitution guarantees citizens the right to freedom of expression and the right to receive information. Nigeria is also bound by the African Union Declaration of Principles on Freedom of Expression in Africa and Article 10 of the African Charter on Human and People's Rights.

Nigeria appears well endowed with policies that can promote an equitable society. The Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), Code of Conduct Bureau (CCB), Budget Monitoring and Price Intelligence Unit (BMPIU), Public Complaints Commission (PCC), and National Human Rights Commission (NHRC) were established for these purposes.[3]

However, in practice, the overarching Official Secrets Act frequently circumscribes these freedoms. There are no constitutional avenues for citizens to request and access public/government documents, so the reality on the ground is that citizens have limited access to public information. The Secrets Act is complemented by other restrictive measures such as the Evidence Act, the Public Complaints Commission Act, the Statistics Act and the Criminal Code.

The National e-Government Strategy (NeGSt)[4] was launched in 2004 to "create a practical strategy and a single architecture to guide the evolution of digital government solutions with consistent standards, operating platforms and applications across agencies and government systems." Not much has been achieved in this vital area of intergovernmental information flow.

The pervasive and growing problem of corruption in spite of the plethora of policy instruments available may be due to:

- The absence of political will. The decline in the international stature of the EFCC as an African role model in the fight against corruption happened under the watch of President Yar'adua. An indication of the (non)impact of the government's attempts to rebrand Nigeria was the level of violence, vote rigging and arrests of independent electoral observers by state security agents at the recent local government elections in Ekiti state.
- The failure to pass strategic bills such as the Oil Sector Reform, the Railway Act Amendment Bill, the Whistle Blowers and Freedom of Information Bills, and the failure to establish the Fiscal Responsibility Commission and National Council on Public Procurement, which continues to undermine all efforts to fight corruption within the executive and legislative arms of government.

Legislative environment

One of the existing pieces of legislation designed to curb corruption within government is the requirement for a declaration of assets by civil servants. At the start of the present administration, in 2007, the president raised a lot of hope for

1 Internet World Statistics, Usage and Population Statistics, accessed 30 June 2009. www.internetworldstats.com/africa.htm

2 Freedom House, Freedom in the World 2009 - Nigeria, 16 July 2009. www.unhcr.org/refworld/docid/4a645295c.html

3 Civil Society Legislative Advocacy Centre (CISLAC) (2008) Communiqué issued at the end of the One-Day Dialogue Session on Whistle Blowers Protection, 5 December. cislacnigeria.org/index.php?option=com_content&task=view&id=71&Itemid=36

4 www.negst.com/index.htm

the implementation of the asset declaration policy when he made a public declaration of his own assets. But the momentum he generated has since dissipated because he did not make it mandatory for key members of his administration to follow suit. This may explain the recent call by the Code of Conduct Bureau for an open declaration and verification of assets by public officers. However, to make such a law more effective, a Freedom of Information (FOI) Bill should also be passed into law. The FOI Bill will enable whistle blowers to expose false asset declarations that may be made.

The widespread corruption in the polity was one of the reasons cited by the US Secretary of State for denying an audience to the Nigerian president. The situation has a long history and the military intervention in governance was a major contributing factor. However, it is instructive that in one of the states of Nigeria, significant progress is being made to ensure transparency and public accountability. The Lagos state executive and legislature appear to have found a way to stem the tide of corruption and accelerate economic and social development in the state.

Lagos state probably has the most transparent governance structure in Nigeria. The state also has a user-friendly website[5] which boasts prompt response to enquiries. Not even federal agencies and ministries have services that can match those offered by Lagos state. The Lagos state website even boasts a Revenue Complaints and Information Unit, with facility for contacting the agency. Lagos may be the only state where the NeGSt[6] is making progress. Indeed, the Nigerian Communications Commission (NCC)[7] and the Lagos state government are among the few government bodies to have regularly updated websites.

The Budget Monitoring and Price Intelligence Unit (BMPIU), which operates from the Presidency, also stands out at a significant level as being responsive to the public. Records also show that it has achieved some spectacular results. It was reported that its Due Process Office has saved up to NGN 160 billion for the government since its inception. However, one of its main defects is its lack of a functional website, in addition to its unduly cumbersome bureaucracy.

The Due Process Office was noted for its attempt at ensuring transparency in all government transactions. One of the earliest beneficiaries of this transparency was the auction of the first set of global system for mobile communications (GSM) licences. It is widely believed that the high level of transparency contributed to the massive inflow of foreign investment into the mobile sector.

It has been argued that the BMPIU has usurped the accountability functions of the legislature. But with the legislature mired in a series of financial scandals including receiving a sanction for non-performance from the president, it is difficult to see how it can effectively carry out this function. Considering that the bulk of corruption within government is related to the procurement of goods and services, there is an urgent need for a body that will enforce accountability and transparency in the various transactions. There is a need to make such a unit more independent and not left to the vagaries of political incumbents.

Apart from the executive and legislative arms of government, the Nigerian media are also experiencing significant levels of corruption. The media already have a code of conduct and its enforcement will also benefit from the FOI Bill when it is passed.

The FOI Bill

Civil society efforts to improve citizens' access to information in Nigeria date back to 1993 when the Media Rights Agenda,[8] International Press Centre, Civil Liberties Organisation and Nigerian Union of Journalists, joined by large numbers of other media groups, academia, human rights organisations and business interests, formed the Freedom of Information Coalition.[9] This virtual forum has been very effective in providing its members with timely information on issues of democracy and human rights using various electronic media.

The FOI Bill has become the oldest bill that has yet to be passed into law: the previous administration of President Olusegun Obasanjo turned it down, and now two years into the new government's term, the bill has yet to make any progress. While it is certainly not a panacea, the FOI Bill is generally regarded as a strategic policy that will have a far-reaching and positive impact on Nigeria's democracy and human rights credentials. The spirit of the FOI Bill is that it promotes accountability and good governance through better and timely access to information by citizens.

Cyber Crime Bill

There is no restriction on citizens' access to the internet. But the escalation in computer and internet-based crimes and the way they have tarnished Nigeria's international reputation have been provided as reason enough for a closer scrutiny of the individual's use of internet cafés. The Internet Crime Complaint Centre (IC3) ranked Nigeria among the top ten countries when it comes to internet crimes. In 2004, a Nigerian Cyber Working Group (NCWG) was set up by the government, but it was not until June 2009 that a draft Cyber Security and Information Protection Agency Bill[10] was presented for public hearing.

The speed with which this issue is being addressed does not reflect the urgency it deserves. Before the suspension, demotion and eventual dismissal of its boss, the Economic and Financial Crimes Commission (EFCC) had made headway in stemming the tide of "advance fee" fraud and other cyber crimes in Nigeria. His removal from that post signals

5 www.lagosstate.gov.ng

6 www.negst.com/index.htm

7 www.ncc.gov.ng

8 www.mediarightsagenda.org/foi.html

9 www.foicoalition.org

10 www.cyberschuulnews.com/nass_cybersecurity_draftbill.html

a reversal of a trend that had seen a significant improvement in Nigeria's rating on the global index of corrupt nations.

New legislative trends

Efforts to track miscreants' misuse of the internet for fraudulent activities led the EFCC to propose a measure that would require internet cafés to be registered. The agency is also considering strategic partnerships with mobile phone operators because they provide a significant proportion of internet access to the population. The challenge posed for effective monitoring of internet usage is due to the large number of subscribers and the land area that has to be covered. Nigeria's teledensity has gone from 0.73 in 2001 to 47.98 in April 2009, while there are now 6,349,660 code division multiple access (CDMA) mobile phones and 59,510,629 GSM subscribers.[11]

A draft Cyber Security Bill has now been released for public comment. When this becomes law, the EFCC would require adequate powers and resources to ensure its efficient implementation.

The National Information Technology Development Agency (NITDA) has developed a new bill, the e-Transaction Bill, that will improve the security of electronic transactions. This bill is particularly important because it reinforces the provisions of Section 37 of the Nigerian Constitution (1999), which states that "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."

Action steps

- Concerted and sustained advocacy by civil society is necessary to force the passing of the various anti-corruption bills, especially the FOI Bill, which is generally recognised as necessary if Nigeria is to attain international best practices. The Freedom of Information Coalition and the Civil Society Legislative Advocacy Centre (CISLAC)[12] have key roles to play in this activity.
- An audit of all global conventions and international agreements that promote probity and transparency to which Nigeria is a signatory needs to be undertaken. This audit needs to be given widespread coverage to ensure that more Nigerians are aware of what the government is expected to be doing on their behalf.
- The Freedom of Information Coalition can also consider undertaking initiatives to further domesticate these various instruments by making translations into major Nigerian languages. This will result in increased awareness raising and structured engagement of the public on anti-corruption issues. The use of the internet needs to be considered here as a dissemination strategy.
- At the moment there is no public record where Nigerians can verify the (non)attendance of their political representatives at the National Assembly. The Assembly will enhance its transparency credentials with a more credible and regularly updated website. Its Policy Analysis and Research Project Unit has to make itself more relevant in providing the National Assembly and the public with its research output.[13]
- The NeGSt, launched in 2004, needs to be revived to deliver on its objectives.

The pervasive level of corruption in Nigeria presents an avoidable hurdle for its development. The presence of a vibrant civil society and the unprecedented success in the governance of Lagos state are beacons of hope. It is obvious that the rapid and ongoing positive changes in Lagos have been facilitated by respect for the rule of law, openness and transparency. The legal instruments to ensure that similar accelerated development happens in the remaining states of the federation are freely available if the necessary political will can be mustered. The use of the internet to facilitate access to those rights provided for in the available legislation should be made a priority. ■

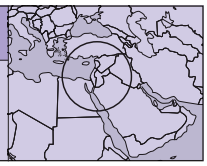
11 Nigerian Communications Commission (2009) Telecoms Subscriber Information (2001-March 2009). www.ncc.gov.ng/index5.htm

12 cislacnigeria.org

13 www.nassnig.org/parp/index.php

OCCUPIED PALESTINIAN TERRITORY

Anat Ben-David and Sam Bahour



Introduction

Access to information in the occupied Palestinian territory (OPT) has long been compromised by the Israeli occupation, ongoing violence and political instability. A further negative impact on access to information in the OPT took place in 2007, following the internal political crisis between Fatah and Hamas. As of 2009, two Palestinian governments operate in the OPT: a Fatah-led government in the West Bank, and a Hamas-led government in Gaza. Each government dismisses the legitimacy of the other. There are accordingly two Ministries of Telecommunication and Information Technology (MTIT), operating independently and implementing different information and communications technology (ICT) policies in Gaza and the West Bank.[1] Most countries refuse to recognise Hamas as the Palestinian ruling party despite them winning the parliamentary elections in January 2006, and as a result foreign aid to the Gaza Strip has been hindered. It is under these circumstances, then, that access to information in the OPT should be examined.

Policy environment

The United Nations Economic and Social Commission for Western Asia (ESCWA) ranks the OPT as having a low level of maturity when considering access to information and knowledge, referring to the relatively low internet penetration and high internet costs as a percentage of income, as well as to the unavailability of e-government services and insufficient number of public access points.[2] The low ranking reflects the halt in implementation of national projects initiated by the Palestinian National Authority (PA) between 2003 and 2005. These projects were in line with the Palestinian official ICT policy, as prepared by the ministerial high committee for the World Summit on the Information Society. The goals concerning access to information were set to promote ICT usage, provide affordable terminal stations, reduce licensing rates for internet service providers (ISPs) in rural areas, and roll out a national network of public access points.[3]

Projects such as the Palestinian e-government and e-learning initiatives were started, aimed at improving the internal connectivity of governmental institutions, the accessibility of education programmes and connectivity of education institutions. Nevertheless, the implementation of these projects was discontinued in 2007 due to the change of government, the consequent disruption in foreign financial aid and the tension between the two administrations.[4]

As mentioned, the new administrations, working independently, implement different policies in Gaza and in the West Bank. The void in the policy environment, created by the internal political crisis and the lack of a single, coherent policy context, is being filled by the work of Palestinian non-governmental organisations, who have been active in promoting freedom of expression and providing access to information throughout the years.[5] These organisations continue to receive foreign aid despite the political situation, and the money is invested in improving public access to information, encouraging the online consumption of information, and improving connectivity between Palestinian institutions.

Legislative environment

In line with international standards, freedom of expression and thought is protected by Article 19 of the 2003 amended Basic Law of Palestine.[6] Article 3 of the same law protects the freedom of the press, and Article 27 protects the right to publish newspapers in all forms and prohibits censorship. Audiovisual media and the internet are not specifically mentioned in the Basic Law. Several initiatives and draft laws for the establishment of a Telecommunication Regulatory Authority (TRA), protecting data, intellectual property rights and privacy on the internet have been proposed, but not yet ratified.[7]

The right of free access to information and transparency of public information is currently not protected by legislation. In 2005, Transparency Palestine, the Coalition for Accountability and Integrity (AMAN - [illegible]), promoted a draft law on access to information in Palestine. Unfortunately, the current absence of an operational Palestinian legislative council halted the process of ratifying this draft law.[8]

1 Ministry of Telecom and Information Technology (Gaza, Minister Yusef Mansi), www.mtit.gov.ps; Ministry of Telecom and Information Technology (Ramallah, Minister Mashhour Abu Daqqa), www.pmtit.ps

2 United Nations Economic and Social Commission for Western Asia (ESCWA) (2007) *National Profile for the Information Society in Palestine.* www.escwa.un.org/wsis/reports/docs/Palestine-07-E.pdf

3 World Summit on the Information Society (2003) *Contribution from Palestine.* www.itu.int/dms_pub/itu-s/md/03/wsis/c/S03-WSIS-C-0007!!PDF-E.pdf

4 ESCWA (2007) op. cit.

5 Rabah, J. and Daneels, I. (2005) Access to Information in the Occupied Palestinian Territories, *Palestinian Perceptions*, Issue 1. www.deza.admin.ch/ressources/resource_en_25077.pdf

6 Palestinian National Authority (2003) *The Amended Basic Law.* www.elections.ps/pdf/The_Amended_Basic_Law_2003_EN.pdf

7 Palestinian Information Technology Association of Companies (PITA) (2007) *Position Paper: Introducing New Intellectual Property Rights Laws and Robust Implementing Mechanisms Will Bolster Investment in Information and Communication Technology in Palestine.* www.picti.ps/defaultPortal/IPR%20Position%20Paper.pdf

8 Article 19: Global Campaign for Free Expression (2005) *Memorandum on a Proposal for a Draft Law of Palestine.* www.article19.org/pdfs/analysis/palestine-2005.pdf

Accessing the basics: ICTs in a conflict zone

Access to information and ICTs has a vital role in maintaining the daily lives of Palestinians in the West Bank and Gaza. Restrictions on movement, closures and curfews imposed by the Israeli authorities make it impossible for Palestinians to effectively travel between Palestinian cities, and to travel outside the OPT. The Gaza Strip is fenced, and entry and exit of its residents is prohibited without hard-to-get Israeli military approval. The West Bank is separated from Israel by the separation barrier, which, at several places along its route, isolates and cuts through Palestinian cities and villages and isolates farmers and their lands. Such circumstances have a direct impact on Palestinian commerce, education, politics, agriculture and maintenance of family and social contacts. Most importantly, ICTs are a key way – if not the only way – in which communication can take place between the physically separated West Bank, East Jerusalem and Gaza; and because of this they have the potential of aiding attempts towards national unity and reconciliation between the Palestinian fractions.

Despite a lack of policy coherence, and a freezing of international aid, ICTs have been rapidly adopted by Palestinians. The Palestinian Central Bureau of Statistics (PCBS) reports a significant increase in internet penetration rates, access to ICT infrastructure and mobile telephony between 2000 and 2006.

Yet access to online information is far from ideal. Internet penetration rates in the OPT remain relatively low. Although a third of all Palestinian households owned a computer in 2006, only 15.9% of the households had access to the internet.[9] The low rates are explained by PCBS as being due to high internet costs, a lack of connectivity in rural areas, and a low level of reliance on the internet as a source of credible information.[10]

PalTel, the incumbent telecommunications operator, has an exclusive licence for providing internet and communication services in the OPT. However, the telecommunications network, albeit owned and operated by PalTel, is forced, in line with the Oslo Peace Accords, to interconnect with the outside world by way of Israeli telecommunication operators. PalTel owns and operates an asymmetric digital subscriber line (ADSL) network, but must buy its bandwidth from Israeli firms, and then resell this capacity to its Palestinian customers, which results in expensive connectivity costs.

Moreover, Israel controls and routinely delays the entrance of hardware and infrastructure to the OPT, which prevents further development of internet public access points.[11] The Palestinian market is also flooded with unlicensed Israeli operators illegally (as per the Oslo Peace Accords)[12] providing communication services to Palestinian residents and businesses.[13]

Data obtained from surveys show that internet use is more prevalent amongst households with above-average education and income. The poor, especially residents of refugee camps and those in the rural areas, often do not have access to online information at all, both due to lack of connectivity and infrastructure, as well as their tendency to rely on other sources of information, such as friends and relatives, satellite television and local radio.[14] This is partially explained by a public distrust of the PA, which is perceived by large parts of the population as corrupt and, more recently, politically polarised.[15] As a result, Palestinians are not inclined to seek or rely on governmental information on the web.

Access to information in the densely populated Gaza Strip, whose residents, unable to leave the strip, have to cope with poverty and scarcity of jobs, food, water, gas and supplies necessary for maintaining normal daily lives, is an issue of growing concern.[16] Although there are numerous internet cafés in the Gaza Strip, most Gazans, especially women, do not have access to the internet.[17]

In early 2009, the Israeli military operation Cast Lead intensified the humanitarian crisis in the Gaza Strip, and this had a devastating impact on access to information. During the operation, electricity, water, food and basic supplies were cut off, and a media ban was enforced on the area.[18] Television and radio stations were bombed, and communication through telephone, mobile phone and internet were rarely possible. Under these conditions, Gazans did not have any means of obtaining essential information about the fate of their relatives, the current situation of the fighting, or where to obtain healthcare, water, food, shelter and humanitarian help.[19] After operation Cast Lead, there was an urgent need to re-establish infrastructure for media and communication channels. Due to a scarcity of funds, Israeli prohibitions on the import of equipment, and a higher priority assigned to

9 Palestinian Central Bureau of Statistics (2009) *PCBS Issues a Press Release on the Occasion of the International Day of Information Society, May 17*. www.pcbs.gov.ps/Portals/_pcbs/PressRelease/presrelse09eng.pdf

10 Rabah, J. and Daneels, I. (2005) op. cit.

11 ESCWA (2007) op. cit., p. 6.

12 Article 36 of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995) recognises the Palestinian right to build and operate separate and independent ICT infrastructures, while imposing Israeli restrictions, such as control of radio frequencies and the routing of outgoing international calls from the OPT through Israeli carriers.

13 Bahour, S. (2008) *De-Development, Israeli Style.* www.miftah.org/Display.cfm?DocId=4477&CategoryId=5

14 Rabah, J. and Daneels, I. (2005) op. cit.

15 Palestinian Centre for Policy and Survey Research (PSR) (2008) *Palestinian Public Opinion Poll No (28)*. www.pcpsr.org/survey/polls/2008/p28e.html

16 Human Rights Watch (2009) *Deprived and Endangered: Humanitarian Crisis in the Gaza Strip*. www.hrw.org/sites/default/files/related_material/2009_OPT_MENA.PDF

17 Zureik, E. et al. (2006) *Information Society in Palestine: The Human Capital Dimension*, Queen's University, Kingston, ON, CA. idl-bnc.idrc.ca/dspace/handle/123456789/31982
See also the Initiative for an Open Arab Internet: www.openarab.net/ar/node/358

18 Human Rights Watch (2009) Israel: Allow Media and Rights Monitor to Access Gaza, 5 January. www.hrw.org/en/news/2009/01/05/israel-allow-media-and-rights-monitors-access-gaza

19 BBC World Service Trust (2009) *Initial needs assessment Gaza Strip: Access to information and perceived accountability of aid services*. www.ochaopt.org/gazacrisis/infopool/opt_gov_BBC_WST_access_to_info_needs_assessment_feb_2009.pdf

rebuilding homes, schools, and healthcare institutions, this process is likely to take a long time.

Until 2008, no evidence of internet filtering was found in the OPT.[20] Although Article 27 of the 2003 amended Basic Law prohibits media censorship, in May 2008 the Hamas-led MTIT in Gaza reached an agreement with PalTel, according to which access to content unfit with the values of Islam will be filtered. Although PalTel is the same company that provides internet connectivity both in Gaza and the West Bank, as from May 2008, websites with content related to pornography, dating, sex education, gay and lesbian information and other religions remain accessible in the West Bank, but are inaccessible from Gaza, according to reports.[21] There is some evidence that internet censorship is being practiced by the Fatah government as well.[22] Open access to the internet in the OPT should be further monitored to ensure that the newly introduced filtering trends do not further expand.

New trends

In the absence of ICT regulation, and despite its exclusive licence expiring in 2006, PalTel benefits from a market monopoly on ICT services in the OPT. This has negative effects both on access to information as well as fair competition. The company's profits (over USD 100 million a year) stand in sharp contrast to the depressed, occupied and deprived people they provide services to.[23] In January 2005, a Subscription Free Internet model was launched, yet its implementation was accompanied by a policy that eventually closed ISPs and left PalTel as the sole, real ISP.[24] Nevertheless, in May 2009 PalTel merged with the Jordanian telecoms operator Zain, which reflects expected growth in the current value of the depressed OPT market.[25] The motivation for this merger seems to have been the PA's 2009 licensing of Wataniya Telecommunications Company (Kuwait) to be PalTel's first legal mobile competitor, and the licensing of over half a dozen broadband wireless operators.

The separate governmental administrations have interesting implications for policies dictated by the two MTITs in Gaza and the West Bank – and there is the danger of a "separate development" of the information society in the OPT. For example, both the Government Computer Centre (GCC)[26] and the Palestinian National Internet Naming Authority (PNINA),[27] previously operating as PA governmental bodies, now operate from Gaza and are therefore subject to the Hamas-led MTIT. Domain name registry (especially of governmental websites) and governmental ICT services are, as a result, controlled by Hamas. For example, in 2009 the GCC launched the video platform Pal GovTube for improving access to Gaza-based ministries, but not to the Fatah-led government ministries.[28] Nevertheless, a number of independent governmental bodies continue to provide and improve access to official information in both areas. The PCBS[29] is a judicially independent authority, which provides access to independent and accurate statistical data through its website and the mass media; the independence of the Palestinian Elections Committee[30] is protected by the Palestinian Elections Law, and it provides information and statistics about the Palestinian electoral process unrelated to the political situation. Despite these initiatives, the majority of Palestinians remain indifferent and suspicious towards online governmental information.

Action steps

- Improve connectivity, especially in rural areas and refugee camps.
- Inform citizens about the importance of access to information through the use of ICTs.
- Improve the transparency of governmental information and policies, thereby regaining public trust.
- Promote the ratification of the draft law on access to information.
- Promote legislation of ICT laws for protecting privacy, intellectual property rights, and e-commerce.
- Promote the immediate creation of an independent telecom regulation authority.
- Invest in activities and raise funds for the rehabilitation and improvement of ICT infrastructures in Gaza.
- Closely monitor newly introduced internet filtering practices. ■

20 Open Net Initiative (2007) *Regional Overview: Middle East and North Africa.* opennet.net/research/regions/mena

21 AFP (2008) Hamas takes aim at Internet porn in Gaza, 9 June. afp.google.com/article/ALeqM5jAeMv4kCXS8A4xxLx2TFTeWttQ8A

22 The Electronic Intifada (2008) Ramallah Palestinian Authority blocks website reporting on corruption, 18 November. electronicintifada.net/v2/article9972.shtml

23 Palestinian Telecommunications Company P.L.C. (PalTel) (2008) *Audited Interim Condensed Consolidated Financial Statement, March 31*. www.paltel.ps/site_files/files/f1236162107.pdf

24 In 2005, PalTel launched the Subscription Free Internet model as an attempt to increase the number of subscribers and decrease the end-user's connectivity costs. Palestinian ISPs and the Palestinian Internet Society rejected the model, claiming that it promoted unfair competition. In 2006, PalTel's daughter company Hadara was established by uniting four major Palestinian ISPs, thereby driving other Palestinian ISPs out of the market. See: ESCWA (2007) op. cit.

25 Zain (2009) Zain Enters into Agreement to Merge Jordan Operation with Palestinian Operator PalTel, 18 May. www.zain.com/muse/obj/lang.default/portal.view/content/Investor%20relations/Press%20releases

26 gcc.gov.ps

27 www.pnina.ps

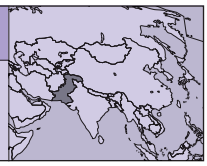
28 www.govtube.ps

29 www.pcbs.gov.ps

30 www.elections.ps

PAKISTAN

Bytes for All
Rabia Garib and Shahzad Ahmad
pakistanictpolicy.bytesforall.net



Introduction

It was the early 1990s when the internet began crawling through Pakistan. By 2002, Science and Telecom Minister Atta ur Rahman and his team had brought almost 800 sites online across the country. In the late 1990s, the Sustainable Development Networking Programme (SDNP) – an initiative funded by the United Nations Development Programme (UNDP) – also helped government agencies, academia and civil society organisations publish their content online. Simultaneously, plans to make computers available through leasing options and the launch of PakSat-1[1] both had a strong influence on establishing access points for the Pakistani population. This domino effect continued with the deregulation of the telecom sector a year later (in 2003), and today more than 50% of Pakistan's population has access to at least one or another form of connectivity.[2]

Access to information, as in most developing countries, has traditionally been dependent on the broadcast and print media. However, a Google and Blogspot ban in 2006,[3] and the Pakistan Electronic Media Ban affecting broadcasters in the emergency of 2007, allowed new media in Pakistan to really prove its mettle.

When the government unplugged the news channels on 3 November 2007, Pakistani audiences quickly transformed the internet into their primary and, at the time, only source for information. The trend of accessing information quickly paved ways into creating content, sparking a revolution in citizen journalism, blogging and a general culture of collaborative content generation.

Investment in infrastructure and capacity building to create a connected country has been consistent in Pakistan, and Pakistanis have been very quick to embrace the open culture of user-generated content and sharing it online, mostly targeting audiences living in large urban areas with better access. However, limited internet penetration in remote areas of the country and an even lower level of broadband penetration have not provided larger spenders with the requisite evidence to support a business model that entails a full content migration onto the web. The problem has been creating "useful information" on a consistent level, which can match or, in some cases, further grow audience demands.

Policy environment

There are no coherent policies on the issue of accessing online information. Pakistan's existing, stale and unimplemented information technology (IT) policy also does not have any specific guidance on this. However, given recent socio-political and socioeconomic developments, intentionally or unintentionally, the government has been trying to block the development of digital content in the country.

After a very successful mass movement by lawyers, civil society and the general public in Pakistan pushing for an independent judiciary in the country, the power of online activism was obvious. It was actually the web – social networking websites and mobile digital content – that drove the movement to success and kept it well organised. This movement hurt the country's then-dictator, President Pervez Musharraf, badly, paving the way for general elections in 2008. But now, given the mass action, and the new media revolution in 2006 and 2007, even the democratically elected government is frightened of the people's power in cyberspace.

Countering this fear, recently a new presidential ordinance called the Prevention of Electronic Crimes Ordinance was announced.[4] This ordinance is extremely draconian; it puts significant stumbling blocks in the way of freedom of expression and censors open political debate. It was issued by the president of Pakistan without consulting the parliament or prime minister and/or his cabinet. Since it still does not have the approval of the parliament, there is a high level of disarray among government functionaries and law enforcement agencies regarding its implementation. The other problematic issue is the lack of clear guidance and very weak capacity to implement it. Pakistan's civil society and the ICT business community are working hard to get the legislation repealed and people's rights restored. If such policy practices continue, the development of content will be affected very negatively.

After Google, Facebook and YouTube are the two top websites visited by Pakistani internet users.[5] Civil rights groups now increasingly organise their debates and events on Facebook, while YouTube is extensively used to showcase the advocacy and rights work being carried out on different issues. However, the government sporadically blocks these websites, mostly on the pretext of harmful content being published. The content tagged as harmful is usually anti-Islamic and blasphemous content. However, the reasons behind these blocks have always been political. For example, recently the Pakistan Telecommunication Authority blocked six different websites that contained pictures of the governor of Punjab and his family, content it called blasphemous.[6]

Pakistan's Copyright Ordinance was promulgated in 1962. This ordinance is still in force, but offers no guidance

1 Pakistan's national communications satellite.

2 www.pta.gov.pk

3 en.wikinews.org/wiki/Blogspot_ban_lifted_in_Pakistan

4 preview.tinyurl.com/nz3hka

5 www.alexa.com

6 pakistanictpolicy.bytesforall.net/?q=node/160

for online/digital content generation. No specific mention is made regarding the form of the material/content that falls under the ordinance.[7]

Turbulent times, but local content remains the challenge

While Pakistan has been going through a highly tumultuous and unstable political period, the administration's crackdown on information has been just as turbulent and aggressive. This, however, is something that will eventually be resolved: short of unplugging the entire economy from the World Wide Web, there is really no way to truly block access to information.

A greater matter of concern is that regardless of the situation, there seems to be a serious dearth of relevant localised content (i.e., in Urdu or other regional languages). The fundamental brilliance of user-generated content is also its most troubling flaw: if you have poor quality data being used to generate content, the resultant quality of the published content will be just as poor. If we take a look at the kind of content that is being created by the online community in Pakistan, most "reliable" blogs and news sites access much of their primary data from an authentic source – either an eyewitness account or an event or incident that has been documented by a credible source. Blog posts are then built on these sources. So there is clear attention to the quality and credibility of content. However, these sites are in the minority.

There have been essentially two kinds of online content producers: those that create content as a revenue source, and those that create content for the sake of documenting an event. For instance, this is the case when it comes to some technology blogs or regurgitated and repackaged news. However, the audience is not local. One of the main reasons for targeting an audience outside the local boundaries is to increase the advertising that comes as a result.

Local content, or what is often referred to as the "kosher content", does not generate as much revenue through advertising unless there is local sponsorship to take it forward. As a result, the majority of people who produce local content help document a tangible record of the field they are dedicated to.

Pushing global?

6.2 billion. That is your global audience – and each one of those 6.2 billion have access to some kind of information "push" device, be it television, radio, internet or mobile phone. But a few thousand news television channels running syndicated content powered by a handful of corporate media houses does not amount to much of a say for grassroots communities. How does anyone know what makes those communities unique? This is precisely why it is essential for people to represent themselves, and why the internet is so important: whether through having a voice on online community platforms, or building online reservoirs of cultural content, the internet is crucial, and can even be used by others to pull content for their own use. In this way, local communities can "push global", rather than being the passive recipients of other people's information.

In Pakistan, Geo Television, Dawn News and Samaa Television are probably the only three networks that are looking at the concept of citizen journalism. Of the three, only Samaa has acquired an integrated solution (by seenreport.com) which has enabled its reach and news aggregation to be merged with its web presence. Radio stations, which traditionally share a much more personal relationship with their audience, have barely explored the web. However, with gradually increasing bandwidth and growing faith in the penetration of the web, there has been chatter amongst various mainstream media outfits trying to set up internet radio or internet protocol-based television. This area is something that should see more interest in the next two years.

The government's lacklustre, almost failing interest in trying to use the country's rich cultural heritage to rejuvenate a more balanced image of the country continues to surprise the public. There are a number of wikis, blogs and groups across social networking sites that aggregate and generate content about the historic wealth of Pakistan, and a privately funded project called the Citizens Archive of Pakistan[8] is one initiative that helps to aggregate this information. The project gathers and aggregates audio and video podcasts of people who lived through the days of Pakistan's independence.

As suggested, the web is probably the most democratic medium of communication because it not only allows for the average citizen to voice an opinion, but also has the power to archive this opinion in such a way that others can access and evaluate it. This process also offers a way of holding authorities and mainstream media houses accountable, amongst others. Today, when a government official is interviewed on television, many websites will also try to make the clip available online just so that the public can comment on it. Stories that break on international news websites receive comments and feedback from the Pakistani public. For the first time, the world is able to read and hear the "other side of the story".

More than any formal platform or organisation, the blogosphere has probably amounted to the strongest form of global activism. Through social networking websites, blogs and micro-blogging platforms such as Twitter, the push of local, on-the-ground news and opinions is finding its way into international chatter. The participants in this social media play the role of a virtual militia and are not only active in ensuring that the audience has a chance to be exposed to both sides of the story, but also in helping the community give voice to its perspective.

One of the greatest criticisms of web culture has been the fact that minimal content is available in local languages or dialects. According to many, this is one of the major hurdles that has held back the proliferation of the internet. New

7 A detailed report on Pakistan's intellectual property regime is available at: a2knetwork.org/reports2009/pakistan

8 citizensarchive.org

media has been tackling this criticism to a certain extent by making low-bandwidth audio or video available in local languages. Add this to Google's transliteration services extending to Urdu as well as other dialects, and the critique should quickly fade away. Easy access to Urdu for the development of content will certainly help to increase the number of people who use the web interactively to access information.

Progress and stability will hopefully soon enter Pakistan's mainstream economy. It is only a matter of time before they do. The dynamic creation, documentation and archiving of content, however, is not something that will simply begin to take place. For this, the effort has to be made, and the resources and talent mobilised. By the time the economy settles down into a bullish run, the relevant content should be in place to report it… live and streaming!

New trends

There are a number of new trends which are emerging through the inspiration of open source platforms. Free application programming interfaces (APIs), which enable developers to create applications using existing software, along with other collaborative technologies allowing innovative ways of making money online, are all helping youngsters to look at the web as a more feasible opportunity where their passion can also be economically sustainable.

The number of Pakistanis who wish to venture into setting up their own businesses has increased multi-fold in the past three years. The era of "just talk" is slowly transforming towards a more action-oriented entrepreneurship, and start-up companies are being formed to take advantage of the opportunity of the web. Progress is slow but will pick up pace with the passage of time.

Being virgin territory for most companies, a number of change agents are positioning themselves to fill a critical void of translating "web-speak" into tangible business terms, creating a whole new innovative economy.

There is also an increasing trend towards social entrepreneurship. With the spotlight on Nobel laureate Muhammad Yunus from Bangladesh, socially responsible start-ups are taking shape. This has also fuelled an increase in the number of people working in the ICT for development arena.

With the trend of collaboration growing, an increase in the number of people to drive the open ecosystem, the availability of multiple technology platforms and an increase in connectivity options, information is slowly being made accessible through converged media. Taking advantage of the increased mobile penetration in the country, applications are being developed which can open up access between mobile phones, the internet and electronic media. Youngsters, who are more adept at envisioning the future of converging technologies, are helping telcos and corporations see the benefits of convergence. (Their skill was seen during the recent mass action for an independent judiciary.)

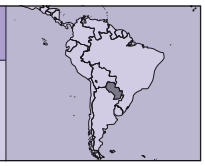
Media convergence has started happening, and in the near future, we will see an increasing number of television channels turning to the web and its users to help them gather and create content. This has also given a boost to the blogosphere and citizen journalism. The playing field in the media may not be level, but the web and its open culture and ability to increase access to information have definitely made headway towards a diversity of views.

Action steps

- *More education:* Realising how truly democratic the web is, the recent Electronic Crimes Ordinance has created a great deal of confusion amongst the population. More than anything, the policy papers that circulate amongst the parliament lobbies emphasise their lacklustre understanding of any interactive electronic media. If the policy makers are illiterate on this subject, the subsequent policy or legislation will reflect the confusion… and it does.
- *Privacy and intellectual property:* Privacy and intellectual property rights are two areas that are already high on the lists of several advocacy groups. With the number of individuals generating content online, the need for an effective intellectual property regime is greater than ever.
- *Official documentation of the "good data":* There have to be official reservoirs of reliable data that can be tapped into for regular, updated information, facts and figures. The official government portal on Pakistan began to be one such site; but the interest in generating a layer of credible facts appeared to diminish. Except for a handful of blogs and perhaps a few ICT forums, there are very few websites where accountable, tangible information is available for extrapolation.
- *Prevention of Electronic Crimes Ordinance:* The recent introduction of the Prevention of Electronic Crimes Ordinance 2009 and its draconian provisions are disincentives for the use of digital content and tools by people. This ordinance should be repealed immediately.
- *Revised IT policy:* The new IT policy should have distinct provisions and guidelines for online content generation and its effective use. ■

PARAGUAY

Radio Viva
Arturo Bregaglio
www.radioviva.com.py



Introduction

Just over a year has passed since the election of President Fernando Lugo on 15 August 2008, and it is fair to say that the people's expectations are higher than the new government's ability to respond. This is seen when it comes to issues such as access to the internet, and the liberalisation of the information and communications technology (ICT) sector.

When it comes to accessing online information the key challenges are gaps in the policy and legislative arena, and the country's low internet penetration.

Access to the internet

Paraguay remains the South American country with the lowest rate of internet penetration (4.1% in 2007), far below figures for other members of the Mercosur[1] common market. The access prices in Table 1 give an indication of the disadvantage Paraguay faces.

Table 1: **Comparative internet access prices**

Country	Price	Kilobits per second (kbps)
Paraguay	USD 25	64
Uruguay	USD 26	256
Brazil	USD 25	800
Argentina	USD 22	1024
Spain	EUR 29	1024
Portugal	EUR 15	2048

Source: **copaco.com.py, antel.com.py, ajato.com.br, fibertel.com.ar, telefonica.es, adsl.sapo.pt, www.internetworldstats.com/stats15.htm**

However, at the last Mercosur summit, which took place in Asunción (23-24 July 2009) with all member country presidents in attendance, ICTs did not make it onto the agenda.[2]

In March 2009, the telecommunications regulatory body Conatel announced the liberalisation of the internet market, and opened up international bandwidth to operators. Prior to this, the international signal had always been the exclusive domain of Copaco, the state-owned telecoms company. This "liberation" should reduce the cost of access for internet service providers (ISPs). However, despite liberalisation, private operators are not accessing international bandwidth directly yet. The cost of access for the end-consumer (for a poor quality connection) remains the same, and, according to Conatel, Paraguay still currently has only between 40,000 and 50,000 internet users.

The leading private sector internet provider in Paraguay is the mobile operator Tigo, owned by Millicom International Cellular. To date, six months after liberalisation, the company has not lowered its prices, and the service continues to be the same. As a result, the country remains with the lowest usage rate in the region.[3]

Policy and legislative environment

In the absence of an umbrella ICT policy, legislative developments in the sector have been piecemeal – some of it good, some bad.

The existing legal framework governing internet access points to the opening up of the sector, promoting and strengthening the development of competition in the market, and favouring the growth of private investment. The legislation is clear and managed transparently, guaranteeing equal access to resources like spectrum. Most of the main problems have been identified, and funds are available to improve universal access (through a universal access fund).

Intellectual property laws are also in place. The law protecting copyright and related rights is Law No. 1.328/98 and its Regulatory Decree.[4] The General Directorate of Intellectual Property (DGPI) falls under the Ministry of Industry and Commerce, and has the following specific functions:[5]

- Assuring the adequate administration of the national systems of copyright and related rights, as well as that of industrial property.
- Promoting intellectual productivity, in its literary, artistic and scientific forms, as well as the scope of its industrial application, and the diffusion of technological knowledge within the cultural sectors.
- Assessing and participating in the formulation of national policies in all those areas that have to do with the protection of intellectual property and other similar rights.
- Promoting initiatives and developing activities that improve the protection of national industrial property such as trademarks and inventions.

At the same time, the National Constitution of Paraguay, approved in 1992, protects freedom of expression and the freedom of the press. It also guarantees the right of any person to produce and share information.[6]

1 Mercosur is a regional trade agreement between Argentina, Brazil, Paraguay and Uruguay. Bolivia, Chile, Colombia, Ecuador and Peru currently have associate member status. Venezuela signed a membership agreement in 2006 (en.wikipedia.org/wiki/Mercosur) but the congresses of Brazil and Paraguay have not taken a decision on its membership yet.

2 rafamemmel.com/category/tic-en-paraguay

3 rafamemmel.com/category/tic-en-paraguay

4 www.cej.org.py/games/Leyes_por_Materia_juridica/CIVIL/LEY%20%201328.pdf

5 www.mic.gov.py/?option=com_content&task=view&id=2&Itemid=4

6 www.acnur.org/biblioteca/pdf/0055.pdf

However, major gaps still exist for a policy and legislative environment that will guarantee access to online information. These involve implementing the constitutional right to information, and the implications of the country's Criminal Code.

Right to information

Article 28 of the constitution guarantees the right to information. Public sources of information should be accessible and free to all.[7] Access to public information legislation was drafted in 2005, and presented before the Chamber of Deputies. The draft was approved by the Chamber in 2006; however, it was rejected by the Senate. As a result, the draft law has been returned to the Chamber of Deputies.

With input from the Senate advisory committee, the draft legislation as approved by the Chamber of Deputies suffered a series of modifications. Limitations introduced that did little else but restrict citizen access to public information were kept.

GIAI, a civil society grouping promoting access to information, is presently working on a similar proposal for presentation before the Congress, while recognising that the chances of its approval are likely to be quite remote. For example, Congress has rejected legislation that would establish the obligation on its members to place their sworn declarations of assets (e.g., income and gifts) online.

GIAI involves more than twenty organisations, among which is Radio Viva, who are striving towards the following goals:

- Citizen awareness on the right to access public information, and private information that is of public interest
- Increasing the scope of the right to access information
- Approval of a law on access to public information, with ample citizen participation in its preparation, promulgation, and implementation
- Promoting the effective enforcement of the law.

The Criminal Code (1997)

The Criminal Code of 1997 covers various forms of electronic communication and has implications for the use of the internet. The code covers areas such as:

- Alteration of data
- Computer sabotage
- Fraud
- Violation of the secrecy of communication

However, legal experts say there are many loopholes that need to be clarified. For instance, "alteration of data" only applies if the offender "changes" such data, and not in cases when the data are erased or deleted. It is also not clear if it has implications for the offence of altering a public database such as civil records or police records.

In the case of "computer sabotage" the sanctions for illegally transferring money from an account are unclear. The text for "fraudulent computer operations" is unclear about things like whether or not this includes email, and the interception of email communication.

Action steps

Despite the liberalisation of the sector, and some legislative clarity, much work still needs to be done. Most importantly, civil society, the private sector and other social actors must demand that an ICT policy is developed. This should, amongst other things, deal with:

- Equal access to international optical fibre
- The simplification of the licensing regime
- The modernisation of the regulatory framework
- The development of regulations to govern voice over internet protocol (VoIP)
- The institutional strengthening of Conatel. ■

7 Ibid.

PERU

CONDESAN (Consortium for the Sustainable Development of the Andean Ecoregion)
Jorge Bossio
www.condesan.org

A reunion with democracy

Access to information was central to the process of returning to democracy in Peru and the fall of the authoritarian regime of former president Alberto Fujimori (1990-2000). Arguably, the fall of the regime was triggered not by the pressure of social forces or by the strengthening of political alternatives, but by the circulation of a video in which a presidential adviser is seen giving money to a congressman in exchange for him changing his political party. Shortly afterwards, with the opening of intelligence service files, secret documents – including videos – were circulated widely, and the extent of government corruption was shown. For this reason, when access to information is discussed in Peru, the most immediate reference is to the Fujimori regime.

Paradoxically, it was during that period that the right to access information was included for the first time as a fundamental people's right. The Political Constitution of Peru of 1993 includes the right of the people "to the freedom of information, opinion, expression and diffusion of thought through oral or written word or image by any social communication means, without previous authorisation or censure or any impediment," and "to request without requiring a reason the information desired and to receive it from any public entity in a legal time frame without additional cost, other than reproduction costs."[1]

In addition, the legal action of *habeas data*[2] was incorporated into constitutional guarantees for the purpose of assuring compliance by authorities with regard to the right to access information and protection of data privacy.

Legal framework

The right to access information was recognised by the Peruvian state even before the Constitution of 1993. This recognition came through the ratification of the United Nations (UN) International Covenant on Civil and Political Rights (1980)[3] and the American Convention on Human Rights (1978),[4] whose Article 13 states that "[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." Even so, the exercise of these rights was limited for more than two decades. Instead, a culture of secrecy was born, evidenced by the unjustifiable refusal of the authorities to provide information and by the establishment of restrictions on access to information.

In February 2001, during the democratic transition, Supreme Decree 018-2001-PCM[5] and Emergency Decree 035-2001 were enacted. The first had the objective of establishing a procedure to facilitate citizens' access to information held by the government and the second specifically refers to the opening of public accounts.

This last decree was complemented by Emergency Decree 077-2001, which created the Economic Transparency Portal,[6] designed to publicise, through the internet, public finances, macroeconomic projections, the execution of public and state expenditures, and tax collection, among others.

Later, during the government of Alejandro Toledo, the Law of Transparency and Access to Public Information (Law 27806) was enacted. However, there were some defects in its formulation that left space for different interpretations of what information should be considered secret, restricted and confidential. This caused the Office of the Ombudsperson to request a modification of the law and to ask the Constitutional Tribunal to recognise its unconstitutionality. To avoid a ruling from the Constitutional Tribunal, the National Congress then promulgated Law 27927 with the necessary clarifications.

The final text of Law 27927 was approved by Supreme Decree 043-2003-PCM[7] and the law was regulated by Supreme Decree 072-2003-PCM.[8] The final text, according to the Ombudsperson, is one of the most complete and advanced in Latin America.

Information access rights

As established by the legal framework, access to information is a right of all persons. On the other hand, the obligation to provide information is mandatory for all public and private entities that provide public services or carry out administrative functions. In the case of the private sector, the entities are obligated to provide information on the nature and tariffs of the services they provide.

1 Constitución Política del Perú, Artículo 2, numerales 4 al 6. www.tc.gob.pe/legconperu/constitucion.html

2 *Habeas data* is a constitutional right granted in several Latin American countries that is designed to protect, by means of an individual complaint presented to a constitutional court, the image, privacy, honour, information self-determination and freedom of information of a person. See: en.wikipedia.org/wiki/Habeas_Data

3 www2.ohchr.org/english/law/ccpr.htm

4 www.oas.org/juridico/English/treaties/b-32.html

5 The text of the laws cited in this section can be found at: transparencia-economica.mef.gob.pe/normas

6 transparencia-economica.mef.gob.pe

7 transparencia-economica.mef.gob.pe/normas/tuo.php

8 transparencia-economica.mef.gob.pe/normas/DS072_2003PCM.php

The legal framework also establishes that the information handed over should be current, true, precise and complete, given that the provision of incomplete or false information does not fulfil the constitutional objective of the right. This has been established clearly by the Constitutional Tribunal in Decision 1797-2002-HD/TC,[9] which states that "not only does this ruling [the right to access information] affect the right to access information when it is denied without the existence of a constitutionally legitimate reason for doing so, but also when the information provided is fragmentary, out of date, incomplete, imprecise, false, not timely or wrong."

Exceptions

Access to information rights are not absolute and have limitations and exceptions. The limitations are related to data privacy. The law establishes exceptions in the exercise of the right regarding information of a private nature or information that could affect personal privacy (such as the guaranteed privacy of tax records), national security, and financial institutions. The Constitutional Tribunal has recognised the importance of these limitations by pointing out that the right to access information "is subject to limitations or restrictions that can arise from the need to harmonise its exercise with other rights of the same kind (e.g., the right to personal privacy), or from the need to safeguard constitutionally relevant priorities (e.g., national security), given that these have been explicitly envisaged by law."[10]

It is important to stress that this statement by the Tribunal refers to the principle of public information, according to which all information is public unless a law expressly establishes the contrary.

Implementing the right to access information

The diverse obligations for public administrative entities include the obligation to create websites to share public documents, and the obligation of the Presidency of the Council of Ministers (PCM) to report to the National Congress on the results of the implementation of the law.

The job being done by the PCM has been criticised by various sources as offering an inadequate analysis of the information reported by the different entities.[11] Despite the criticism, the PCM has not developed a responsible attitude regarding enforcing the implementation of the law. Its 2008 report only collects information supplied by 21% of the entities required to provide information by law. Nearly 80% of the entities omit reporting (including the Congress itself, the Ministry of Education, and 65% of local governments) without receiving any sanction at all.[12]

In its conclusions, the PCM report itself points out deficiencies such as general ignorance of the laws, lack of infrastructure, lack of suitable personnel and a failure to meet deadlines.

Considering these deficiencies, the role of the Constitutional Tribunal is notable, not only in resolving cases, but also in creating jurisprudence and clarifying, through its decisions, certain aspects that could be ambiguous or interpreted in a different way than that intended by the law.

Even so, according to an investigation carried out by the Press and Society Institute (IPYS) on 105 decisions handed down from 1996 to 1998, it was possible to verify the implementation of only one of them.

Culture of transparency

The most important tool to guarantee the right to access information resides in the actual behaviour of the administration, because no law or procedure will have a real effect without a change in the prevailing culture in public management. This was stressed by Ombudsperson Beatriz Merino during the Americas Regional Conference on the Right of Access to Information (in Lima, April 2009), when she pointed out that it was a challenge to eradicate the "culture of secrecy" in Peru because the laws often are interpreted in a sense contrary to their objective. For that reason "clear regulations are required, but also supervision that guarantees proper respect and observance [of the law], but above all, a policy directed to accomplish a substantial improvement in public servant capabilities, which will ultimately ensure that they not only know the law, but enforce it with passion."[13]

The Ombudsperson has stressed elsewhere that "it is about fighting a cultural battle, something that can only be won with a permanent and tenacious affirmation of ideas and with permanent control of its enforcement by means of regulations and institutions willing to give them effective compliance."[14] This is where civil society organisations have played a fundamental role: in keeping watch on the implementation and enforcement of the law guaranteeing access to information in Peru.

Citizens' watch

Diverse independent entities like IPYS, the Peruvian Press Council, *Ciudadanos al Día* (or "Citizens up to date") and the Ombudsperson's Office itself, among others, have been promoting workshops and training programmes, as well as running information campaigns and developing publications oriented to strengthen peoples' capabilities to exercise their right to access information.

Similarly, the publication of independent evaluations by institutions and civil society associations like *Propuesta Ciudadana* ("Citizen Proposal") has had an impact on local

9 www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html

10 File N.° 1219-2003-HD. Available at: www.tc.gob.pe/jurisprudencia/2004/01219-2003-HD.html

11 El Comercio (2008) Critican a PCM por no llevar registro adecuado sobre pedidos de información, 1 October. www.elcomercio.com.pe/ediciononline/HTML/2008-10-01/critican-pcm-no-llevar-registro-adecuado-sobre-pedidos-informacion.html

12 Even though Article 22 of DS 072-2003-PCM clearly establishes that obligation.

13 Press release from the Office of the Public Defender (Ombudsperson): www.defensoria.gob.pe/descarga.php?pb=3684

14 IPYS (2008) Relatoría. Primera conferencia nacional sobre acceso a la información, Lima, 29 y 30 de septiembre de 2008, p. 63.

and regional governments in that they serve as a form of moral sanction against those who do not comply and offer good publicity for those who do. A 2007 study carried out by *Vigila Perú* (Peru Watch) shows that the response of regional governments to the publication of transparency indicators has shifted from a defensive attitude to a proactive and collaborative one.

Another example of positive enforcement is the Annual Competition on Good Government Practice promoted by *Ciudadanos al Día*, where one of the categories of evaluation is Transparency and Access to Information. Here a range of factors are assessed, including the presence of municipal internet portals, application processes for accessing information, supplementary services for users, information on costs and prices of public services.

Complexity in accessing information: The case of the National Congress

In August 2008, a scandalous event was uncovered in the National Congress: a congressman had used false documents to justify part of his operating costs. The congressman was sued for having committed a crime. However, this event generated suspicion about the use of state funds by members of congress.

As the information was not available on the Congress' website, a group of Peruvian bloggers began a campaign entitled "Adopt a Congressman". The idea was that each blogger would track the operating costs of a member of congress. To do this, the blogger requested the report of these costs from Congress.

The result was shameful. Various members of congress declared themselves against the initiative, threatening to take legal action against the bloggers, and the Congress refused to provide the information, considering it "reserved" given that it was in the process of being revised by the Office of the Comptroller General.

Finally, after much public pressure, the "operating costs" line item was eliminated from the budgets for congresspersons and the amount was incorporated as part of their salaries. In this way the obligation to provide information was evaded. Nevertheless, the case stressed the important role of alternative media and information sources in the achievement of democratic objectives.

The role of ISPs

In Peru, discriminatory practices by internet service providers (ISPs) related to accessing information are prohibited by law. In 2005, the telecoms regulator adopted a rule that expressly provides that ISPs "cannot block or restrict the use of any application." However, it has been verified that some end-user contracts have clauses limiting the use of the service. Such is the case of Claro's third-generation (3G) service, which states in its contract: "The operator reserves the right not to pass on or to block certain types of internet traffic such as voice over internet protocol, peer-to-peer traffic, spam and anything else considered necessary."

Service providers could, under the right granted them by another law,[15] suspend a service when there is a "misuse" of that service. It should be noted that the word "misuse" is not clearly defined in Peruvian legislation. Due to this lack of clarity, ISPs can control access to applications and information at their own discretion.[16]

Action steps

The action to take involves raising awareness of the right to access information as a personal right, but also as an administration responsibility. Creating an awareness of the importance of this right, not only for oversight and supervision of public administration, but also as a basis for democratic coexistence, is a fundamental task to be undertaken.

Clarifications on the legal framework are also needed at this point. There are still many aspects to elucidate regarding the limitations and exceptions to the right to access information. For instance, there is no clarity in the process of defining information that is reserved or considered a commercial secret. The rulings of the Constitutional Tribunal have helped to clear up some points, but there are still areas of doubt that help to maintain the culture of secrecy in the country.

It is also necessary to strengthen the capabilities of institutions to manage information. Significant emphasis has been put on the publication of information on the internet, but very little or none on the improvement of the records management systems of public administration.

The state should recognise the importance of the initiatives of different organisations that seek to encourage good practices in transparency, and reward entities that are outstanding in their compliance. But it should also adequately supervise a minimum compliance to the law, and to the rulings of the Constitutional Tribunal that penalise entities that systematically evade their responsibility. ■

15 Law on Conditions of Use of Public Telecommunications Services.

16 See Bossio, J. (2009) *Peru: The Battle for Control of the Internet*, APC, Quito. www.apc.org/en/system/files/CILACInvestigacionesPeru_EN_20090630.pdf

References

Abad Yupanqui, S. (2006) Transparencia y acceso a la información pública: Avances y retos pendientes, in *Temas de derecho tributario y de derecho público*, Palestra, Lima, p. 1229-1246.

Arana, J. (2004) La Ley de transparencia y el acceso a la información pública: La Transparencia Parlamentaria, *Alfa-REDI: Revista de Derecho Informático*, No. 067, February. www.alfa-redi.org/rdi-articulo.shtml?x=1230

Belaunde, A. de (2009) Instituciones empañadas, *RealPolitik*, 6 May. albertodebelaunde.blogspot.com/2009/05/instituciones-empanadas.html

Bossio, J. (2008) Privacidad de datos: los límites de Internet y el acceso a la información, *Palestra: portal de asuntos públicos de la PUCP*. palestra.pucp.edu.pe/portal/pdf/393.pdf

Bossio, J. (2009) *Peru: The Battle for Control of the Internet*, APC, Quito. www.apc.org/en/system/files/CILACInvestigacionesPeru_EN_20090630.pdf

Boza, B. (2004) *Acceso a la información del estado: marco legal y buenas practices*, Ciudadanos al Día, Lima.

Casas, J. (2005) El derecho de acceso a la información pública en Perú, *Derecho comparado de la información*, No. 7, January-June. www.juridicas.unam.mx/publica/librev/rev/decoin/cont/7/art/art2.pdf

Ccoyllo, J. J. (2009) El control social de la gestión estatal. Políticas de transparencia y Gobiernos Regionales, *Palestra: portal de asuntos públicos de la PUCP*. palestra.pucp.edu.pe/portal/general/imprimir.php?id=419

Defensoría del Pueblo (2005) Informe Defensorial Nº 96 Balance a dos años de vigencia de la ley de transparencia y acceso a la información pública 2003-2004.

El Comercio (2008) Critican a PCM por no llevar registro adecuado sobre pedidos de información, 1 October. www.elcomercio.com.pe/ediciononline/HTML/2008-10-01/critican-pcm-no-llevar-registro-adecuado-sobre-pedidos-informacion.html

IPYS (2008) Relatoría. Primera conferencia nacional sobre acceso a la información, Lima, 29 y 30 de septiembre de 2008.

Luque Rázuri, M. (2002) *Acceso a la información pública documental y regulación de la información secreta*, ARA Editores, Lima.

Propuesta Ciudadana (2008) Evaluación de Portales de Transparencia en Gobiernos Regionales y Ministerios en el Segundo Trimestre 2008. www.observa.org.pe/DOCUMENTOS/GPC_CPP_EvaluacionPortalesGRYMinisterios.pdf

Sierra Peralta, Z. (2008) Parlamento no cumple con la Ley de Transparencia, *Perú21*, 18 September, p. 3. peru21.pe/impresa/noticia/parlamento-no-cumple-ley-transparencia/2008-09-18/224973

Vigila Perú (2007) Transparencia de la gestión pública y participación ciudadana. www.participaperu.org.pe/apc-aa/archivos-aa/3c6bb51ada688b58c57cb18308d59d73/transparencia_gesti_n.pdf

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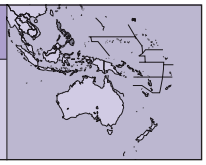

Introduction

Though it has been more than twenty years since the Philippines peacefully overthrew the fourteen-year martial law regime in 1986, the continuing tug-of-war between the forces of authoritarianism and democratisation continues to be played out on many fronts. As the right to information and other communication rights have assumed greater significance with the perceived dividends of the so-called global "information society", there are continuing efforts to pry open the authoritarian legacy of state (and lately, corporate) information secrecy, by organisations and movements in the Philippines who see "freedom of information" and "the right to know" as crucial to the ongoing democratisation of the country.

This report will outline the terrain of freedom of information in the Philippines, with a special emphasis on online access. It will focus on the battles for access to (official) information, and will touch on the state of media freedom, including freedoms in online environments. The legal and policy context will be outlined, followed by a general discussion of the actual practice on the ground, particularly how recent issues and trends impact on human rights in general, and communication rights in particular. (Due to space limitations, access to knowledge issues, particularly dealing with intellectual property regimes, cannot be discussed extensively but will be referred to briefly.)

Context

Democratic traditions and the martial law legacy

In a region where numerous authoritarian regimes rule, and where information policies are often restrictive and even repressive, the Philippines has been one of the few countries in Asia with a long tradition of a relatively open society and a free and hard-hitting media sector. The succession of Philippine constitutions amended and ratified during specific periods since 1935 have always enshrined a Bill of Rights, which has traditionally been protective of freedom of expression. The right to information is also protected, and even elevated as a distinct constitutional guarantee.

Martial law changed the political landscape irrevocably. The Marcos regime[1] paid lip service to democracy and grossly violated basic rights and freedoms, limiting access to information for its citizens. From 1972 to 1986, presidential decrees and issuances retained the force of law—embodying "one-man rule" during the period— and these were often kept from public scrutiny and debate. In addition, the mass media were severely curtailed, media practitioners critical to the regime were jailed, and opposition and independent media outlets were shuttered.

Freedoms restored amidst constant threat

After the People Power Revolution of 1986, legal and policy instruments that sought to expunge the worst features of martial law, and to guard against similar authoritarian (and corrupt) restorations in the future, were revived. A constitutional cornerstone is Article III, Section 4 of the current 1987 Constitution: "No law shall be passed abridging the freedom of speech, of expression, and of the press."

But while all post-martial law presidents and their governments distanced themselves from the authoritarian era by maintaining formal democratic institutions, some have succumbed to authoritarian temptations and have at times resorted to more closed information policies. Official corruption – long a bane of governance – continued to endure and grow as a national problem that fuelled the People Power II Revolt against President Joseph Estrada in 2001, and became a flashpoint for efforts to expand the right to information. In the current Arroyo[2] administration, government scams and scandals seem to crop up weekly, exposed by a vigilant civil society. The current regime is now seen as more hostile to information rights than its recent predecessors, as it struggles with investigations of large-scale official corruption, and constant criticism of non-transparent government policies, as well as condemnation of its deteriorating human rights record. This history is an important backdrop to the continuing struggle for freedom of information.

Online access

Telecommunications in the Philippines was liberalised in the mid-1990s, at around the same time the internet was introduced. As with mass media, the internet is substantially unregulated and market-driven approaches have become dominant.

Current internet penetration estimates range between 6.3% and 21.1% of the population. Broadband penetration remains low at less than 1%. On the other hand, as traditional fixed telephony plateaued, the Philippines emerged as a top regional market for mobile telephony, with the number of subscribers climbing to 57 million—about 65% of the population.[3] With the number of short message service (SMS) messages sent reaching almost a billion a day, the country is considered one of the "texting capitals of the world", both in per capita terms and in innovative use.

1 President Ferdinand Marcos, 1965 to 1986.

2 President Gloria Macapagal-Arroyo.

3 Statistics cited are from the websites of the International Telecommunication Union (www.itu.int/ITU-D/ict), the National Telecommunications Commission (www.ntc.gov.ph), and Internet World Stats (www.internetworldstats.com).

These figures also indicate that only the middle and upper economic classes, mostly in the urbanised areas, have the internet access to take advantage of their right to information in online environments. But with school and community access rates increasing, and the constant advocacy by civil society for universal access and digital/social inclusion, this may change. Furthermore, high mobile penetration across social classes and evolving mobile applications continue to make this space an area to watch. From a human rights perspective, the ubiquity of mobile communications and growing popularity of the internet make this a new battleground for content filtering issues.

Policy and legislative environment

After martial law, a more independent Supreme Court in a freer environment emphasised the citizen's access to laws and state policies as a public interest: "The days of the secret laws and the unpublished decrees are over… Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed… [in order] to make full disclosure and give proper notice to the people."[4]

Guarantees strengthened

The current constitution ratified in 1987 – which sought among other things to restore and reaffirm people's rights immediately – reiterated and strengthened the constitutional guarantee:

> Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving the public interest (Article II, Sec. 28).
>
> The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as a basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law (Article III, Sec. 7).

It also required specific classes of information to be made public, including information on foreign loans obtained or guaranteed by the government (Art. XII, Sec. 21); the declaration of public officers or employees of their assets and liabilities (Art. XI, Sec. 17); and the journal of the proceedings of the legislature (Art. VI, Sec. 16 [4]) as well as its records and books of accounts (Art. VI, Sec. 20).[5]

The Supreme Court in 1987 laid down key principles in applying the right to information in a landmark case, Legaspi vs. Civil Service Commission (G.R. No. 72119, 29 May 1987):[6]

- The right to information is a public right.
- The constitutional guarantee is self-executing, though not absolute. As such, it does not require any enabling legislation for it to become enforceable.
- Government agencies are without discretion in refusing access to information of public concern; therefore they may be compelled by a writ of *mandamus*.[7]

Other policy instruments

Republic Act 6713 of 1987 further strengthens this constitutional provision via the Code of Conduct and Ethical Standards for Public Officials and Employees and its accompanying implementing rules and regulations. The Act supported the "full public disclosure" policy, and required officials to act on requests within fifteen working days from receipt of the requests.[8] The Supreme Court also issued rules for issuing a "writ of habeas data".[9]

Online media

No comprehensive policy framework exists which defines particular access imperatives regarding online content environments. The mass media are, however, generally free, subject to existing laws and the monitoring of state regulatory agencies.[10] The internet is traditionally an unregulated space, but remains an underdeveloped policy/governance area in the Philippines; existing policy institutions are relatively weak and strategic gaps remain in policy frameworks.[11] Telecommunications regulations exist, but for now focus on rules for trade practices.

Between policy and practice: Issues and gaps

Because of such a progressive policy framework regarding the right to information, the Philippines is considered one of the more open countries in terms of accessibility of public documents.[12] However, effective implementation for the past twenty years has been uneven, hampered by legal and procedural gaps, state capacity and information and communications technology (ICT) policy issues, as well as low commitment within government to comply, particularly when political (i.e., partisan) considerations are involved.

4 Justice Isagani Cruz, in "Tanada vs. Tuvera, G.R. No. 63915, 29 December 1986". Cited in Malaluan, N. (2006) Right Versus Access to Information: The Gap Widens Under Macapagal-Arroyo, in Access to Information Network (ATIN) *Clampdown on the People's Right to Know,* ATIN, Quezon City, p. 2.

5 Ibid., p. 3.

6 This summary is in Malaluan, N. (2006) op. cit., p. 4-5.

7 A writ of mandamus is a legal petition that enjoins a person or entity to perform an act that the law requires.

8 Republic Act 6713 and its Implementing Rules and Regulations are accessible at the Civil Service Commission website: www.csc.gov.ph

9 A petition for the *writ of habeas data* is a legal remedy for those whose right to privacy in life, liberty or security is violated or threatened by anyone (public or private individual/entity) engaged in gathering, collecting or storing of data or information regarding the aggrieved party (especially victims of human rights violations). See: www.chanrobles.com/writofhabeasdata.html

10 Aside from the National Telecommunications Commission, there is a Motion Picture and Television Regulatory and Classification Board to deal with regulating "questionable content", and an Optical Media Board that tackles "intellectual property" issues concerning "piracy".

11 See Alegre, A. and Tuano, P. A. (2007) Philippines, in Finlay, A. (ed.), *Global Information Society Watch 2007*, APC and ITeM, p. 187-190. www.giswatch.org/gisw2007

12 See for example Coronel, S. (ed.) (2001) *The Right to Know: Access to Information in Southeast Asia*, Philippine Center for Investigative Journalism, Quezon City.

The Philippine Center for Investigative Journalism (PCIJ) had recorded at least fourteen cases of major requests effectively denied by eleven government agencies over the past decade, for flimsy excuses.[13] Some recent high-profile examples where information disclosure has been denied include the report of Supreme Court Justice Hilario Davide Jr. on electoral reform; the report of the Independent Commission to Address Media and Activist Killings; the anomalous National Broadband Network (NBN) deal; and various government contracts and loan agreements.[14]

General access to information: Legal and procedural gaps

The Access to Information Network (ATIN) is composed of civil society organisations doing public interest work in the fields of media freedom and communication rights, development, governance and law, who have come together to advocate the people's right to information. They, as well as other advocates, have noted numerous problems in practice:[15]

- *Absence of a uniform and speedy access procedure:* Access to information is differently and inconsistently applied across government agencies. Government granting therefore remains *discretionary in practice*, and agencies are able to frustrate the exercise of this right.
- *Absence of a definite scope, particularly on what information may be exempted:* Limitations "as may be provided by law" are hampered by the lack of such a defining law. For example, this gap prevented access to the proposed text of controversial free trade agreements, like the Japan-Philippines Economic Partnership Agreement.[16]
- *Legal difficulties in enforcement:* In the absence of a definite procedure and scope, it remains difficult to enforce administrative and penal sanctions for unlawful withholding of information. Related to that, the judicial remedy to compel disclosure (i.e., writ of *mandamus*) remains inaccessible to the general public.

These gaps moved groups like ATIN to push for an enabling law that provides the mechanics for implementation. The Freedom of Information Act of 2008 (House Bill 3732), shepherded by ATIN, passed the Lower House of Congress and a counterpart Senate Bill 3308 has been calendared for second reading in September 2009, hopefully to be passed before Congress adjourns.

Online access: State capacity and ICT policy gaps

- *Poor state of government information systems:* Even in analogue form, the level of many government agencies' recordkeeping is inadequate, and is worse when one deals with digital databases. Several government agencies often post laws and other information on their own websites, but this is highly uneven across agencies. There also is no central website that contains all current laws, and the individual websites are not always easily searchable. So online access may be possible, but is more the exception than the rule, though some public and private institutions are seeking to address this. (An ongoing study by the Centre for Internet and Society in Bangalore has pinpointed interesting efforts to promote better online access to law in the country: the Supreme Court's e-Library Project, Arellano University's Philippine Laws and Jurisprudence Databank, and the Chan Robles law library.)[17]

Two other issues relating to ICT and internet policy and governance – one supply-side and the other demand-side – also affect citizens' right to information:

- *Lack of a strategic e-governance[18] framework and strategy:* Underpinning the issue of the lack of state capacity in managing their information and allowing access are basic gaps in the government's ICT governance framework and strategy. In an upcoming assessment of the government's ICT targets in its six-year development plan, researchers have noted the glaring lack of an effective e-governance strategy that takes advantage of ICTs as an enabler of democracy and social inclusion. This lack has hampered the development of a sound government content strategy, and fails to see the advantages of open government.[19]
- *Lack of a coherent digital inclusion and universal access strategy:* Addressing the universal access gap is a significantly relevant factor for online access. Government has taken a generally *laissez faire* and overly market-driven approach in addressing the lack of digital inclusion among its citizens, which would enable citizens' participation in the so-called information society. It has failed to correct "market failures" in the provision of access to the internet to large parts of rural areas not reached by commercial providers and carriers, as well as to particularly vulnerable sectors. This ultimately prevents wide sections of the population from taking advantage of the internet to access much-needed information and knowledge.[20]

13 For an overview of these difficulties, see a two-part article by the PCIJ, "Access to Information Denied", at pcij.org/stories/2009/access-to-info-denied.html and pcij.org/stories/2009/access-to-info-reporters.html

14 Access to Information Network (ATIN) (2009) A Primer on Freedom of Information in the Philippines, 27 May, p. 5. For coverage on the NBN scandal, see: www.inquirer.net/specialfeatures/nbndeal/index.php

15 ATIN (2009) op. cit. See also Malaluan, N. (2006) op. cit., p. 5-7.

16 Lat, M. T. (2006) The Right to Information in International Treaties: The Case of the Japan-Philippines Economic Partnership Agreement, in Access to Information Network (ATIN) *Clampdown on the People's Right to Know*, ATIN, Quezon City, p. 2.

17 See elibrary.judiciary.gov.ph, www.lawphil.net and chanrobles.com; from numerous interviews with researcher Grace Armstrong, June 2009.

18 Here used to include e-government (i.e. government-citizen interaction) as well as a broader, more interactive and participatory multi-stakeholder strategy.

19 Foundation for Media Alternatives and ideacorp (forthcoming 2009) *A Civil Society Assessment of the Medium-Term Philippine Development Plan 2004-2010 in the Area of ICT Governance* (tentative title).

20 Ibid.

Political issues

- *Growing government secrecy:* ATIN notes that there is a very low level of bureaucratic commitment to openness, with a high level of distrust for information seekers.[21] A growing concern is how the state – especially under the current administration – has been compromising the people's right to know. A recent indication of this is the government's Executive Order (EO) 464, which invokes the concept of *executive privilege* – the power of the president to withhold information from the courts, Congress, and ultimately the public, for reasons of "national interest".[22] What has been objectionable is the wide latitude given to prevent officials from "spilling the beans" or "whistle blowing" on potentially illegal transactions, to protect the powers-that-be. Now known as the "gag rule" for government officials, EO 464 has limited Congress' power of legislative inquiry and its ability to investigate government anomalies, and media and human rights advocates are worried.[23]

- *Attacks on media freedom:* The media are a primary channel for citizens to information on matters of public interest, and investigative journalism has flourished in the country. The Philippine media have been among the freest (and most free-wheeling) in the world. Ironically, the country has been tagged as one of the most dangerous countries for journalists globally, with 134 killed since 1986, 69 under the current Arroyo regime alone, the most since the martial law era.[24] Many of these murders (as in the case of hundreds of others including activists, peasants and pastors) have been unsolved. This has nurtured a culture of impunity, which poses a direct threat to information freedom as it has a chilling effect on the media.[25]

- *Online censorship and surveillance:* Though Philippine online environments are generally free and unregulated, recent research shows that targeted hacking of anti-government websites does occur. The mobile telephony space has also been subjected to surveillance and content blocking both by state and non-state actors, for political and economic reasons.[26] Such unauthorised online (internet and mobile) monitoring and filtering is harmful to access to information rights as it prevents the free expression and communication of citizens and groups. International discourses on "cyber crime" and "cyber terrorism" are increasingly used to justify domestic policy and practice that are problematic for human rights.

- *Restrictive intellectual property (IP) regime:* There is also an ongoing policy debate in the Philippines about how restrictive IP frameworks are – in this case, the country's Intellectual Property Code, and the still officially unreleased National IP Policy and Strategy (NIPPS). Certain civil society groups assert that the country is uncritically following dominant international private interests in overriding development objectives via a strict copyright and patent legal regime.[27] The negative effect on access to information and knowledge is beginning to cascade to many sectors and areas (e.g., copyright, access to medicines, biodiversity, arts/culture). And big business has always been willing to enforce conservative copyright regimes. A recent illustration was when one large internet service provider (ISP) was taken to task for capping bandwidth and slowing down subscribers' paid-for and guaranteed internet speeds if they were suspected of engaging in peer-to-peer downloading of copyrighted material.[28]

Action steps

The Philippines' democratic traditions of information freedom and more open government are now under threat on several fronts. State actors are slowly implementing a more restrictive information regime as a strategy for political survival, and have shown the capacity to do so without proper regard for human rights. The state has also partly abdicated its role as a defender of the public interest by being remiss in instituting progressive policies encouraging online access, by failing to defend media from attack by anti-democratic forces, and by allowing private interests to further enclose knowledge and information to the detriment of development imperatives and people's rights.

Communication rights advocates must unite with human rights groups to defend against such trends, continue to work for greater information access, and craft policies which institutionalise this via strategic legislation and policy development. They must prepare to mount legal challenges to ever-increasing violations, and be eternally vigilant to the various threats, especially in online environments.

The right to information is a necessary condition for the effective exercise of other rights, and must be protected and expanded by all. ■

21 ATIN (2006) op. cit. p. 7.

22 The text of EO 464 may be accessed here: www.doe.gov.ph/popup/EO%20464.pdf

23 See Ilagan, K. (2008) Right to information and government's hangover of secrecy, 16 April. www.pcij.org/blog/?p=2294 and Bernas, J. (2008) The limits of 'executive privilege', *Inquirer.net*, 17 February. opinion.inquirer.net/inquireropinion/columns/view/20080217-119534/The-limits-of-executive-privilege

24 Center for Media Freedom and Responsibility: www.cmfr-phil.org/map/index_inline.html.

25 The Philippines ranks sixth worldwide among countries that fail to prosecute cases of journalists killed for their work, according to the Committee to Protect Journalists' Impunity Index. See: cpj.org/reports/2009/03/getting-away-with-murder-2009.php

26 The Foundation for Media Alternatives (FMA) is part of the Open Net Initiative in Asia (opennet.net) and is drafting a country report on "Internet and Mobile Telephony Content Monitoring and Filtering" (forthcoming 2009).

27 The Third World Network and FMA convened a series of civil society meetings and roundtables in mid-2009 to consolidate responses to the NIPPS.

28 Villafania, A. (2009) Subscribers hit Globe P2P bandwidth cap, *Inquirer.net*, 18 May. technology.inquirer.net/infotech/infotech/view/20090518-205734/Subscribers-hit-Globe-P2P-bandwidth-cap

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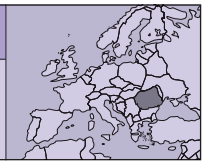
www.sbnet.ro



Introduction

European Union (EU) membership since 1 January 2007 has shaped Romanian regulatory practices concerning access to online information. A process of aligning to EU legislation (2000-2007) catalysed country efforts to create a more transparent policy environment for information and communications technologies (ICTs). The four pillars of ICT development have strengthened unevenly during this process: while access to appropriate infrastructure and affordable internet connectivity showed positive trends, the ability to use ICTs and *the availability of useful content* maintained a digital divide[1] among individuals and communities across Romania.

Romania ranked 58th out of 134 countries for networked readiness, according to the latest World Economic Forum report,[2] scoring slightly better in the ICT use (52nd) and ICT readiness (55th) components, but significantly worse in the ICT environment[3] component (66th). Unsettled policy-making practices and poor education expenditure, which were part of the ICT environment indicators, placed Romania in the lower half of the list. The broadband penetration rate at 31 December 2008 was only 11.65 connections per 100 inhabitants,[4] while public discourse highlighted the "six million Romanian internet users" as a success story.

This analysis focuses on national programmes aimed at facilitating access to online information: e-government, a knowledge economy project, an e-learning system and innovative ICT initiatives developed to fight corruption. The report was compiled through desk research and empirical analysis.[5]

Policy environment

A Romanian think tank reported a "post-accession political hangover"[6] related to dysfunctions of democracy in the region. In Central and Eastern European countries, populist electoral gains, political radicalisation, weak parliamentary majorities, factional behaviour and misconduct of political elites were the symptoms of a backlash in policy-making processes after EU accession. Power shifts in 2008[7] also brought about institutional changes concerning ICT policy in Romania: the communications ministry was renamed (from the Ministry of Communications and Information Technology to the Ministry of Communications and Information Society, suggesting perhaps a change of vision), and the national authority for regulating communications was re-established and renamed,[8] due to leadership issues and a lack of clarity concerning its mission and attributions.

ICT policy has attracted little public attention[9] in Romania: the complex regulatory framework imposed by EU accession requirements from 2000 to 2007 was considered a matter for ICT specialists and institutional actors directly involved, rather than a broader topic for debate for legal experts, economists and citizens. The avalanche of laws and regulations adopted was aimed at creating a proper market environment for business players and affordable access for end-users, both individuals and organisations.

Strategic goals formulated by the communications ministry[10] were aimed at developing a knowledge-based society through:

- Increased economic competitiveness through the use of the newest ICTs
- ICT industry development
- Increased institutional performance of public administration and easy access for citizens.

Tangible results promised by 2008 in the same policy document were: quality telecommunications at affordable prices; access to broadband services; investments in the "new economy" through better-paid jobs; and a more efficient, responsive public administration. The policy also promised extended information services that allow citizens better interaction and social integration.

The ICT policy environment in Romania has both strengths and weaknesses.[11] Strengths include the fast alignment to EU regulations from 2000 to 2007, simplified regulations concerning market entry, and the "unusual transparency" of the telecommunications market regulatory authority. Weaknesses of the policy-making framework are

1 Baltac, V. (2008) Universities and the Information Society, in Péron, F. (ed.), *L'Europe dans la société de l'information*, Larcier, Brussels, p. 208.

2 World Economic Forum (2009) *The Global Information Technology Report 2008-2009*. www.insead.edu/v1/gitr/wef/main/fullreport/index.html

3 Broadly conceptualised to include a range of social, economic and political factors.

4 ANCOM (2008) *Raport date statistice comunicatii electronice*, National Authority for Management and Regulation in Communications, Bucharest, p. 63.

5 Valuable information was collected at the free and open source software (FOSS) conference eLiberatica. www.eliberatica.ro/2009/index

6 Romanian Academic Society (2008) *SAR Annual Report 2008*, p. 4. www.sar.org.ro/files/Policy%20memo29-en.pdf

7 A centre-right coalition (2004-2008) was displaced by a centre-left coalition in December 2008.

8 The National Authority for Regulating Communications, created in 2002, was later turned into the National Authority for Regulating Communications and Information Technology, then renamed and restructured as the National Authority for Communications in September 2008, and since March 2009, as the National Authority for Management and Regulation in Communications.

9 Manolea, B. (2008) Réglementation des communications en Roumanie, in Péron, F. (ed.), *L'Europe dans la société de l'information*, Larcier, Brussels, p. 37.

10 Ministerul Comunicatiilor si Tehnologiei Informatiei (2005) *Politica Guvernului Romaniei în domeniul tehnologiei informatiei si comunicatiilor*. www.mcti.ro/index.php?id=55&L=0

11 Manolea, B. (2008) op. cit., p. 42-51.

related to the general lack of institutional capacity, an unsettled legislative environment and the poor planning practices of regulators.

Civil society is poorly represented and the policy-making process has a strong top-down orientation. Open source software solutions and gender mainstreaming are also completely absent from official public ICT discourse.

Legislative environment

Romanian ICT-related laws and regulations were adopted under EU pressure to follow its general legislative framework. Advocacy by ICT businesses also helped shape a dynamic business environment, as presented in the Romania country report for GISWatch 2007.[12] Between 2001 and 2005 an avalanche of legislative measures were adopted to comply with EU legislation. These included legislation and regulations dealing with e-signatures (in 2001); general communications, audiovisuals and e-commerce (in 2002); universal access to electronic services, e-data collection, e-procurement and e-payment systems (in 2003); and e-data security and e-time stamps (in 2004). The privatisation of the incumbent RomTelecom, which started in 2003, was also finalised in 2005. These laws enabled a more competitive and transparent playing field for individuals, organisations and communities as ICT stakeholders. They also created the regulatory and infrastructural premises for developing the content side of the information society.

Access to online information has several legal aspects concerning transparency, privacy and accessibility. There are few laws and regulations related directly and explicitly to online content in Romania:

- Law 506/2004 concerning personal data processing in electronic communications prescribes several rights for internet and telephone users. These include the right to confidentiality of their personal data, the right to be informed of risks concerning the processing of their personal data, and the right to refuse to provide personal data to electronic communication service providers.
- Law 102/2005 establishes the Authority for Supervising Personal Data Processing and prescribes the competencies of this independent public entity to ensure the individual's right to privacy.
- Law 298/2008, concerning data retention, prescribes the obligation to store data generated or processed by electronic communication service providers and make it available to enable governmental entities to combat crime. This law has encountered strong criticism and concern from human rights activists and its implementation was still pending in June 2009 due to the lack of preparation of stakeholders to implement it properly.
- In April 2008 the communications ministry launched guidelines concerning web page standards for public authorities[13] for comment. In June 2009, however, we could not retrieve the text of the guide on the ministry's website, nor information concerning the status of the proposal. Instead we consulted the guide (and the rest of the ICT-related legal framework) on a website developed by a dedicated group of ICT policy experts.[14] The guidelines refer to internationally accepted standards for web usability, accessibility and design. If implemented on a national scale, the quality of online content posted on public authorities' websites will increase significantly.

Access to online information: Mainstream and innovative initiatives

The government is the key player in facilitating and developing access to online information, serving multiple roles: *as a regulator*, it creates the normative framework of rights and responsibilities for electronic service providers and users, as presented in the policy/legislative section above; *as a funder*, the Romanian communications ministry channels World Bank loans and EU funds for e-government, e-learning and e-community building; and it also acts *as an implementer* of these programmes.

E-government

The Romanian e-government programme is a complex and long-term initiative aimed at developing transparent and easily accessible online access to public services, following the regulatory framework set by European Commission Service Directive 2006/123/CE. Key components of the Romanian programme are the National Electronic System, which offers dedicated and unified access to e-government services, and the Electronic System for Public Procurement,[15] a set of interactive and transactional services established to facilitate 20% of public acquisitions.

According to Law 161/2003 dealing with measures to ensure transparency and prevent corruption, the National Electronic System was established as a common platform for the development of the e-government sector in Romania. The ministry developed a holistic approach to ICT-enabled public sector governance, envisioning public service agencies working across portfolio boundaries, under the supervision of a specially created governmental entity: the Agency for Information Society Services. All e-government services are coordinated from an "electronic point of single contact" through the www.e-guvernare.ro portal, as requested by the EU Service Directive.

We analysed e-government readiness in Romania according to the five-stages framework developed by the United Nations[16] that views e-government as a multi-stakeholder interaction between government, businesses and the citizen:

12 www.giswatch.org/files/pdf/GISW_Countries.pdf

13 www.mcti.ro/index.php?id=28&lege=1440&L=0

14 www.legi-internet.ro/legislatie-itc.html

15 Somodi, Z. (2008) eGovernment Readiness, Ministry of Communications and Information Technology, Bucharest. www.mcti.ro/index.php?id=48&L=0

16 United Nations (2005) *Global E-Government Readiness Report*, p. 16.

(1) *Emerging presence* means the information available is limited and basic. The government's online presence comprises a web page. Links to organisations/departments and regional/local government may exist. Some archived information, such as speeches or official documents may also be available online. Most information remains static with few interactive options for citizens.

(2) *Enhanced presence* is the stage in which the government provides greater access to policy and legislative documents. Reports and newsletters, amongst other types of content, are downloadable. The user can search for a document and help features including a site map are provided. Interaction is still primarily unidirectional with information flowing from the government to the citizen.

(3) *Interactive presence* is the stage in which citizens can find downloadable forms for things like tax payments, or applications for licence renewal. Audio and video capability is available for relevant public information. Contact details are online for government officials to be contacted via email, fax, telephone and post. The site is updated to keep the public up to date.

(4) *Transactional presence* is the stage that allows two-way interaction between the citizen and government. It includes options such as paying taxes, applying for identity cards, birth certificates and passports, and renewing licences online. Online payments are possible. Providers of goods and services are also able to bid online for public contracts via secure links.

(5) *Networked presence* is the most advanced level in e-government development. The government encourages participatory decision making in a two-way dialogue. Interactive features such as an online comment form and other online consultation mechanisms enable the government to proactively solicit citizens' views on public policy and law making. In this stage the public sector agencies cooperate in a well-integrated and participatory manner.

We analysed a convenience sample of 40 websites for city halls, county councils and communes across Romania according to the UN framework, specifically looking at the online content provided. As many as 3,896 organisations – mostly governmental entities – were registered by June 2009 in the National Electronic System.[17] They provided contact data and – most of them – links to their websites. There are strong horizontal (geographical) and vertical (hierarchical) disparities among these websites: while municipalities have more content and better design, smaller localities (towns and communes) and, surprisingly, some county councils provide scarce information and poor website architecture in terms of accessibility and usability. Most of the municipalities' websites analysed are in the interactive stage of e-government, in transition to the transactional stage, whereas disconnected communities from poorer areas and smaller localities are in the enhanced web presence stage at best.

17 www.e-guvernare.ro/Default.aspx?LangID=4

Knowledge-based Economy Project

The Knowledge-based Economy Project is aimed at promoting the digital inclusion of 255 disconnected communities across Romania with a substantial loan of USD 60 million from the World Bank. The project is intended to be part of the national e-government strategy. Beyond infrastructural investments in knowledge centres, the project implementation unit (part of the communications ministry) facilitates online communication among target communities. As part of this project, the eComunitate portal18 is a collection of websites offering a range of information and services online, including the ability to interact with other communities. The portal is well designed and user-friendly, providing Web 2.0 tools for enhanced interaction, including blogs, wikis, forums and RSS feeds. Online community content is structured in thematic categories: social, education, culture, history, tourism, traditions, venue, local strategies, projects and businesses.

Advanced e-Learning educational project (AeL)

The Advanced e-Learning educational project (AeL) is a public-private partnership developed by the Romanian Ministry for Education and the Siveco IT company.[19] The project has been providing modern online teaching facilities for 4,780 Romanian schools since 2005.[20] Electronic content is structured according to subject, offering more than 500 lessons on literature, mathematics, computer science, physics, chemistry, biology, geography, history, economics, technology and psychology. The project has attracted criticism from the open source community because it is implemented using proprietary software solutions.

Other initiatives

At a recent free and open source software (FOSS) conference called eLiberatica, the former communications ministry state secretary presented an innovative open source application: a queue register.[21] The purpose of the application is to provide citizens and organisations a simple and transparent technical solution to the online registration of any transaction where the order of registration is important. The benefit of implementation would be stakeholders' access to virtual queue information in order to avoid favouritism.

An important, yet poorly publicised success story is the Jurindex initiative. Launched in spring 2009, it is an official programme of the Superior Council of Magistracy that aims to publish all court decisions in their original form online. Access to these documents will be free. Beyond contributing to a more transparent judiciary system, Jurindex enables stakeholders to monitor court cases in a reliable and user-friendly manner.[22]

18 www.ecomunitate.ro

19 The company is considered by the media and competitors to be the subject of favouritism. See: www.capital.ro/articol/link-de-300-mil-euro-la-licitatiile-pentru-it-din-scoli-111522.html

20 advancedelearning.com/index.php/articles/c3

21 Teodorescu, C. (2009) National Unique Queue Register can fight against corruption, paper presented at the eLiberatica conference, Bucharest, 23 May. www.eliberatica.ro/2009/conference/schedule

22 www.jurisprudenta.org/MainSearch.aspx

Emerging trends in access to online information

According to a regulatory authority assessment, we can expect dynamic changes in local content creation given the growth in broadband penetration. "As internet access, data transmission services and content applications increase their share in the operators' revenues, the content providers, including websites, portals and audiovisual programme services will have a significant impact on market dynamics. In turn, the development of local content will boost the growth of broadband penetration."[23]

Open source groups are preparing to create a lobby organisation to advocate for affordable ICT solutions in Romania, according to eLiberatica and ICT activists. A louder voice for the open source community could foster meaningful content creation through promoting more accessible and customised applications.

The social media boom is an ongoing process entailing digital inclusion, citizen participation and civic involvement through bottom-up online content development. A fast-growing blogger community and media convergence trends[24] create a "fifth power" (or "fifth estate"): an accessible space for autonomous voices.[25]

Action steps

Access to online information follows a top-down dissemination model, as shown in the projects analysed. Few grassroots initiatives have attracted public attention and support. Bottom-up initiatives should be encouraged through funding, skills transfer and networking support in order to enable citizen participation in shaping and developing local content.

Free and open source solutions should be given more attention by government and business stakeholders to encourage sustainable and inclusive access to online information.[26]

Technologies are far more advanced than information dissemination practices in the country. In order to develop a transparent, participatory society, government initiatives and a business community drive have to be backed up by increased civic involvement of opinion leaders, action groups and civil society organisations. ■

23 ANRCTI (2007) *Position Paper on the Regulatory Strategy for the Romanian Electronic Communications Sector for 2007-2010*, p. 39-40.

24 Comănescu, I. (2007) *Presa electronică românească, între producţia de ştiri de tip clasic şi specificităţile de tip Web 2.0*, Centrul pentru Jurnalism Independent, Bucharest. www.cji.ro/categ.php?categ=publicatii

25 Chiruţă, R. (2007) „Blogul, a cincea putere în stat", *România Liberă*, 19 April. www.romanialibera.ro/a92821/blogul-a-cincea-putere-in-stat.html

26 Savluc, L. (2009) My official position – The Romanian government is about to spend millions of euro on proprietary software…, 27 May. www.cianblog.com/2009/05/27/my-official-position-the-romanian-government-is-about-to-spend-millions-of-euro-on-proprietary-software

RWANDA

Media High Council
Emmanuel Habumuremyi
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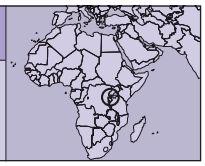


Introduction

Access to information is a human right and should be treated as such. Institutions should do everything they can, and all actors should pool their efforts to ensure that right. All sectors have to bear responsibility.[1] This was the position stated by Paul Kagame, the president of Rwanda, when he was addressing the Geneva World Summit on the Information Society (WSIS) in 2003. The arrival of the internet in the 1990s marked the beginning of a new era for Rwandan citizens, whose doors to information were closed because of a bureaucratic government.

During the 1994 genocide against Tutsis, Rwandan citizens were exposed to false information whose purpose was to encourage people to play an active role in the killings of Tutsis and moderate Hutus. After the genocide, the Rwandan government faced the challenge of citizen mistrust in information, and made a commitment to promote access to information in order to develop the country, improve social welfare and foster national reconciliation and unity.[2]

Information and communications technologies (ICTs) came as one solution for the country to achieve this goal, and to strengthen the transformation from an agriculture-based economy to a knowledge-based economy by 2020. Technology and ICTs have been privileged as key enablers of this transformation, where access to information equals access to education and knowledge in order to stimulate innovation.

Policy environment

The Rwandan government has embraced ICTs out of necessity, not choice.[3] In 1998 the Rwandan ICT-led Socio-Economic Development Policy and Plan was formulated.[4] Its implementation is through four five-year plans known as the National Information Communications Infrastructure (NICI) Plans. At the moment, Rwanda is implementing the second plan period (NICI II), committed to putting in place the infrastructure to allow widespread access to ICTs in the country.

Rwandan ICT for development policy aims at promoting universal access to ICTs and systems.[5] With the liberalisation of the telecommunications market, Rwanda also recognises the importance of increasing citizens' access to information. The current policy environment has encouraged various initiatives in the ICT sector. Today, a national portal[6] provides information on all Rwandan economic sectors to help the general public, researchers and policy makers easily access information, and share knowledge, experiences and best practices. Community telecentres, being built all over the country through the implementation of NICI II, together with the pilot of the information kiosks set up in key public institutions, are providing information to the public. They are going to be supported by two mobile telecentres[7] to reach people who have been underserved in terms of lack of electricity and other infrastructure. The mobile telecentres are buses, each containing twenty computers connected to the internet, as well as equipment such as printers and scanners, and a generator to provide electricity.

Other projects have also been launched. E-soko,[8] for example, intends to offer access to information on agricultural markets and other aspects of farming in order to help with better planning.[9] It is possible today to access information on Rwandan embassies,[10] and an e-gateway for all districts of the country has been launched.[11]

Some key services accessible online in Rwanda include:

- An e-procurement platform called dgMarket[12] that offers information on the public procurement process in Rwanda
- Online visa application facilities[13]
- Tax declaration facilities and application for a tax clearance certificate[14]
- Access to social security information
- Shopping via the B-web run by Kigali Bank.[15]

Initiatives such as the implementation of a national identity registry system and connecting local government institutions to one network are already in place. These are being run by the Ministry of Local Government, Good Governance, Community Development and Social Affairs (MINALOC). In the health sector, TRACnet was established and has been implemented by the Treatment and Research AIDS Centre (TRAC), based at the Ministry of Health, since 2005.[16]

1 UNECA (2003) Round Table on Creating Digital Opportunities, 10 December. www.uneca.org/aisi/wsis2003/Round%20Table%20on%20CREATING%20DIGITAL%20OPPORTUNITIES.htm

2 Republic of Rwanda (2005) NICI II Plan, Kigali, p. 165.

3 www.unis.unvienna.org/unis/topical/wsis/highlights-10dec03.html

4 NICI Plan: www.uneca.org/aisi/NICI/country_profiles/rwanda/rwanpol.htm

5 NICI II Plan, p. 17.

6 www.rwandagateway.org/article.php3?id_article=1273

7 Cole, Y. (2009) ICT Buses to Bridge Digital Divide, *allAfrica.com*, 5 August. allafrica.com/stories/200908060353.html

8 www.esoko.gov.rw

9 NICI II Plan, p. 147.

10 www.embassy.gov.rw

11 www.district.gov.rw

12 www.market.gov.rw

13 www.migration.gov.rw/singleform.php

14 mail1.rra.gov.rw

15 www.bk.rw/english/b_web_internet_banking.html

16 United Nations Department of Education and Social Affairs, Division for Sustainable Development (2008) TRACnet, Rwanda: Fighting Pandemics through Information Technology. www.un.org/esa/sustdev/publications/africa_casestudies/tracnet.pdf

Legislative environment

Access to information goes hand in hand with freedom of opinion, which is a constitutional right for Rwanda. Article 33 of the constitution[17] states that freedom of thought, opinion, conscience, religion, worship as well as the freedom of information are guaranteed by the state in accordance with conditions determined by law.

With the implementation of the NICI II Plan, there is a need to enact the enabling laws. Rwanda has enacted telecommunications legislation, the multi-sector regulatory law, and intellectual property rights legislation. However, laws to support e-commerce and other internet-related activities are still absent. These include broadband regulations (Rwanda has no broadband policy); laws relating to online security, including digital signatures and encryption; laws relating to data privacy; and access to information legislation. Steps towards developing the latter are being taken by the Media High Council.

Access to online education materials

The Rwanda government has opted to meet the goal of "Education for All", including enhancing the quality of education. The education sector's policy states that ICTs are "the heart of the education system."[18] The policy considers the importance of ICTs as lying "less in the technology itself than in its ability to create greater access to information and communication in underserved populations."

The Ministry of Education (MINEDUC) has already drafted an ICT policy to guide the deployment of ICTs in the ministry to support its organisational activities and operations within the framework of the national ICT-led development vision (called Vision 2020). The ultimate goal is more effective creation and delivery of educational products for improved teaching and learning in Rwanda.

It is expected that a clear road map for the integration of ICTs in education will also be developed, which will, among other things:

- Increase access to basic education for all, both formal and non-formal, where ICTs are one of the main tools for learning and teaching, and for seeking and sharing information.
- Improve the quality of basic education and promote independent and lifelong learning, especially in secondary and tertiary education.
- Contribute to the availability of a workforce with the ICT skills needed for employment and use in a knowledge-based economy.
- Ensure that Rwandans can compete and cooperate in an increasingly interconnected world.
- Ensure that Rwanda has in place an ICT-driven process that supports evidence-based decision making with respect to resource allocation, strategic planning, and the monitoring and evaluation of educational policy implementation.

Even though the above-mentioned ICT in education policy is still awaiting approval, there are some ICT-oriented projects that are being implemented in education. Apart from the One Laptop per Child (OLPC) project, there is Rwednet, whose expected outcome is the development and promotion of research and education networking communities in and outside the country. Meanwhile, the national examination council is developing a platform that helps O-level and A-level students get their exam results on mobile phones and online. Another initiative is the Rwanda Education Commons (REC),[19] whose aim is to facilitate widespread access to education information and materials.

The REC, initiated by the Global Learning Portal Alliance (GLP) in October 2008, is the first pilot of the Africa Education Commons. This is a virtual space where teachers, learners, parents and stakeholders from government, business, non-governmental organisations, education institutions and civil society will be able to share resources and collaborate with each other to meet African education challenges.

The REC brings stakeholders together to collectively design a programme that will coordinate, support and leverage ICT investments for education in Rwanda to ensure their effectiveness, integration into national policy, and sustainability, and develop and support state-of-the-art ICT programmes to enhance Rwanda's education system.

To achieve these objectives, the project will develop the Commons learning platform, which will feature an online portal with interactive features and tools to promote collaboration among educators and provide access to materials, such as digital learning libraries. It will also provide offline channels of delivery and support, including CDs for unconnected computer labs, and leverage other technologies, including radio, mobile phones, and satellite and broadcast television to deliver relevant and up-to-date educational content. Additionally, it will provide a mechanism for coordinating ICT in education activities, including funding positions on the ground in Rwanda; facilitate the digitisation of educational content in areas identified by Rwandan stakeholders; and train trainers to facilitate the use of the Commons learning platform at designated access points.

The first round of digital learning materials available on the Commons platform are expected to improve the quality of primary school teaching in Rwanda through their use at pre-service and in-service primary teacher training programmes. The Commons will also, amongst other things, make available digital learning materials for income-generation activities, and a database of education projects in Rwanda for policy makers and administrators.

17 Republic of Rwanda, The Constitution of 04/06/2003.

18 MINEDUC (2003) Education Policy 2003, p.22.

19 rwanda.glp.net/home

New trends

In Rwanda new technologies are under development to increase access to information via various and diverse channels. The government is assisting both pupils and communities to acquire laptop computers and mobile phones. At the same time, Korea Telecom is managing the implementation of the national fibre-optic backbone. The project is expected to be completed by the end of this year. The country has engaged in discussions with the Seacom and TEAMS fibre-optic submarine cables in order to prepare for accessing them as soon as they start operation. Rwanda is looking to buy fibre bandwidth capacity in order to distribute it to schools and health centres, amongst others.

Another ICT infrastructure project is being set up on the top of the Kalisimbi volcano. It will increase access to information for Rwandans, as well as for other countries in the region. It is expected that the project will increase FM radio range to a 700-kilometre radius by enhancing antennae orientation (vertical as well as horizontal polarisation). It will also offer digital video broadcasting following the pilot phase (with a 250-kilometre radius), and internet connectivity (50-kilometre radius) for rural connectivity.

Pay TV is another new source of information in Rwanda. A Chinese broadcasting company, Star Media, is offering pay TV services via a terrestrial digital network. The initial network is based around a transmitter site in Kigali, but they plan to cover the whole east African region.

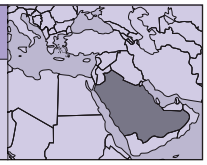
Action steps

The fact that the country had almost no ICT infrastructure before the NICI plan explains why there is still a long way to go. Despite progress recorded in online access to information, several steps need to be taken regarding the policy and regulatory framework, as well as access to infrastructure and human capacity building. First, some important policies and laws are still lacking. This includes a broadband policy. To avoid a concentration of ICT services in major urban areas, there is a need to reinforce a shared-infrastructure regulatory policy to allow smaller players in rural areas to access the network backbone at a low price.

Rwanda is a trilingual country where Kinyarwanda, English and French are used. Where ICT services are available, they are not always suited to local needs, and relevant local content remains a key constraint. Securing access to services should be seen both as a question of delivering them and empowering the community to access them, in order to effectively secure broader developmental benefits. ■

SAUDI ARABIA

Saudi Arabian Strategic Internet Consulting (SASIc)
Rafid Fatani
www.sasiconsult.com



Introduction

Saudi Arabia has set itself two goals regarding the information society: dramatically improving skills and computer literacy; and becoming a centre of excellence in knowledge-based industries. This policy focus is an acknowledgment of how information and communications technologies (ICTs) now pervade every aspect of our lives. However, although the Saudi authorities are working hard in bridging the digital divide and liberalising the ICT market, its severe censorship of the net, and invasion of privacy at public access points, contradict its vision of a modern knowledge society.

Accessing technology in Saudi Arabia

Saudi Arabia's telecommunications sector is growing rapidly. Broadband access to the internet has become increasingly popular in recent years, although only 2% of internet users access the internet via broadband. Currently digital subscriber line (DSL) is the most common broadband technology deployed by service providers. While WiMAX technology and fibre-to-the-home (FTTH) are on their way, internet hotspots are already seen in shopping centres and restaurants. The country's two mobile services providers started to offer third-generation (3G) mobile data services in 2006.[1] However, Saudi Arabia still maintains a highly impractical ICT infrastructure in today's knowledge economy, with dial-up being the predominant source (98%) of internet connection.[2]

The number of internet users in Saudi Arabia reached 6.2 million in 2008.[3] Although this figure is large, the Saudi authorities still need to work hard on bridging the digital divide with over 77% of the country without access to computers. While the government's target is 30% penetration by 2013,[4] it still remains an extremely low target with respect to the country's demographics, given that over 60% of the population is under the age of 20.[5]

Government initiatives to build a knowledge society

The Saudi authorities are becoming more aware of the potential efficiencies from applying information technology to all sectors, including knowledge building. With high sales figures for computers, including personal computers (PCs), notebooks and accessories in 2008, the population's urge to become more "tech savvy" is apparent. The number of PC users in Saudi Arabia should also continue to rise steadily over the next few years, led by programmes such as the Saudi Home Computing Initiative (SHCI), which permits the purchase of computers at low prices and in easy instalment payment schemes.[6]

In an attempt to create better access to ICT services, the government has dealt with the three major challenges: physical infrastructure, education and awareness, and policy and regulation. In the 2009 budget report, the Saudi authorities signed off a USD 3.1 billion plan to improve the education system. The focus of this plan is to equip schools with the ability to compete in scientific and technological activities. This figure does not include the allocation of USD 2.4 billion to provide teachers with computer training.[7]

Another government scheme is the Smart City Initiative, which is one of the projects that support the modernisation of Saudi society to a new-age economy and knowledge society. The objective of the Smart City Initiative is to provide advanced e-services to businesses and the public at home and in public places such as airports, parks and hospitals. Its proposed vision is "to improve quality of life in the cities and catalyse economic development through ubiquitous broadband connectivity and compelling ICT services, supported by a true collaboration between the public and private sectors."

The Saudi government has an e-government programme. It has created a bilingual (Arabic and English) portal,[8] which is the main gateway to numerous Saudi public e-services.[9]

The government has also emphasised developing Arabic content websites and the use of Arabic domain names. This new initiative, entitled Developing Arab Digital Content, aims to encourage the production of Arabic web pages and thereby encourage internet usage.[10]

1 International Telecommunication Union (2006) 3G switch-on for Saudi STC, *Regulatory Newslog*, 8 June. www.itu.int/ituweblogs/treg/3G+Switchon+For+Saudi+STC.aspx

2 Oxford Business Group (2008) *Country Business Intelligence Report: Saudi Arabia*, Oxford Business Group Publications, Oxford.

3 Internet World Stats (2008) *Saudi Arabia: Internet Usage and Marketing Report*. www.internetworldstats.com/me/sa.htm

4 Saudi Gazette Staff (2008) Value of Kingdom's IT market forecast to rise to $5.6 billion by 2013, *Saudi Gazette*, 15 May. www.saudigazette.com.sa/index.cfm?method=home.regcon&contentID=2009051538013

5 Wells, C. (2003) *The Complete Idiot's Guide to Understanding Saudi Arabia*, Penguin Group USA, p. 153.

6 The Saudi Network, Saudi Arabia's Cyber Marketing Network: www.the-saudi.net/business-center/saudi_it_market.htm

7 Business Monitor International (2009) *The Saudi Arabia Information Technology Report 2009*. www.businessmonitor.com/saudi_arabia_information_technology_report.html

8 saudi.gov.sa

9 Communication and Information Technology Commission of Saudi Arabia (2006) *Annual Report 2006*. www.citc.gov.sa/citcportal/Homepage/tabid/106/cmspid/%7B611C6EDD-85C5-4800-A0DA-A997A624D0D0%7D/Default.aspx

10 Telecommunication Insight (2007) Regulator Aims To Bridge Arab Digital Gap, May. www.telecomsinsight.com/file/44954/regulator-aims-to-bridge-arab-digital-gap.html

Building Saudi confidence in the use of ICTs

The Saudi government has tried to build public confidence in using ICTs by targeting the misuse of ICTs. However, it has a very limited number of laws and other legislation dealing with online safety and the protection of the rights and privacy of the individual using digital media.[11]

E-Transactions Act

This law establishes legal regulations for electronic transactions and digital signatures in order to build confidence and facilitate their adoption in the public and private sectors. It also consolidates the use of electronic transactions at local and international levels and advocates their use in commerce, medicine, education, e-government, e-payment systems, and other applications. This act should reduce cases of abuse and potential fraud in electronic transactions and digital signatures, such as forging and embezzlement.

E-Crime Act

This law combats electronic crimes and specifies the penalties and fines which violators would be subject to for hacking into other people's personal information or hacking websites. It also stipulates that defamation on the internet is illegal and is a punishable offence. Using the internet to acquire information illegally from public or private sources will be severely punished by fines or jail terms or both. However, the e-Crime Act is somewhat unclear and can be open to different interpretations, which could prove a setback.

Censoring the net

According to United States (US) President Barack Obama, "Suppressing ideas never succeeds in making them go away," and "[t]he internet can bring knowledge and information, but also offensive sexuality and mindless violence into the home."[12]

When it comes to the information society, Saudi Arabia is a place of contradictions. While the Saudi government has been heavily spending on the ICT sector, it, along with China, is widely considered to have one of the most restrictive internet-access policies. Before granting public access to the internet in 1999, the Saudi government spent two years building a controlled infrastructure, so that all internet traffic would pass through government-controlled servers. With the huge expansion in public network and wireless access, government policy is changing to allow the development of new technologies while maintaining the same security and control of media use that is part of Saudi socio-political culture.

It has even gone as far as to impose severe restrictions on Saudi internet cafés. On 15 April 2009, the Ministry issued eight instructions to internet café owners, including installing secret cameras, preparing a registration of users and their identities (name of user, ID number and contact details), and a prohibition on using prepaid internet cards, as well as satellite dishes to access the internet without authorisation from the competent authorities.

One of its biggest drawbacks is its reliance on content filtering. The Saudi authorities justify the limitation on access to the World Wide Web from cultural, religious and national security perspectives. However, it is often claimed that control and censorship in Saudi Arabia is historical, and is motivated by socio-political reasons, as the government does not publish a list of offending sites.

In order to filter online content, all international web traffic must go through the main proxy server that is run by the national regulator (CICT), which keeps a log of this activity. Only internet service provider (ISP) proxies are allowed to connect to CICT's proxy. All ISPs offering web access to their customers must run their own caching proxy server. ISPs are not required to block any sites, since the CICT's proxy does that; but they are required to maintain a one-month log of their user activity. The log must include internet protocol (IP) addresses, user names, dates and times of activities, hypertext transfer protocol (HTTP) commands used and full URL or web addresses accessed. Foreign media that report extensively on Saudi Arabia are systematically censored, with articles and pictures blocked.

These censored sites are blocked when web pages are deemed either offensive to Islam, a threat to national security or contain what the state would label "inappropriate" images. Among web pages that are blocked are the following categories:

Theologically oriented sites that:

- Include any criticisms of Islam
- Advocate non-Islamic teachings
- Advocate religious tolerance.[13]

Health websites that:

- Contain health information on specific diseases, such as HIV/AIDS and other sexually transmitted diseases (including treatment and prevention methods)
- Contain information on abortion and other aspects of women's health (especially if containing images)
- Contain information on illegal drugs (including the war on drugs, and the effects and risks of using illegal substances).

Entertainment websites that:

- Deal with certain "Western" music genres[14]
- Contain jokes deemed offensive
- Provide online movies for download (this reflects the censoring of the offline film industry).

All websites containing homosexual content including:

- Support for the homosexual community
- Social networking for the homosexual community.

11 Saudi Arabia does not have a Freedom of Information Act, nor legislation guaranteeing freedom of expression.

12 Quotes from Barack Obama's historic speech in Cairo, 4 June 2009. www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09

13 Some sites fall into this category (e.g., those that advocate the teachings of religions other than Islam). However, not all sites advocating religious tolerance are blocked.

14 Such as rock, pop and rap.

Political websites that contain:

- Perceived hostility towards Saudi Arabia (including the sites of organisations such as Amnesty International and the Saudi Arabian National Society for Human Rights, NSHR)[15]
- Political analysis of Saudi Arabia. Most recently this has included "naming and shaming" Saudi bloggers who analyse the socio-political scene (the number of Saudi blogs being filtered is rising dramatically).

Websites generally containing what is deemed inappropriate material:

- Any types of pornographic material (whether in literature or in image or video formats)
- Specific sites that grant access to inappropriate material (search engines such as Google Images and Altavista)
- Specific non-pornographic human images, which could range from lingerie to modelling (or any images of people who are wearing less clothing than what is deemed appropriate in public)
- Support or advocacy of euthanasia.

Educational websites that:

- Provide information on women's empowerment and feminism
- Grant access to specific sections in online encyclopaedias and search engines that contain content from the above categories
- Contain information on sexuality and relationships.

Tech-savvy websites that:

- Provide information and services that allow access to restricted sites (via proxies, archives or even translation sites that would allow access to other censored sites).

Terrorism-related sites that:

- Encourage extremism, spread hatred, and promote violence
- Advocate political intolerance
- Contain information on how to join and help religious fundamentalists
- Contain information on how to make explosives, or how to create havoc.

New trends

In the last few years, Saudi Arabia has witnessed unprecedented growth in demand for internet services, an increase attributed to population growth, economic expansion as well as increased investment in this sector. However, government censorship of information is likely to continue. Highlighted below are some of the top trends that are likely to emerge in the coming year:

- Growing use of Web 2.0 technologies. Web 2.0 technologies are serving as integrated hubs for individuals, organisations and their extended networks to connect, communicate, access and share tailored news, information and entertainment.
- An increase in the number of connections via satellite dishes to access the internet (although the use of this type of connection is prohibited).
- With an increase in the number of Saudi citizens studying abroad, Saudis are seeking and connecting to the internet via virtual private networks (VPNs).
- Increased trends towards blogging and micro-blogging (micro-blogging is becoming more popular as it is difficult for the authorities to block the many applications used).
- Continued growth in the use of web-enabled mobile devices.
- As the authorities are cracking down (naming and shaming bloggers), virtual identities are becoming more and more popular.
- As physical infrastructure remains an issue, more citizens are looking at mobile broadband. This trend is currently growing at a rate of 126% per quarter.

Action steps

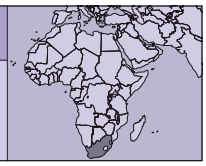
The following action steps are needed to stimulate a free information society in Saudi Arabia:

- The government needs to introduce privacy and individual rights laws, including legislation on access to information and freedom of expression.
- The government censorship system needs to be reviewed. Not all content is filtered on religious or national security grounds.
- Transparency needs to be encouraged through the government publishing a list of all filtered websites, with reasons for their filtering.
- Access to scientific content on the internet must be provided to encourage research innovation. In general citizens need to be encouraged to use the internet as a knowledge tool rather than just for social networking or banking transactions.
- More governmental campaigns are required to build confidence and awareness about ICT security and privacy.
- Arabic content on the internet must be increased to encourage its use by larger segments of the population.
- More public internet access points are needed, and ISP infrastructure needs to be upgraded to improve broadband connectivity.
- The government needs to put pressure on ISPs to upgrade their infrastructure. Liberalising the market on its own will not substantially improve broadband connectivity. ■

15 At the time of writing, the NSHR website was accessible (after being blocked), as were the websites of some international human rights organisations like Human Rights Watch and Amnesty International. However, the Arab Network for Human Rights Information (ANHRI.net) was blocked.

SOUTH AFRICA

Women'sNet
Lebogang Marishane and Sally-Jean Shackleton
www.womensnet.org.za



Introduction

Access to telecommunications – and through that information – remains a development issue for South Africa and bridging the digital divide is an ongoing challenge for the South African government. Changes in the economic landscape also contribute to the widening digital divide and shape the way people access information and communicate. With an estimated 4,590,000 South African internet users at the end of 2008, and a total of 378,000 broadband internet subscribers as of September 2008, the number of internet users has grown.[1] But this number is still a drop in the ocean of 45 million people.

Statistics show that the number of mobile phone users, however, has grown to 70% of the South African population.[2] Mobile phones are proving to be essential tools for communication, especially in under-serviced rural areas that landlines have failed to reach (with only 10.1 fixed lines for every 100 people).[3] In these rural areas, access to essential basics such as water and food takes precedence, and the issue of access to information and communications technologies (ICTs) becomes secondary. As a result, these citizens are excluded from the information and its dividends.

The lack of access to ICTs deprives citizens of a chance to access information relevant to their development. Even the assumption that making telecommunications devices available in semi-rural and rural areas contributes to increased universal access is erroneous. We need to go beyond the access-equals-development scenario.

Legislative environment

The Telecommunications Act (No. 103 of 1996) initiated a string of legislation, with this Act amended by the Telecommunications Amendment Act (No. 12 of 1997), the Independent Communications Authority of South Africa Act (No. 13 of 2000), and the Telecommunications Amendment Act (No. 64 of 2001). In July 2001 the Independent Communications Authority of South Africa (ICASA) was established and merged the telecoms regulator (Telecommunications Regulators Association of Southern Africa) and the broadcasting regulator (Independent Broadcasting Authority).

In July 2006, the Electronic Communications Act (ECA, 2005) took effect, repealing the Telecommunications Act (1996) and the Independent Broadcasting Authority Act (1993). ECA was enacted because telecommunication and broadcasting technologies were becoming increasingly blurred. The Act provides a framework for the licensing of electronic communications services, electronic communications network (ECN) services and broadcasting services.

A distinction is drawn between three categories of broadcasting services, namely public, commercial and community broadcasting. In order to provide any of these services, a licence must be obtained from ICASA, although ICASA has limited discretion to exempt certain services from the ECA's licensing requirements.

The ECA (and previously the Telecommunications Act 1996) also made possible the establishment of a universal service agency, now called the Universal Service *and Access* Agency of South Africa (USAASA). Mandated by statute to ensure that everyone, citizen or business, has equal access to ICTs, the Agency was charged with defining and meeting the challenges of universal access and services in the South African context.

South Africa has no internet-specific legislation. This means that there is no legislation drafted or created specifically to regulate the internet. There are, however, amendments or proposals for amendments of existing legislation in various sectors, that affect the internet in one way or another. The Film and Publications Amendment Act (No 34 of 1999) has been amended to include in its definition of publication any messages and communications on distributed networks, including the internet. It has also defined child pornography and banned it on the internet. In addition, it also prohibits pornography in which women are depicted as being under eighteen years of age.[4]

The target of the legislation (combating child pornography) is not as problematic as the fact that it fails to distinguish the roles of internet service providers (ISPs) in relation to subscribers. As its stands, anyone who knowingly creates, distributes, produces, imports or is in possession of child pornography may be liable for being in contravention of the Act. In relation to the internet and its associated technologies, it remains unclear in the Act who exactly a creator, distributor, producer, importer or possessor of child pornography is.

The Electronic Communications and Transactions Act (ECT, 2002) was promulgated to regulate electronic communications and transactions; to provide for the development of a national e-strategy for the country; to promote universal access to electronic communications and transactions

1 Quirk eMarketing (2009) 2008/2009 Survey of Online Media in South Africa. www.gottaquirk.com/2009/03/06/friday-fact-box-south-african-online-media-statistics

2 Batchelor, S. (2009) *Mobile Government in Africa*, Gamos. unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN033527.pdf

3 Internet World Statistics 2008: www.internetworldstats.com

4 Cohen, T. (2000) *Governance and Human Rights Online*. link.wits.ac.za/research/r_9.html

and the use of electronic transactions by small businesses; to provide for human resource development in electronic transactions; to prevent abuse of information systems; to encourage the use of e-government services; and to provide for matters connected therewith.

Policy developments

As a statutory body, USAASA recently engaged the public on the definition of "universal service", releasing a draft for public consultation in March 2009. This was a welcome gesture, given that the Agency manages the Universal Access Fund (established in terms of the 1996 Telecommunications Act) to which all telecommunication licence holders must contribute.

In policy, the South African government often emphasises the importance of ICTs as a driver of economic activity and as a development indicator. In 2001 then-President Thabo Mbeki announced the establishment of the Presidential National Commission on the Information Society and Development (PNC on ISAD), the mandate of which was contained in Government Gazette No. 1087. The body is meant to provide guidance to the president on the establishment of a government policy framework on ICTs, as well as other issues, its mission being "[t]o build an inclusive Information Society in which human rights, economic prosperity and participatory democracy are fully realised through optimising the usage of ICTs for a better life for all."

Most recently, the National Planning Commission (NPC) located in the Office of the President released a Medium-Term Strategy Framework[5] (MTSF) that identifies ICTs as a key component in meeting South Africa's development goals. The MTSF will be the frame of reference for government policy, and the Department of Communications and the PNC on ISAD have referred to the framework in their own plans for 2009-2014. Their plans for the next five years include the development of an Integrated National ICT Policy, with the intention to develop an Integrated National ICT Act (presented to the Select Committee on Labour and Public Enterprises on 9 July 2009).[6]

This initiative has the potential to clarify the muddy waters of ICT policy in South Africa, but also the potential to confuse policy even further. Given the Department of Communications and the PNC on ISAD's vision, mission and areas of focus, one can hope that the needs and interests of currently offline and digitally excluded South Africans will be a primary concern.

E-citizenship and e-government

The concepts of e-citizenship and e-government are new for most people living in South Africa, even for a fifteen-year-old democratic state. E-government is defined as the way in which the public sector uses ICTs to improve accountability, transparency, effectiveness, public service delivery, and citizen participation in decision making.[7] The South African government has embraced the idea and publishes information via the internet. Some government departments make use of mobile technology to communicate with citizens: for example, the Department of Home Affairs introduced a service for South Africans to check the progress on approving their identity document and passport applications via short message service (SMS).

The advantages of e-government, when implemented correctly, are numerous. They include accessibility to services at all hours; building linkages between citizens and public servants; efficiency and cost-effectiveness; and the ability to engage in two-way communication with citizens. However, in a country where one's ability to access telecommunications is still defined by class, gender, geographic location and race, exploiting the use of ICTs to access information and development opportunities is still a challenge. While the above efforts aim to bring government to the people by using ICTs, they should be complemented by efforts to ensure an environment where there is equal access to ICTs and the skills to use them.

The government has introduced around 500 multi-purpose community centres (MPCCs), 98 Thusong Centres,[8] and 700 public information terminals (PITs) to provide citizens with access to the internet, email and other services. However, previous studies suggest that many if not most telecentres and cyber labs implemented by the previous incarnation of USAASA were considered expensive, and were dysfunctional and under-utilised.[9]

Mobile phones, as a channel to deliver and access information, are proving to be efficient. Where other forms of communication seem to be poor (for instance, if one is in a rural area where there are no fixed-line telephones), the value that mobile phones add is great. Having access to a mobile phone means that one is able to search for jobs and can be alerted when opportunities arise. Mobile phones are also becoming integrated into daily lives, with one study indicating that people would rather call than visit family and friends, and that a mobile phone "improved" their relationships. However, only 15.5% of the respondents in this study used their mobile phones to find a job.[10] The latter is perhaps indicative of the lack of relevant content for the majority of South Africans.

Policy development needs to be done in a consultative process so that the demands and needs of citizens are taken into account. For the concept of e-government to work there has to be political leadership and will. Without access to affordable broadband, the "participatory gap" is widening in South Africa. Issues of affordability of government

5 Medium-Term Strategy Framework, Presidency Office Media Release 16 July 2009. www.usaasa.org.za/index.php?q=newsview,56

6 Department of Communications and Presidential National Commission on Information Society and Development: Strategic Plan and Budget 2009/12. Parliamentary Monitoring Group (PMG). www.pmg.org.za/print/17247

7 Batchelor, S. (2009) op. cit.

8 Community centres offering basic services.

9 Batchelor, S. (2009) op. cit.

10 Vodafone (2005) *Socio-Economic Impact of Mobile Phones.*

information also come into play as access goes beyond whether or not citizens have internet access, to whether it is affordable to download documents.

The benefits of using ICTs to engage with citizens were evident during the 2009 elections in South Africa. During their campaigns, political parties used social networking forums to keep in touch with their constituencies. They also made use of new media technologies to announce their meetings, publicise their manifestos and communicate with party members. Prospective voters participated in online discussions with political parties, making their views known. Online electioneering has become a global phenomenon. During United States (US) President Barack Obama's campaign, the strategy allowed citizens using the internet to find past speeches that proved a politician wrong or hypocritical, and then to alert their fellow citizens.[11]

In South Africa, while big political parties embraced digital campaigning strategies, smaller parties were left out and resorted to door-to-door strategies. At the same time, citizens with no access to the internet were excluded from accessing politicians' messages and participating in the online democratic process.

Citizens can benefit from the use of the internet to advocate, lobby and hold the government accountable. The e-government initiatives already undertaken by the government need to be followed up with citizen's initiatives to engage with and track the government's performance in service delivery.

South Africa has been marred by a series of protests by citizens who are not satisfied with service delivery. Despite the government having launched a portal aimed at providing a platform for citizens to engage them on issues of importance, this does not seem to have created the much-needed space of engagement between the country's citizens (mostly the poor, in the case of the protests) and the government. The portal, called *e-imbizo* (electronic meeting), allows people to send an SMS to the Department of Public Service and Administration (DPSA) about challenges in service delivery in all government departments or spheres. But do citizens even know about this *e-imbizo* portal? Would knowing about it have informed a strategy to engage with government, rather than engage in often violent protests?

Recently the new Minister of Human Settlements Tokyo Sexwale – an anti-apartheid activist turned multi-millionaire mining magnate – spent a night at Diepsloot informal settlement just outside Johannesburg in an effort to show solidarity with the poor, and to tune into their plight. However admirable and sincere the gesture, it also showed how unsuccessful the government has been in engaging the poor in the past, and how fruitless e-government initiatives aimed at engaging the poor had been. The physical presence of the minister was needed to demonstrate a compassionate government – the Diepsloot Thusong Service Centre nearby was no doubt irrelevant.

Large sections of the population are not literate and cannot engage with text-based content. There is also a language barrier, since much of the government's content is in English. This further creates a divide between government and citizens. The government seems to tailor online content for a citizen who is literate, able and with easy access to telecommunications. Factors such as disability, language, access to telecommunications, gender and relevant information need to be considered.

The key benefit of e-government is that it allows citizens to participate and engage with the government. For this to happen, the government needs to provide more training to ordinary citizens on how to use ICT facilities to access e-government services. The MPPCs will have to be utilised by government officials to raise awareness and educate citizens about the government's electronic systems. For improvement in services, competent staff should also be appointed to develop and maintain e-government services. The government must engage with the telecommunications industry in order to improve telecoms infrastructure and assist citizens with access to affordable internet services.

New trends

The number of South Africans who use their mobile phones to access the internet now exceeds the number of those who rely on traditional desktop means of connecting to the net. This is according to Rick Joubert, head of Mobile Advertising at Vodacom, who says South Africa has close to 9.5 million mobile internet users compared to the estimated five million desktop users: "The number of unique South African users accessing the mobile internet using WAP [wireless application protocol] is already just about double the size of the number of users accessing the fixed internet. In my opinion this user number will break through the 10 million unique users mark by early 2009."[12]

The South African State Information Technology Agency (SITA) and the Free Software and Open Source Foundation for Africa (FOSSFA),[13] a pan-African not-for-profit foundation, have signed a memorandum of understanding that outlines their objectives to mobilise efforts to build a free and open source software (FOSS) ecosystem; to build knowledge and commitment to FOSS through communication, advocacy and change management; to create an enabling environment for the deployment of ICTs in development; to foster greater acceptance and use of FOSS in the region; to enhance skills in the use and implementation of FOSS applications; to collaborate on FOSS initiatives and activities; and to

11 Cain Miller, C. (2008) How Obama's Internet Campaign Changed Politics, *The New York Times*, 7 November. bits.blogs.nytimes.com/2008/11/07/how-obamas-internet-campaign-changed-politics

12 South Africa - The Good News (2008) Mobile internet users exceed PC users, 27 November. www.sagoodnews.co.za/science_technology/mobile_internet_users_exceed_pc_users.html

13 www.fossfa.net

monitor and assess progress towards FOSS implementation.[14] The adoption of the policy on FOSS use by the South African government will provide the much-needed environment to promote interoperability and allow collective efforts to mobilise citizens and come up with solutions tailor-made for specific scenarios.

In terms of a new bill called the Regulation of Interception of Communications and Provision of Communication Related Information Amendment (RICA) Bill, brought into effect in June 2009 by the minister for justice and constitutional development, all mobile phone subscriber identity module (SIM) cards will have to be registered. Mobile phone service providers are prohibited from activating a new SIM card unless they have captured the customer's mobile number, full name, identity number and address. This will pose a challenge for citizens who do not have a regular address since they will not be able to provide proof of residence.

The Seacom submarine cable, launched in South Africa in June 2009, is expected to improve the government's broadband roll-out, which should in turn improve access to affordable high-speed broadband connections to the internet. Used properly, this will dramatically scale up the potential of accessing online information in the country in the future.

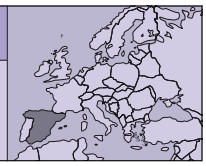
Action steps

- *Universal service and access:* Physical access has to go hand in hand with appropriate ICT training. Information that is published on ICT applications should be socially, economically, politically and culturally relevant to communities and should be written in familiar languages. Citizens need to be able to take up the role of content producers. This process has to include the development of appropriate applications or platforms to access and distribute information. The government has to legislate and incentivise the production of local digital content.
- *Affordable and high-speed broadband:* A draft framework towards a broadband strategy, launched in March 2009, lobbies for a proactive response from the government around broadband roll-out, given the landing of the Seacom undersea cable in South Africa. The framework was intended to highlight the current policy vacuum around broadband roll-out in South Africa, and to create a "popular movement" around broadband in the country. The overall goal for the draft framework is "for every South African home, business, and public, private and community-based institution [to] have access to affordable high-speed broadband connections to the Internet." Now that the Seacom cable is launched, civil society needs to ensure that broadband roll-out benefits the poor. ■

14 Otter, A. (2009) SA IT agency and Fossfa join forces to spread OSS, *Tectonic*, 4 May. www.tectonic.co.za/?p=4724

SPAIN

Pangea ***(Comunicació per a la Cooperació)***
and Technical University of Catalonia ***(Universitat Politècnica de Catalunya)***
Leandro Navarro
www.pangea.org and www.upc.edu



Introduction

Spain is a highly developed country, ranked sixteenth on the Human Development Index in 2008,[1] with more than 46 million inhabitants. The level of access to information and communications technologies (ICTs) is high. For instance, 63.6 % of households have at least one computer, and 51% of the population are internet users.[2] The educational sector is particularly well connected: all universities have Wi-Fi internet access on their campuses, and 99.3 % of schools have ICT equipment and internet access.

The growth of the ICT sector has accelerated in the last years, particularly in the period 2004-2007. As with similarly developed countries, there are more mobile lines than inhabitants, with 1.1 million people considered intensive users of mobile broadband. There is also a very high level of access to information and content on the internet – even though access to languages besides Castilian is low.

Recently, Spain has suffered the effects of the ongoing global economic crisis, aggravated by a strong dependency on construction and other traditional industries. This situation has refocused political attention on the knowledge society – the internet and the digital industry – as areas for future employment and opportunities for development.

However, this potential is being hobbled by the entertainment industry, which continues to attempt to introduce restrictions to preserve traditional dissemination models instead of creating new business models. A lack of understanding is also creating a "content divide" between traditional digital media (i.e., CDs, DVDs) and online media. The population is spending less time watching television and more time online, on the computer or the mobile phone. Faster internet connections – 20 to 100 megabytes per second (Mbps) – lead to more and more people interacting and exchanging text, audio and video files with their social networks, and watching digital content over the internet.

Policy environment

The key policy concerning access to online information held by the public administration involves a plan for the development of the information society and convergence with other countries in Europe, known as *Plan Avanza* (2006-2012).[3]

The intensive and popular use of ICTs is seen as a way to contribute to the recovery of the Spanish economy and as a source of employment, particularly regarding small and medium enterprises. The policy and plan focus on five key areas: supporting industry in the development of new content, services and applications; ICT training; online public services; infrastructure (including a large portion dedicated to the transition to digital television); and trust and security.

The local governments in autonomous regions have additional policies, and also have their own data protection agencies. These include policies on the provision of ICTs, digital educational content and educational software for schools.

Legislative environment

The Spanish Constitution (1978) outlines legislative responsibilities regarding ICTs in Article 18.4: "The law shall restrict the use of data processing in order to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights."

The national laws that regulate online information and communication implement European Commission directives at the national level. The main laws are:

- The Data Protection Law[4] (LOPD, 1999), regulating the procedures used to manage databases with personal information, and privacy in general. It complies with European Directive 95/46 CE.
- The E-Commerce Law[5] (LSSI, 2002), implementing Directive 2000/31/CE, and partially Directive 98/27/CE; and Law 56/2007,[6] dealing with the promotion of the information society. These laws address e-communications generally, and also regulate the provision of e-services, including the obligations around holding customer data. Amongst other things, they define universal service, the kinds of public information that must be published, e-government obligations, the obligations of service providers regarding customer support, as well as website requirements such as accessibility.
- The E-Administration Law[7] (LAECSP, 2007), which recognises the right of citizens to online interaction with the public administration and obliges the government to guarantee that right.

1 UNDP (2008) *Human Development Indices: A statistical update 2008.* hdr.undp.org/en/statistics/data/hdi2008/

2 Instituto Nacional de Estadística (2008) *Encuesta sobre Equipamiento y Uso de Tecnologías de Información y Comunicación en los Hogares.* www.ine.es/prensa/np517.pdf

3 www.planavanza.es

4 Boletín Oficial del Estado (1999) *Ley Orgánica de Protección de Datos.* www.boe.es/boe/dias/1999/12/14/pdfs/A43088-43099.pdf

5 Boletín Oficial del Estado (2002) *Ley de Servicios de la Sociedad de la Información.* www.boe.es/boe/dias/2002/07/12/pdfs/A25388-25403.pdf

6 Boletín Oficial del Estado (2007) *Ley de Medidas de Impulso de la Sociedad de la Información.* www.boe.es/boe/dias/2007/12/29/pdfs/A53701-53719.pdf

7 Boletín Oficial del Estado (2007) *Acceso Electrónico de los Ciudadanos a los Servicios Públicos.* www.boe.es/boe/dias/2007/06/23/pdfs/A27150-27166.pdf

Filtering the net

There is a growing perception among numerous social sectors that the internet revolution was initially positive, but now that citizens use it in sometimes unplanned ways to access, produce and disseminate digital data, the online world is becoming a wild territory that needs to be drastically limited to protect everyone.

In many cases, surveillance and censorship are viewed as a recipe to protect people, especially children and youth, from unethical actions and dangerous content. This is being promoted as technological advances enable monitoring and filtering in very detailed ways (so-called "deep packet inspection"), albeit at a very high financial cost and with a consequent lack of privacy.

In the mobile communications world, anonymous mobile accounts (prepaid mobile cards with unregistered owners) will be eliminated before the end of the year. The justification used for this measure is the war against terrorism, but as a consequence it is feeding a growing market for stolen mobile phones, or phones acquired using fraudulent identity documents.

Schools and homes are using filtering mechanisms to protect children from undesirable content. According to a recent survey, 19.2 % of households use parental filtering tools, and in 21.2 % there is parental supervision of content accessed by children.[8]

New content models

The debate on the protection of online property rights, the control of the distribution of digital content, and author payment for digital content are still open issues – and the gap between the stakeholders is sadly widening. Despite a campaign against a private copying levy *(canon digital)* collecting more than one million signatures, the levy has not been eliminated. Private organisations that collect this levy argue that there is a need for compensation for the personal copying of a product, as well as in the "war" against the piracy of copyrighted digital content.

The discussion so far has been focused on helping content creators and the distribution industry find viable economic models, without specific attention on defining and protecting the digital rights of citizens. Unfortunately, the discourse is quite outdated, based on ideas such as subsidies and promoting restrictive mechanisms to control distribution in a traditional way, instead of exploring new models for distribution that take advantage of the characteristics of the internet. For instance, the government has pushed internet service providers (ISPs) and authors' associations to reach an agreement on rules to prevent the distribution of copyrighted contents on the internet with no participation from associations of internet users or other social groups. No agreement has been reached, especially after the "three strikes" model in France was declared invalid.[9] The option to create a reasonably wide offering of legitimate and paid-for digital content available to internet users is surprisingly not pursued with interest by the entertainment industry.

In contrast to this, a growing number of young artists are exploring alternative open content and open culture models. However, this is being done with no or little support from the government and their efforts are largely unknown to the majority of the population.

The opportunities the internet affords and the applications that allow collaborative contributions (e.g., wikis) and distribution (e.g., BitTorrent) are not fully exploited for the benefit of society. Public libraries, for instance, have only a taste of digitised content compared to the huge potential of their archives.

The digitisation of content for educational purposes is also only at its initial stage. There are big differences in schools across different autonomous regions in Spain, as well.

Traditional publishing companies are keen to hold on to their traditional paper-based market and new initiatives to produce open educational content do not get sufficient support to reach a critical mass.

New trends

Social networks (such as Facebook or MySpace) and Web 2.0 applications (such as YouTube, Flickr and Twitter) are attracting many people, particularly the youth. These applications create opportunities to share personal information such as photos, audio and video clips. The bright side is how easily people can set up groups of common interest, self-made content can be published, and content can be shared through the social network. The dark side is the loss of control over personal information that is uploaded, exposed and sometimes reused in unexpected and undesirable ways, and exposure to personal attacks such as cyber bullying, internet fraud or other types of harassment.

Lobbies from the traditional local and multinational entertainment industries are exerting growing pressure on the government and large ISPs to protect their commercial interests. They say this should be done through the systematic surveillance of internet communications (deep-packet inspection) and limiting access to the internet through an administrative entity, without judicial intervention, in this way bypassing the legal system. These measures are targeted at the sharing of copyrighted music and video content using peer-to-peer applications (such as eMule or BitTorrent). However, these actions not only widen the gap between the producers and consumers, but also lead to an Orwellian society where the powerful try to impose limits on the individual through widespread monitoring and other invasive measures that affect their privacy. The lack of shared

8 Asociación para la Investigación de Medios de Comunicación (2009) *Navegantes en la Red: 11ª Encuesta AIMC a usuarios de Internet.* download. aimc.es/aimc/03internet/macro2008.pdf

9 This model seeks to enforce compliance with the copyright law by proposing massive mechanisms of internet surveillance and immediate penalties (suspension of internet connection) imposed by an administrative entity instead of a court. This is controversial as it affects privacy, freedom of expression and the presumption of innocence.

values or commercial agreement between the sides leads to a new type of digital divide.

The educational sector is accelerating the take-up of digital content. However, there is a struggle between the business sector and the educational community. This translates into a debate over the pros and cons of open and commercial software, open and closed content (e.g., text books, reference materials, etc.), and whether the content is produced collectively (open) or by a closed list of authors chosen by publishing companies (closed). Different schools and autonomous communities in Spain are taking very different directions.

Action steps

There is a need for coordination. There are several small organisations in Spain working on diverse aspects of ICTs, particularly on issues related to the internet and human rights and democratic participation. Consensus is needed on a common action plan to have a stronger voice. This plan should not only involve online advocacy, but should include traditional social and political forums and protest activities (e.g., demonstrations and addressing consumer rights associations, as well as relevant forums in political parties, in parliament, and in local and central governments). This should help to raise awareness and initiate direct discussion between citizens' organisations and public representatives.

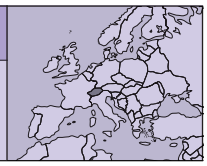
Issues for discussion should include the launch of an information campaign on access to and production of culture (particularly for publicly subsidised works); the right to cultural expression; the criminalisation of file sharing; the remix and redistribution of amateur works; the role of public libraries in access to culture; and fair, accountable and transparent models for paying authors of cultural content beyond the traditional models offered by the cultural and entertainment industry.

The outcome of the discussions should be oriented towards creating new sources of employment beyond the traditional distribution models using content created by an elite of artists. The outcome should also take advantage of the benefits of new digital tools to democratise content creation and use the internet as an efficient distribution platform.

Finally, there is a need to remove the current private copy levy, including its ambiguous definition of "fair use". ■

SWITZERLAND

Wolf Ludwig



Switzerland offers strong technical infrastructure and its access indicators are steadily increasing, as the GISWatch 2008 country report has shown.[1] Access to infrastructure varies according to age, education and income. The question of access to content is more complex and sectors of society must be assessed in a differentiated way. This report focuses on the federal level. The situation and practices in the 26 cantons and in the communes may differ considerably.

Access to public information

Like Germany, Switzerland is a latecomer and adopted a Federal Open Government Act (*Bundesgesetz über das Öffentlichkeitsprinzip in der Verwaltung* - BGÖ) only recently, in the summer of 2006.[2] With the introduction of this law, there was a shift in the Swiss administration from a former principle of confidentiality to one of public accessibility and transparency.

As the Federal Data Protection and Information Commissioner (FDPIC) notes:

> Information and communication are two essential characteristics of current society. If in the past, our societies were dominated by the cult of secrecy and the reign of non-transparency, they are now becoming more open, while at the same time guaranteeing individuals the right to have their private lives respected. The principle of access to information and official documents, along with the right to data protection, are two democratic imperatives which are necessary for the functioning of an information society which is close to its citizens. Following the example of many European countries, a wave of transparency is also crossing Switzerland.[3]

The implementation of this access to information law, however, has had mixed results. In 2008, only 221 demands from individuals/citizens for information were registered. In 115 cases (68%) access was completely or partly provided, while 71 demands (32%) were refused. In the 30 months following the introduction of the law, only 565 requests were submitted. This is considered modest given a total population of 7.7 million people. The FDPIC notes that the figures do not necessarily represent all inquiries in all governmental authorities, as information requests from media are not included or distinguished. The cases statistically listed are supposed to be the "relevant" ones, which means that they are beyond routine requests and need special assessment or demand extraordinary efforts to be accomplished.

An FDPIC report mentions another factor that may contribute to the low level of information requests: many citizens, it is assumed, were not aware of the change in their rights when the new law was introduced in 2006 – the vast majority of the Swiss population, according to some observers. This assumption is backed by the experience of some departments that demands from the public increased where targeted information events on public access were organised.

According to an external evaluation on the implementation of the law, the quality of public service is considered high, whereas the duration of procedures has been criticised.[4] Usually citizens are not charged for access requests.[5]

Switzerland consists of four linguistic[6] and cultural areas. Equal opportunities, access and balance between the different parts of the country are considered a constitutional imperative. Therefore governmental information is usually available in the four national languages, some of it even in English. In 2006 the Swiss portal ch.ch became the national gateway to Switzerland. It is Switzerland's electronic business card and the main point of access to online information from the federal government, the cantons and local authorities. In the fourth year of its operation, the national portal became popular, with 5,250 visitors a day on average. The 160,000 visitors per month generate around 1.8 million page hits, according to official web statistics.[7]

Uniform handling of electronic data and documents

An ongoing problem in the federal administration is the handling of electronic data and documents. An official report from 2006 noted that:

> The heterogeneous practice in the individual units of the administration regarding management, organisation and technology is preventing systematic exploitation of the potential of electronic transactions. Although solutions have been successfully implemented in individual departments with success and great benefits, there has to date been a lack of will and appropriate management to place the federal administration's transactions on a… basis which eliminates data format incompatibilities. Consequently the Confederation is not only missing out on substantial potential for rationalisation but there is

1 www.giswatch.org/gisw2008/country/Switzerland.html

2 www.edoeb.admin.ch/dokumentation/00652/01116/01117/index.html?lang=en

3 Ibid.

4 Neue Zürcher Zeitung (NZZ) (2009) Das Interesse der Geheimdienste an Facebook, *NZZ*, 29 June.

5 Federal Data Protection and Information Commissioner (FDPIC): www.edoeb.admin.ch/dokumentation/index.html?lang=en

6 German, French, Italian and Romansh.

7 Schweizer Portal ch.ch (2009) Schweizer Portal ch.ch weiter auf Erfolgskurs, 20 March. www.ch.ch/private/00987/00993/01160/index.html?lang=de&msg-id=25980

also the danger that the digitisation of transactions will take place only under external pressure, with the resulting major restraints on design freedom.[8]

In harmony with the national e-government strategy, the report continues, "the administration's ICT-based activity must be both economical and reflect citizen's concerns, and should also promote good governance." An action plan for the uniform handling of electronic data and documents within the federal administration was therefore adopted by the Federal Council in January 2008, including verifications of a Single Point of Orientation[9] (SPO) as defined in the BGÖ.[10]

Problem: Open standards and open source

Despite the Confederation adopting a Federal Open Source Strategy[11] and emphasising open source software in its e-government strategy,[12] the reality is a different one.

In spring of this year, the federal administration signed a new three-year licence deal with Microsoft amounting to CHF 42 million (around USD 40.75 million) – without any public offering. Several open source service providers, as well as a parliamentary grouping, contested the deal. The members of parliament demanded "digital sustainability", saying "the federal administration in Switzerland is still favouring proprietary software."

Similar practices became public last May in the Canton of Berne.[13] Now the members of parliament intend to increase public pressure, pushing for open standards and software. The Swiss Internet User Group (SIUG) is also planning to launch a major campaign to promote open standards like open document format (ODF) and extensible business reporting language (XBRL), an open data standard for financial reporting, for internet documents.[14]

Access to culture: Copyright restrictions

Legal frameworks and intellectual property laws are still imposing various limits to open content and access. The Creative Commons initiative, which offers a country-adapted version for Switzerland (developed in 2007), provides a range of possibilities for legally protecting content in a way that it becomes open content. It poses a significant challenge to traditional copyright protection.[15] However, the traditional cultural and media groups and national collecting societies,[16] amongst others, are doing their best to oppose and marginalise alternative licensing models.

A peculiar example of how traditional intellectual property rights hamper open access initiatives is the creation of Europeana, a European digital library, where about 90% of national library holdings cannot be transferred due to traditional intellectual property regimes. At the moment, Europeana provides approximately 5% of all digitised books in the European Union (EU), which are in the public domain already. For legal reasons the library project cannot offer works that are out of print – about 90% of Europe's national library holdings. Viviane Reding, the EU Commissioner for Information Society and Media, urges better cooperation among member countries to make European intellectual property laws relevant to the digital age.[17]

Access to scientific information

The University of Zurich was among the first to sign the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities[18] launched in October 2003.[19] The Declaration became one of the milestones in the open access movement and today is still recognised as the standard for the future handling of scientific literature. The University of Zurich is now among the leading academic institutions in this field in Switzerland, besides the University of St. Gallen. Most of the major Swiss universities have signed the Berlin Declaration since. Unfortunately, there have been initiatives launched in neighbouring Germany, such as the Heidelberg Appeal,[20] encouraging scientists to abuse their author's rights and to exclude their work from search engines like Google, thereby undermining open and public access.

But the open access movement is gaining more and more ground amongst scientists and researchers. An increasing number of universities maintain their own servers for managing and storing material and publications. And like the Alliance of German Science Organisations,[21] Swiss science institutions like the Swiss National Research Fund are considering regulations that all research funded by public allocations must be freely accessible to the public in return.

In October 2009, the third Open Access Days conference focused on open access-related activities in the German-speaking regions. The conference was organised by open-access.net and the University of Konstanz in cooperation with the German Helmholtz Association, the Max Planck Society, the German Initiative for Networked Information (DINI) and the Universities of Linz and Zurich.[22]

8 OFCOM (2008) Uniform handling of electronic data and documents within the federal administration. www.bakom.admin.ch/themen/infosociety/01690/index.html?lang=en

9 Similar to the "one-stop government" or "one-stop shop" idea.

10 Bundesgesetzes über das Öffentlichkeitsprinzip der Verwaltung BGÖ, December 2004. www.admin.ch/ch/d/sr/c152_3.html

11 Federal Strategy Unit for IT (2008) Partial strategy: Open Source Software (OSS). www.isb.admin.ch/themen/strategien/00745/00750/index.html?lang=en

12 Ibid.

13 Swiss Open Systems User Group (ch/open): www.ch-open.ch

14 Swiss Internet User Group (SIUG): www.siug.ch

15 Creative Commons Switzerland: www.creativecommons.ch

16 Private bodies collecting royalty payments from various individuals and groups on behalf of copyright holders.

17 Golem (2009) Urheberrecht behindert Ausbau von EU-Digitalbibliothek, 29 August. www.golem.de/0908/69425.html

18 open-access.net/de_en/information_on_oa_by/max_planck_society/berlin_declaration

19 The university signed in December 2004.

20 The "Heidelberg Appeal" on the Freedom to Publish and the Protection of Copyright, March 2009: www.textkritik.de/urheberrecht/index_engl.htm

21 Alliance of German Science Organisations (2009) Declaration on Open Access and IP Rights. www.wissenschaftsrat.de/texte/allianz_erklaerung_25-03-09.pdf

22 open-access.net/de_en/activities/open_access_days/announcement

The private media

The print media in Switzerland are privately owned. Since the crisis in this sector is continuing and editors see their business model at stake, there is no willingness to embrace an open access content model. A few days after publication, online articles are transferred to the Swiss Media Database where access and retrieval are charged for.

Action steps

Despite the constraints and backlashes, the claims for open standards and open content are not an issue of isolated communities any longer. Access to content in the different spheres of society is more and more perceived as a basic right. And the spirit of the Berlin Declaration is vivid: "to promote the internet as a functional instrument for a global scientific knowledge base and human reflection, and to specify measures which research policy-makers, research institutions, funding agencies, libraries, archives and museums need to consider."

Some of these measures should include:

- The obligatory use of open standards and open source for public administrations.
- Intellectual property laws allowing choices for content creators, including alternative licensing models like the Creative Commons.
- Binding rules that all content and research funded by public allocations must be freely accessible to the public in return. ■

References

Alliance of German Science Organisations (2009) Declaration on Open Access and IP Rights.

www.wissenschaftsrat.de/texte/allianz_erklaerung_25-03-09.pdf

Federal Data Protection and Information Commissioner (2009) Zugangsgesuche bei der Bundesverwaltung.

www.edoeb.admin.ch/dokumentation/00445/00509/01551/01575/index.html?lang=de

Federal Strategy Unit for IT (2008) Partial strategy: Open Source Software (OSS). www.isb.admin.ch/themen/strategien/00745/00750/index.html?lang=en

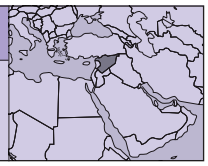
Federal Strategy Unit for IT (2008) eGovernment Strategy Switzerland. www.isb.admin.ch/themen/egovernment/00067/index.html?lang=en

Ludwig, W. (2008) Switzerland, in Finlay, A. (ed.), *Global Information Society Watch 2008,* APC, Hivos and ITeM. www.giswatch.org/gisw2008/country/Switzerland.html

OFCOM (2008) Uniform handling of electronic data and documents within the Federal administration. www.bakom.admin.ch/themen/infosociety/01690/index.html?lang=en

SYRIA

Ahmad El Sharif



Introduction

There has been sustained growth in internet penetration in Syria over the past few years.[1] In the pursuit of realising the goals of its national information and communications technologies (ICTs) strategy, the Syrian government eased its regulations on internet service providers (ISPs), and granted several licences for private ISPs. However, the newly licensed ISPs can only operate within the network infrastructure of the incumbent telecommunications operator, the Syrian Telecommunications Establishment (STE). This effectively means that private ISPs cannot have their own international links to the global internet backbone, and are restricted to the access provided by STE. Such an arrangement gives STE the upper hand in controlling the market in the whole country.

It is important to note that the growth in internet penetration has primarily happened in dial-up access to the internet through the public switched telephone network. Very few broadband connections are available (only 5,600 lines as of September 2007),[2] and the costs associated with high-speed internet access are an additional barrier to its adoption.

Syria still needs to leverage the internet as a viable means for access to knowledge and information. More than half of the population is below the age of nineteen, and unemployment among the youth reached 19% in 2006.[3] However, the extent to which the country is moving towards an inclusive knowledge-based economy is arguably negligible.

Slow pace of policy reform

In 2004, the Syrian government adopted a national strategy for ICTs.[4] The strategy aims to develop the country's infrastructure and regulatory environment to foster the development of a knowledge-based society and to support Syria's development agenda. Content and access to information comprise a significant part of the national strategy. The government intends to increase the population's access to information and local content as a means to develop and sustain its human capital.

Several initiatives have been conceived to achieve this goal. Some fall within the scope of the ICT strategy, while others have been initiated by local and regional organisations and partnerships. These include one called ICT4Dev that provides internet access through telecentres,[5] a national ICT dissemination programme[6] aimed at building computer literacy and promoting information technology,[7] and a United Nations (UN)-supported ICT programme aimed at socioeconomic development generally.[8] This last programme strives to leverage the potential of ICTs for human development by creating an enabling environment that consists of access centres, relevant local content, policy advice and capacity building.

The implementation of the national ICT strategy seems to be lagging behind its original schedule, particularly in the area of policy reform with regards to access to information. For instance, the country's intellectual property policy still needs to adapt to the changes in the global environment. No provisions exist in the current system for alternative licensing (such as that found in the free and open source software movement and Creative Commons). The enforcement of existing copyright laws also remains weak, and an awareness of intellectual property issues among the population is still very low.

The national strategy also ignores aspects of freedom of expression and citizen participation, although the Syrian Constitution clearly indicates that freedom of expression is protected by law. Apart from a brief mention of the recommendations in the UN's Arab Human Development Report 2003: Building a Knowledge Society,[9] no explicit provisions are formulated to protect online expression, and no clear policies are documented to guide the government's approach to online censorship. This results in censorship decisions being made without explicit justification. For example, access to the popular blogging platform Blogger is blocked in the country, and until recently, the online free encyclopaedia Wikipedia was blocked as well.

Shifting legislation

Arab governments are embarking on a concerted effort to harmonise their media publishing laws across the Arab League. Such a move is expected to affect online media and

1 Arab Advisors Group (2005) Syria's Internet market: Brighter times ahead, 10 July. www.arabadvisors.com/Pressers/presser-100705.htm

2 Internet World Stats (2007) *Usage and Population Statistics - Middle East.* www.internetworldstats.com/middle.htm

3 Kabbani, N. and Kamel, N. (2007) Youth Exclusion in Syria, paper presented at the Workshop on Youth Exclusion in the Middle East: Towards New Knowledge and Solutions, Dubai, 23-24 February 2007.

4 Ministry of Communications and Technology in Syria (2004) *ICT Strategy for Economic and Social Development of Syria.* www.moct.gov.sy/servers/gallery/20050126-052419.pdf

5 Arabic News (2004) A new Syrian experience in ITC4DEV, 31 March. www.arabicnews.com/ansub/Daily/Day/040331/2004033102.html

6 The programme consists of opening computing facilities at secondary schools in all cities to the public for a token fee and carrying out introductory courses on the use of personal computers.

7 Economic and Social Commission for Western Asia (ESCWA) (2007) *National Profile of the Information Society in the Syrian Arab Republic.* www.escwa.un.org/wsis/reports/docs/Syria-07-E.pdf

8 United Nations Development Programme (UNDP) (2008) *Strategic ICT Programme for Social and Economic Development.* www.undp.org.sy/index.php/our-work/business-for-development-/62-strategic-ict-programme-for-social-and-economic-development

9 United Nations Development Programme (UNDP) (2003) *Arab Human Development Report 2003: Building a Knowledge Society.* www.arab-hdr.org/publications/other/ahdr/ahdr2003e.pdf

citizen journalism, and is considered by many to be a significant setback to freedom of expression in the region. It will constitute an obstacle in building an inclusive and equitable knowledge society.[10]

Online publishing and content creation in Syria is treated as an extension of offline media, and because of this is governed by the same publishing law – even though the government is trying to amend the law to include online publishing specifically. The publishing law as it now stands is known for its restrictive provisions with regards to open criticism. These restrictions, however, are mostly applied to issues and topics that are perceived to pose a threat to national security, or those that contain explicit political material. Other topics, such as science and technology, education and knowledge, are encouraged and supported.

Despite the government's efforts to improve its legislative environment to facilitate citizens' online access to government, specific laws to protect privacy and the confidentiality of electronically transmitted information have yet to be passed. In fact, Syria lags significantly behind in the laws measured by the World Economic Forum's ICT index, ranking 127th among 134 countries.[11]

Bureaucracy and lack of transparency still constitute a major challenge to any viable e-government initiative. Syria was featured among the lowest-ranking countries with regards to e-government readiness by the UN Global E-Government Readiness Report 2004.[12] The country's rank on the e-participation index in 2004 was 186th out of 191 countries. This can be attributed to several reasons, including low levels of trust between citizens and the government, particularly in relation to service delivery, and the high cost of internet access.

Stimulating the information society

With the challenges facing Syria in its development agenda, access to information becomes the cornerstone in promoting the growth of intellectual and human capital in the country. Leveraging the potential afforded by the internet can enable Syria to address the inability of its educational system to meet the requirements of the new job market. At the same time, an informed and intellectual population is more likely to participate in the public debate, and find viable solutions to the social, economic and environmental challenges facing their society.

Arguably, despite its potential, an increase in internet penetration has had little impact on democracy and freedom of expression. Hardly any cases can be cited in which access to information has been effectively leveraged to improve human rights and democracy in the country.

While several attempts have been made to widen access to ICTs and stimulate the creation of local and relevant content, these attempts have had limited impact. This has been because they were not conceived within the context of a broader plan to empower citizens to leverage the information revolution and proactively participate in the global information society.

Providing appropriate infrastructure and equipment cannot in itself address the challenges of access to information. The increasing costs associated with accessing and using copyrighted materials complicate the situation even further, particularly when the resources available are strained by many competing development priorities. Syria should strike the critical balance between enabling its citizens to utilise the vast information resources available on the web through infrastructure roll-out, while creating the appropriate incentive structure to promote content-based industries and ecosystems.

Reforms of the current intellectual property regime will play a critical role in increasing access to information in the country. These reforms should leverage the available alternatives to traditional copyright that have been developed globally. The reforms should also be accompanied by a more effective enforcement structure in order to increase awareness of the importance of intellectual property and reduce the staggering piracy levels in the country.

A modern, balanced and properly enforced intellectual property regime will foster the growth of content and knowledge-based industries, without blocking access to information through excessively restrictive legislation. The country stands a good chance to become a vibrant knowledge-based economy as evident from its success in the book publishing and media production sectors. However, in order for Syria to capitalise on its distinctive capabilities in the knowledge economy in a rapidly changing global internet marketplace, the telecom market should also be liberalised to enable competition and to develop the country's communications infrastructure to satisfy the requirements of media-rich Web 2.0 applications.

Until recently, the telecom sector has been perceived by the government as a revenue-generating investment. This view has to change to one that considers telecoms in general, and the internet particularly, as an enabler for a knowledge-based economy that inherently has higher value-added potential than many other sectors. This shift will ease the burden placed on the government to create jobs for its booming population by stimulating and rewarding entrepreneurship in an industry that is based on intellectual capital and has, compared to expensive infrastructural roll-out, fewer requirements for financial investment.

Another area that requires careful consideration relates to restrictions on online publishing. Excessive restrictions on online expression can hinder the growth of an in-country media industry, particularly with the global nature of the internet, in which online organisations can operate from anywhere on the globe.

10 Houssien, M. (2008) Journalists' Fears of the Media Principles Charter, *Zahrira News Network ZNN* www.zahrira.net/?p=4578

11 World Economic Forum (2009) *Global Information Technology Report 2008-2009.* www.insead.edu/v1/gitr/wef/main/analysis/showdatatable.cfm?vno=2.27&countryid=615

12 United Nations (2004) *Global E-Government Readiness Report 2004: Towards Access for Opportunity.* unpan1.un.org/intradoc/groups/public/documents/un/unpan019207.pdf

Clear and well-publicised policies regarding the country's stance towards censorship will mandate that every censorship decision be duly justified in light of these policies. Effective mechanisms should also be implemented to enable people to inquire about and challenge specific censorship decisions.

New trends

Several developments in internet technologies are driving change in the way people are interacting with information on the web and with each other globally, and Syria is no exception. Most prominent of these developments is the growth of Web 2.0 (also called the "read-write web") in which the internet user is no longer a passive consumer of online information, but an active participant in online content creation and a member of a content-sharing community.

Despite the scarce availability of broadband internet access, Syrians are joining social networking websites in droves. By March 2008, Facebook, one of the world's largest social networking sites, which is officially blocked in the country, had 34,351 Syrian users.[13] They utilise several proxy software tools to mask the communications with the blocked site and bypass the government's filtering measures.

Many Syrian bloggers write regularly on a wide range of topics, including technology, current affairs, art and science. These bloggers seem to, however, substitute blocked blogging sites, which are popular, with less visible alternatives hosted abroad. This has the unfortunate consequence of diluting the visibility and popularity of Syrian blogs. The use of micro-blogging websites (like Twitter) is also on the rise.

Predictably, with the large number of Syrian internet users on the social web, these sites are becoming effective tools for mobilisation. A recent example is the use of Facebook in a campaign to boycott the mobile providers in the country for one day in protest against high tariffs and charges.

Another notable trend is the high utilisation of online discussion forums as platforms for expression and dialogue. Existing discussion forums cover topics as diverse as society, religion, science, politics, and health and beauty. Access to these forums usually requires users to register and log on, which makes them difficult to index by search engines unless the forum moderators want to explicitly allow it. This reduces the odds of the site being blocked by the government.

Actions steps

The following steps are necessary to free the information society in Syria:

- Reform intellectual property laws and regulations and consider incorporating emerging alternatives to traditional copyright regimes. Institute appropriate mechanisms for their enforcement.
- Clearly expose the policies that govern censorship of online materials and content, and implement mechanisms for inquiring about and challenging the censorship decisions.
- Adopt policies that foster competition in the telecom market in order to improve the country's telecom infrastructure.
- Reframe the telecom sector as an enabler of a knowledge-based economy and entrepreneurship rather than an income-generating investment.
- Increase transparency in governmental transactions in order to build trust between the citizen and the government and foster participation in any new e-government initiatives. ■

13 Baillargeon, E. (2008) March 2008 Facebook statistics. inlogicalbearer.blogspot.com/2008/03/march-2008-facebook-statistics.html

TAJIKISTAN

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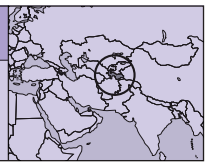

Introduction

Tajikistan ratified a law on the right to access information on 18 June 2008. It was the second state in Central Asia that adopted such a law, based on international standards and a model law by the Commonwealth of Independent States (CIS). Considering the mountainous geography of this landlocked country, together with the ubiquity of mobile phones, mobile technology seems the most effective way to implement the law.

The first mobile operator, TajikTel, launched in 1996. It reached about 3,000 users only, covering Dushanbe, the capital of Tajikistan, and a few towns around it. The number of operators competing in the market today is nine, with at least four of them covering about 90% of the country. By the end of 2008, the operators provided services to over 3.2 million users, according to the Ministry of Transport and Communications. Operators have been competing in deploying mobile technologies such as global system for mobile (GSM) and third- and fourth-generation (3G, 4G) technologies, as well as a newly created mobile technology called WMNT (which is based on WiMAX).

However, the use of mobile tools as a means of accessing information has not yet been explored as actively as mobile technologies have been deployed. Last July, research showed growth in the percentage of state agencies with websites from 3% in 2007 to 6.1% in 2008.[1] But none of the websites are compatible with wireless access protocol (WAP), which would allow state information to be accessed via a mobile device. If we consider the growth of the mobile telephony market in 2008 (60%), which provides services to about 47% of the population, then it is obvious that there is a need to focus on mobile technology to deliver government services. In comparison, the internet market grew about 14% in 2008, covering merely 7% of population.[2] It should be mentioned that these are official figures (from the State Service on Regulation and Supervision of Information and Communications), which are lower than those calculated by the Public Fund Civil Internet Policy Initiative (CIPI) and the Internet Service Providers Association (ISPA), which show between 10% and 12% of the population as active internet users.

Policy environment

A state policy on the information society, ratified on 30 April 2008, aims to promote the political, socioeconomic and cultural development of the country as well as to improve its international image. It consists of a set of political, economic, socio-cultural and administrative measures focused on ensuring the constitutional rights of citizens to access information. The long-term strategic goal of the policy is the development of a democratic information society in the country and its integration with the global information society.

This strategic goal is similar to the goal of the state strategy on information and communications technologies for development (ICT4D), an e-strategy which, along with the other legislation, provides the legal platform for the information society policy. The e-strategy in its turn considers access to information as one of the indicators of the country's e-readiness.

In a recent appeal (April 2009) to the Parliament of Tajikistan, President Emomali Rahmon drew attention to the information "war" that Tajikistan is losing due to many factors. One of them is the low level of local online content.[3]

The Ministry of Transport and Communications has, for the second time, attempted to create a unified communication centre using the facilities of the state-owned operator. Once created, the centre will become a unique point for transferring all international voice traffic. The ministry has been seriously lobbying for this measure as the only option to reduce illegal voice traffic, even though it runs against ICT legislation and introduces many threats into the market, including fragile information security and technological dependency. The issue is likely to be raised over and over unless the state-owned operator, Tajiktelecom,[4] is privatised. The operator is scheduled to be privatised in 2010, although this date might be changed, as has happened several times in the past.

Legislative environment

A telecommunications law was adopted in 2002, and its impact has been significant since November 2005, when Article 38 (dealing with networks and services) came into force.

The newly ratified law on the right to access information is key when it comes to shaping the legal environment for accessing information of public interest online. The law aims to create the legal conditions necessary for all citizens to exercise freely their right to access information, as well as for state agencies to provide information openly. Currently developed mobile telephony infrastructure could speed up this law implementation process. What is needed now is an implementation mechanism for the law.

1 Public Fund Civil Internet Policy Initiative (CIPI): www.cipi.tj//index.php?option=com_content&task=view&id=127&Itemid=4

2 Ibid.

3 Appeal of the President of Tajikistan Emomali Rahmon to the Majlisi Oli (Parliament of the Republic of Tajikistan). www.president.tj/habarho_150409.html

4 www.tajiktelecom.tj

The Ministry of Education has lobbied for restrictions on the use of mobile phones at school. These restrictions were passed in 2009, and now mobile phones are banned at school, and may not be used during class at colleges or universities. In a country where many educational establishments do not have electricity, mobile devices are tools capable of compensating for this shortage.

The current technical and technological capacity of mobile providers is capable of providing internet protocol television (IPTV). For example, two state TV channels, 1TV[5] and Safina,[6] were accessible through the Babilon-M mobile network[7] until the end of 2008, as part of a pilot project. This is one more option for promoting national e-content using mobile telephony infrastructure. However, the regulator of the sector, the State Committee on Television and Radio Broadcasting, has not yet approved the service.

A lack of online content

A young generation of experts, particularly those in the mass media and ICT industries, are adept at deploying Web 2.0 technologies for content development. Despite this, a low level of content development has been the main challenge faced by the country since ICT access became widespread.

Most of the available online information is entertainment related. A few mobile content providers, such as Next-Style,[8] Intech[9] and Zervana,[10] have been actively competing in the market. Services include short message service (SMS) voting for competitions. Sometimes these services are used in public initiatives – for example, the SMS voting used in a competition called "The Seven Treasures of Tajikistan", initiated by the Tourism Development Centre.[11] At the same time, the International Trade Centre, through its partnership with the Chamber of Commerce and Industry, has been promoting a project to create a web-to-SMS engine integrated in the Chamber's website.[12] This initiative aims to assist local farmers to harness available technologies for accessing information and reaching new markets.

According to official data almost half of the active internet users in Tajikistan use mobile phones to access online resources.[13] Unless adequate local content is developed, an import-oriented country in the traditional economy might be mirrored in the knowledge economy. Considering that the number of mobile telephony users has grown much faster than internet users, it is not hard to see that Tajikistan, as a landlocked country, is missing an opportunity.

A viable state policy is needed to address these kinds of gaps. For instance, the restriction on mobile phones in schools is short-sighted, given their potential benefits as educational tools. At the same time, the regulation of the sector needs to be streamlined. For example, a common gateway for voice traffic is not the only way to reduce so-called "grey traffic" (illegal traffic). National economic benefits must be the focus when approaching these kind of challenges, not the interests of one player in the market, even if this player is the state-owned operator.

Without online content that meets local needs, Tajikistan might miss its unique opportunity. What the country needs now is a proactive policy-making body in the ICT industry that is capable of harnessing the advantages of technology. Only such a body can face the current and potential threats by developing viable policies.

New trends

As mentioned, the current technical and technological capacity of mobile providers is capable of providing IPTV service. The deployment of 3G and WiMAX by key mobile companies means that more areas will have mobile internet access. The availability of national TV channels via mobile networks is an affordable approach to meet the needs of access to information in small communities that cannot access these channels via traditional broadcasting.

WMNT is a mobile access technology developed by a local company, Babilon-M. WMNT provides access to server resources (the mobile terminal will perform the role of remote terminal for a number of content-providing servers, and will itself serve as a high-speed wireless interface between different devices). With WMNT there will be no high-cost high-performance processors and complicated operations systems. This will make it affordable to many users.

Action steps

ICTs, mobile devices included, are a tool; and like every tool they need to be managed according to their advantages and disadvantages by the user. The ideal place to educate users as to the potentials and pitfalls of technology is at school. Yet school curricula are lacking.

The more learners have the freedom to access information and online resources, the more demand is created, both for education and entertainment content. Users, including students, who can access resources regardless of their location will benefit. The law that restricts the use of mobile technology in the classroom must, as a result, be amended. A viable policy on ICT for education is also needed.

Illegal traffic, as any other illegal action, is bad for the whole society. Creating a common gateway (unified communication centre) to tackle this issue is not necessarily the only way forward. Various options have to be considered and analysed jointly with key market players, bearing in mind issues such as the quality of services and the rights of consumers. The national interest, rather than any single

5 www.1tv.tj

6 www.safina.tj

7 www.babilon-m.tj

8 www.nextstyle.tj

9 www.intech.tj

10 www.zervana.tj

11 www.tourism.tj

12 www.tpp.tj

13 State Service on Regulation and Supervision of Information and Communications: www.gsnrsi.tj

operator's interest, must be a priority. Illegal traffic is not the only challenge in the market. Presumably some others are emerging and/or might emerge and solutions should not be outcome-oriented but problem-oriented. Only a viable policy is capable of facing these kinds of challenges.

A policy-making body, with a focus on meeting the needs of society as a whole, is needed to develop policy, raise the necessary funding, and coordinate effective implementation. The ICT Council under the President of Tajikistan should be considered for this role. ■

References

Eurasian Patent Organization (EPO) (2009) *Bulletin 3/2009*. www.eapo.org/rus/bulletin/ea200903/HTML/012004.html

Public Fund CIPI and Internet Service Providers Association (2009) *Research on the Online Availability of the State Authority Agencies of the Republic of Tajikistan*. www.cipi.tj and www.ispa.tj

Republic of Tajikistan (2003) *State Strategy on Information and Communication Technologies for Development of the Republic of Tajikistan*. www.cipi.tj

Republic of Tajikistan (2008) *State Information Policy Conception of the Republic of Tajikistan*. www.cipi.tj

State Service on Regulation and Supervision of Information and Communications (2009) *Annual Statistical Data*. www.gsnrsi.tj

TUNISIA

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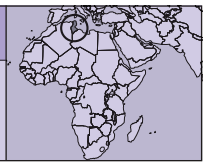

Introduction

Tunisia was the host of the second phase of the World Summit on the Information Society (WSIS) in November 2005. This choice was justified considering that information and communications technologies (ICTs) are a priority sector in the country.

The use of ICTs in Tunisia started in the early 1990s. With the spread of the internet, ICT take-up has accelerated, particularly in the business world, which needed to meet the challenges of globalisation. Individual citizens first used computers at cybercafés, before gradually acquiring personal computers for home use. With recent e-transformation efforts, the government has prioritised the distribution of ICTs in education across the country, while the use of ICTs in the public sector has also increased.

The ICT sector has undergone an important expansion in recent years, contributing 10% of gross domestic product (GDP) in 2008, compared to 7% in 2005 and 2.5% in 2002. This contribution will reach 13.5% over the period 2007-2011. Outsourcing in the ICT sector also benefited from a significant investment of around EUR 3.5 billion for the period between 2007 and 2011, against EUR 230 million from 1992 to 1996.

There has been a huge increase in the number of websites created, especially in the private sector. The country has over 10.7 million inhabitants, 66% of them living in cities. A large part of the population is young: people between fifteen and 59 years of age constitute around 65.8% of the population. Perhaps because of this, blogs, social networking and personal websites are also thriving.

Policy environment

The development of e-content is a crucial and strategic issue in Tunisia. In 1998, the country started mobilising local and international communities on ICT issues. After WSIS in Geneva 2003 and Tunis 2005, governments, businesses and non-governmental organisations (NGOs) were committed to ICT development issues, particularly e-content development, e-accessibility and digital opportunities. Since then, Tunisia has worked hard to develop ICT accessibility and e-content locally, and to follow up on the WSIS action plan regionally.

The country has adopted a new and ambitious strategy that meets the needs of building the information economy and promoting e-content. The strategy is articulated around three main axes: the development and modernisation of ICT infrastructure; the promotion of digital content and the universalisation of ICTs; and the adoption of a legal framework that promotes e-services and e-content.

Both e-content and ICTs in education are cross-cutting features of the strategy. ICTs in education encompass all levels and subject areas. Today, 50% of primary schools are connected to the internet, while all secondary schools and universities are connected, and 10% of students at universities are specialising in ICTs. Remote schools have been connected to the internet through the work of an organisation called Internet Caravan.

Tunisia has also invested considerably in ICT training and has many world-famous institutions, such as the National School of Computing Sciences (ENSI) and the National School of Engineers of Tunis (ENIT).

Several initiatives have been launched to promote ICT take-up in the country. There are about 305 public internet centres and 196 call centres providing about 17,000 jobs. The El Ghazala technology park is considered an innovative environment offering modern infrastructure that helps to create a synergy between education, research and industry.

Tunisia is also determined to promote e-content, including Arabic content. Several specialised multilingual sites have been developed, with the aim of encouraging the use of the internet and access to information.

Legislative environment

A suitable regulatory framework has been adopted to help modernise the country through ICTs, to encourage the development of e-content, and to protect personal data. There has also been an agreement to incorporate the Creative Commons open licensing platform into Tunisian legislation.

Key acts that make up the ICT sector's legal framework are:

- Telecom Act (2001/2008)
- Electronic Business and Interchange Act (2000)
- IT Security Act (2004)
- Decree No. 6382 (2008) dealing with voice over internet protocol (VoIP).

In addition to this, Decree 2004-1250 obliges national institutions to conduct periodic computer security audits.

Other legislation relevant to online information includes:

- Legislation dealing with the digital economy (2007)
- Protection of Personal Data Act (2004)
- Intellectual Property Rights Act (1994) (under revision)
- A decree dealing with encoding services (Decree 2008-2639)

Open culture and the internet

E-content encompasses the creation, design, management and distribution of digital products and services and the technologies that make these activities possible. User-generated digital content is an important milestone on the road to the information society: social networking sites like Facebook, MySpace, Twitter, blogs and wikis continue to grow and compete for users' attention with traditional content.

E-content development in Tunisia is focused on different areas: e-business (banking, transport, telecoms, commerce, e-payment, human resources, tourism, crafts, information portals, etc.); e-government (municipalities, social security, tax, customs, education, investment, etc.); e-culture; e-health (hospital management, medical information); e-entertainment (games, travel portals, etc.); e-inclusion (content for children and people with disabilities, NGO portals); e-learning (eDuNet, the primary and secondary school portal, specific learning content, etc.).

The public sector is a major player in developing e-content. It has developed several portals allowing online access to information and encouraging the development of e-content. These include the Tunisian government portal,[1] which offers a set of online services (social security, municipal services, etc.) and a variety of content in three languages (Arabic, French and English). The use of these portals is encouraged through various incentives and media campaigns.

To develop e-content and technical skills, government departments have also put several electronic services online using the e-dinar for virtual currency. The e-dinar was introduced by the Tunisian Post Office to help Tunisians shop online.[2] Tunisian Post also acts as a multimedia service provider and facilitator for many public services (transportation, utilities operators, municipalities, universities, schools, housing, insurance, etc.) to help the public access these services and pay bills online.

A school portal[3] delivers a variety of high quality content and offers online support for students. Students can register online, participate in open learning sessions, get support from tutors, and access materials, amongst other things. At the same time, Tunisia's education portal, EduNet,[4] provides users with a variety of educational services, such as web hosting, email and collaborative work platforms.

In order to improve exchanges within the community of teachers, researchers and students, and to encourage the use of modern pedagogical tools with rich e-content resources, the government has developed communication tools to promote e-learning and e-content.[5] Other platforms that support e-learning include eCircle.[6]

Universal Postal Union members from over 30 countries are also using the virtual school set up by Tunisian Post. This is a unique showcase of virtual-learning services used all over the world – especially by some countries that cannot afford the investment on their own – and is open to contributions.

In the field of science, an online portal[7] has been dedicated to supporting scientific communities, researchers and students with updated information on scientific events and research. In this way it contributes to the diffusion of scientific knowledge and enhances the accessibility of scientific information.

Many in the technology sector contribute to the development of e-content. For example, the El Khawarizmi Computing Centre (CCK) announces technological events and publications, and the National University's Centre of Scientific and Technical Documentation (CNUDST) offers various content relevant to the scientific and technical community.

The most developed e-culture website[8] offers content and information related to things like cultural events, museums, movies, and a cultural directory.

The availability of content in the Arabic language will be key to increasing the use of the internet at all levels of society. The Tunisian Ministry of Technology has made substantial strides in working with partners in the public and private sectors to foster a vibrant and active e-content industry in Tunisia, with a particular focus on encouraging Arabic e-content. However, Tunisia is a multilingual country, and its proximity to Mediterranean countries means that many citizens are fluent in several languages, including Italian, English, French and Spanish.

Several national and international competitions have been established in Tunisia to encourage the use of e-content, such as the Tunisian Best e-Content Award and the World Summit Award (WSA). This approach is reinforced through things like the adoption of the Creative Commons licensing framework in Tunisian legislation, and the role of associations and NGOs in developing a digital culture.

New trends

- *Outsourcing development applications:* Offshore outsourcing has gained popularity in recent years in Tunisia, as a result of business strategies aimed at developing e-content and e-applications.
- *Using open source applications:* The open source community in Tunisia is very active: the country has a secretary of state dedicated to the development of open source, and there are several non-governmental open source groups and student clubs focusing on open source (ATU2L, Libertysoft, etc.). The private sector is also active and develops services based on open source applications.

1 www.bawaba.gov.tn

2 www.laposte.tn

3 www.postelearning.poste.tn

4 www.edunet.tn

5 www.uvt.tn

6 www.ecircle.rnu.tn

7 www.annonces.rnu.tn

8 www.villedetunis.com

- *Social networking applications:* Social networking has become a very effective way to access information. Tunisian communities on Facebook have reached more than 150,000 members. Several thousands more use LinkedIn, Viadeo, and the like. The importance of this new wave is increasing as people are becoming more involved by submitting all kinds of announcements advocating causes and appeals for action.

Action steps

A number of action steps are necessary in Tunisia:

- Promoting Arabic e-content. The use and distribution of Arabic digital content reflecting the richness in culture and tradition and the intellectual progressiveness of the Arab community is essential. This is especially true in the areas of creative e-content and quality applications.
- Increasing the number of nationally based websites and improving the quality of their content.
- Increasing the number of web hosting services in Tunisia and reducing the costs of hosting.
- Establishing centres dedicated to the creation and promotion of e-content. ■

References

e-Content: Voices from the Ground (n/d) E-government, NGOs and SMEs are on the move, interview with Faouzi Zaghbib. www.econtentworldwide.org/folder.asp?folder=folder&id=145&nm=Tunisia

ICT in Tunisia: Access for all and promotion of investment and enterprises competitiveness, November 2008. www.ict4allforum.tn/fileadmin/Documentation/Brochure%20ICT4Allen.PDF

Ministry of Communication Technologies: www.infocom.tn

Ministry of Higher Education, Scientific Research and Technology: www.mes.tn

National Digital Certification Agency: www.ance.tn

National Statistics Institute: www.ins.nat.tn

Ouaili, M. (2006) ICTs for Development: Towards e-Tunisia, presentation by Minister of Communication Technologies Montasser Ouaili to the ICT4All Forum, Hammamet, Tunisia, 26-27 October.

*Think*Tunisia: www.thinktunisia.tn

Tunisian Internet Agency: www.ati.tn

UGANDA

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Introduction

Information and communications technologies (ICTs) offer the promise of an information-rich society: one in which citizens have access to a wide range of information from a variety of sources; one in which every issue is extensively debated amongst citizens and policy makers through interactive media; and one in which participation in the political process is greatly increased.[1]

The Ugandan government is increasingly adopting the internet for activities that have broader social applications for grassroots communities. Efforts include laying fibre-optic backbone infrastructure; e-governance infrastructure in 27 ministries; e-government programmes to improve the provision of public information; and a universal access fund, as part of the Rural Communications Development Fund (RCDF).

Access to the internet has continued to grow. A total of 214,293 active mobile wireless internet accounts was reported at the end of December 2008, compared to 166,621 in the previous quarter. Fixed-line internet subscriptions were estimated at 22,000. The number of internet users, on the other hand, was estimated to be 2.5 million – about 7% of the population – according to figures from the Uganda Communications Commission (UCC).[2]

Policy environment

A national ICT policy framework was set up in 2002 to ensure the optimum utilisation of information to enable socio-economic development. The policy focuses on three areas: information as a resource for development; mechanisms for accessing information; and ICTs as an industry, including e-business, software development and manufacturing. The policy recognises that the three areas are not mutually exclusive. Rather, new ICTs have led to convergence between the media and telecommunications.

The Telecommunications Sector Policy of 1996, meanwhile, is currently being reviewed to make it more responsive to emerging trends. The policy recognises that internet access is a critical sphere where the government, the regulator and the private sector need to take action. It emphasises the need to address the issue of access to the international fibre backbone to enable Ugandans to be part of the global knowledge society; the creation of relevant and accessible content; regional peering within first East Africa and then the whole of Africa; and the need for government to become the number one user and advocate of the internet in Uganda.

As key national strategic priorities, the Ugandan government and telecom companies (MTN and Uganda Telecom Limited) have been part of initiatives to develop the Eastern Africa Submarine Cable System (EASSy) and the East African Backhaul System, the terrestrial fibre network being developed to link Kenya, Uganda, Tanzania, Rwanda and Burundi. It is hoped that the national fibre backbone being built by the government will increase online access to information through making the internet affordable and easy to access. Efforts are also being made to enable the country to tap into the EASSy submarine cable when it lands at Mombasa, Kenya or Dar es Salaam, Tanzania.

The draft telecommunications sector policy review report notes that it is government policy to ensure equitable access to telecommunications services for all the citizens of Uganda through an enabled and competitive private sector. It also recognises that a purely commercial approach would marginalise the majority of citizens, and makes universal access, supported by appropriate public-private partnerships, a key objective.

The country's Rural Communications Development Policy mandated the establishment and implementation of the RCDF. The RCDF is meant to act as a means of intervention to ensure that basic communications services of acceptable quality are accessible at affordable prices and at reasonable distances by all people in Uganda. It aims to assist in areas where provision of commercial services is not feasible, provide basic universal access, and promote competition among operators. The fund is mostly the result of contributions from service providers and is meant to be used to leverage further investment rather than provide all the funding solutions.

The fund has been administered since 2002, and through the provision of subsidies it has supported the establishment of internet points of presence in twenty districts in the country, set up information portals in 54, internet cafés in 55, and ICT training centres in 30, as well as 316 public pay phones, two internet connectivity institutions and five telecentres.

Legislative environment

Uganda's Access to Information Act (2005) was formulated to:

- Promote an effective, transparent and accountable government.
- Give effect to Article 41 of the Constitution by providing the right to access information held by the state, other than exempt records and information (i.e., those that are likely to prejudice the security or sovereignty of the

1 Horrocks, I. and Pratchett, L. (1995) *Electronic Democracy: Central Themes and Issues*. www.clubofamsterdam.nl/contentarticles/Democracy%20and%20New%20Technology.pdf

2 www.ucc.co.ug

state or interfere with the right to privacy of any other person).

- Promote transparency and accountability in all organs of the state with timely, accessible and accurate information.
- Empower the public to effectively scrutinise and participate in government decisions that affect them.
- Protect persons disclosing evidence of contravention of the law, maladministration or corruption in government.

A number of bills in relation to online access to information have been drafted. They include the Regulation of Interception of Communications Bill (2007) and bills dealing with e-signatures and e-transactions.

Challenges with policy and legislation

While the above policies and legislation have been put in place, gaps exist when considering access to information broadly. The RCDF, for example, is not funding broadband access, and it has largely offered subsidies for the establishment of services at district headquarters – which are mostly urban or semi-urban – ignoring the needs of the rural and unserved populations who are its primary constituency. The RCDF's failure to help devise sustainability plans for its grantees, its offer of huge subsidies to national telecom operators, and its failure to align some of its programmes to the government's poverty reduction strategy in rural areas have been criticised.[3] The fund also lacks a gender-sensitive approach. This has limited the number of women benefiting from the fund compared to men.[4]

Concerns have been raised about the Regulation of Interception of Communications Bill (2007). Amongst other things, the bill provides for the lawful interception and monitoring of communications, and establishes a monitoring centre. If passed into law, internet service providers (ISPs) will be obliged to give the government access to email accounts on request.

The Constitution of Uganda guarantees the rights to privacy, freedom of expression and the freedom of the media. The constitution sets the standard of derogation by providing that any limitations to the enjoyment of rights must be those that are acceptable and demonstrably justifiable in a free and democratic society. However, views from civil society organisations such as the Uganda Women's Network (UWONET)[5] and online discussions (on i-Network and WOUGNET mailing lists) indicate that the bill is a serious invasion of an individual's privacy and susceptible to abuse.

While the bill may be a means of protection for the public good, it could unjustifiably and irregularly restrict the exercise of the right to privacy and freedom of expression. This concern is especially warranted given precedents of the government blocking access to a website called Radio Katwe, as well as criminal cases brought against journalists and their media houses for supposedly publishing "wrong" or "misleading" information.

Reaching marginalised groups and communities

Many civil society organisations in Uganda have embraced the potential of ICTs for advocacy through the dissemination of information. They include, among others, WOUGNET, I-Network, Raising Voices, Isis-Women's International Cross Cultural Exchange (Isis-WICCE)[6] and the Eastern African Sub-regional Support Initiative for the Advancement of Women (EASSI).[7]

WOUGNET uses online forums to provide and share relevant information targeting urban and rural women for the purposes of improving their quality of life. The WOUGNET website[8] is an interactive site that enables network members to share information on ICT for development issues, gender issues, actions taken by the government and other agencies, news from its network members, and current events, among others.

WOUGNET administers discussion lists to which one can subscribe and contribute free of charge. Some of the discussion lists are administered by WOUGNET members and are used for advocacy purposes. This includes a women's movement list and a list for the African Protocol on Women's Rights task force. Both discussion lists share and discuss gender and rights-related issues. The WOUGNET mailing lists stimulate debate and are accessed by a wide audience including policy makers, parliamentarians, civil society actors and bilateral and multilateral donor agencies.

WOUGNET also uses short message service (SMS) to support online discussions, enabling its members without email and internet access to participate in discussions. This even gives people in rural areas a chance to speak out on issues related to their development.

The I–Network mailing list[9] is another online platform for sharing knowledge and information on ICTs for development. Emails sent to this platform go to over 1,000 registered members in the private sector, government, academia and civil society, including community-based organisations. On average three major topics are discussed per month. Discussions have been held on internet governance, the Uganda country code top level domain (ccTLD), the Regulation of Interception of Communications Bill, the Computer Misuse

3 CIPESA (2009) *The Telecommunications Reform Process in Uganda: A Research Report and Policy Narrative.*

4 WOUGNET (2007) *An assessment of the Rural Communications Development Fund (RCDF) from a gender perspective.*

5 In its recommendations submitted to the parliamentary committee, UWONET noted that the right to privacy is part of the right to life and personal liberty enshrined under Articles 27 and 29(1)(a) of the Constitution of Uganda. The right to privacy is also guaranteed under the International Covenant on Civil and Political Rights (ICCPR). UWONET (www.uwonet.or.ug) is an advocacy and lobbying network of national women's NGOs and individuals. It deals with issues of gender-based violence and discrimination, while WOUGNET deals with ICTs and women, reaching marginalised groups and communities.

6 www.isis.or.ug

7 www.eassi.org

8 www.wougnet.org

9 i-network@dgroups.org, www.i-network.or.ug

Bill, and ongoing consumer issues, among others. Vital information arising from discussions may be compiled and published elsewhere or shared with the authorities concerned. Face-to-face discussions are also arranged when necessary.

While gender equality advocates are making use of online forums to discuss issues such as legal rights, sexual and reproductive rights, and women's human rights,[10] access to new ICTs is limited for the majority of women. Reasons include a lack of access to infrastructure, culture and language. According to Anita Gurumurthy, while it may be necessary for the progressive elite to mediate information dissemination, real democratisation of information depends on making new ICTs relevant to the majority and accessible to every woman.[11]

The initiatives mentioned above are commonly faced with challenges of limited membership and the fact that participants are more or less confined to urban centres. Network members also do not use email as effectively as they should. There is a tardiness in obtaining information on a regular basis and the email list subscribers are mostly recipients and not active enough.

In efforts to improve the provision of public information to promote democracy, the Ugandan government has embarked on laying optical fibre. This will be done in three phases. The first, connecting districts in Kampala, Entebbe, Bombo and Jinja, has been completed. The second is expected to connect sixteen districts, and the third the rest of the country. Its e-governance infrastructure also connects 27 ministries with voice, data and video services. E-government programmes include DistrictNet, set up to enable data and voice communication between the district headquarters and sub-counties; the introduction of an integrated information system for storing, analysing and managing financial information; a portal for the central government; district portals developed to provide comprehensive information about public institutions, infrastructure and opportunities in each particular district; an integrated financial management system; electronic voting; and an information flow management and networking project under the Ministry of Tourism and Trade. However, limitations such as a lack of relevant content, lack of access to internet facilities by most rural populations, and a lack of capacity to use ICTs make using the internet by the majority of the population difficult.

As argued by Sanjana Hattotuwa, "e-government is a cruel joke for someone without clean drinking water and digitising government forms and putting them on the internet is meaningless for those who do not have the language skills and computer literacy to use this information. While this alone does not belittle the potential of ICT, one must also recognise that ICTs can help only if the necessary under-pinning for social reform is present – the respect for human rights, democracy and equitable distribution of technology."[12]

New trends

The internet is increasingly being used as a platform for people to give their views and petition policy makers. The media have also started using the internet to share information on people's rights (for example, an e-paper[13] published by the *Daily Monitor*), and blogging is becoming common practice among civil society organisations and the general public. It is hoped that the internet will thrive as a platform where people can participate in democracy and civic life.

Spam and pornography are some of the challenges that have come along with the increased use of the internet. In internet cafés – and apparently even some school computer labs – porn sites are said to be a favourite online destination. This raises the issue of content blocking. ISPs and network administrators may need to work on filtering networks. However, the issue of spam remains difficult to control given the state of international law on this issue.[14]

Cyber crime, including e-fraud, is also reported to be on the increase in Uganda. It is important for the government to enact cyber laws to curb these malpractices and establish legislation on electronic commerce and other online transactions. The Electronic Transactions Bill, Digital Signatures Bill and Computer Misuse Bill are pending approval by parliament.

Action steps

The following action steps are needed in Uganda:

- The government needs to continue developing ICT infrastructure to increase the penetration of ICTs among citizens, especially in rural areas.
- Uganda has a range of auxiliary regulations on telecoms which ideally aim to make the sector competitive and telecom services affordable. The challenge has been implementing these regulations on such issues as tariffs and accounting, interconnection, fair competition, and universal service obligations.
- There is a need to build capacity for people to be able to use the internet and other ICTs.
- There is a need to develop local content in local languages and applications with a high utility value for the community in areas such as health, education, market information, agriculture, and local administration.

10 For example, Raising Voices (www.raisingvoices.org) has used online open chatting and blogging to discuss issues such as HIV/AIDS and other gender issues.

11 Gurumurthy, A. (2006) Promoting gender equality? Some development-related uses of ICTs by women, *Development in Practice*, 16 (6), p. 611-616. www.siyanda.org/docs/gurumurthy_icts.pdf

12 Hattotuwa, S. (2003) Online Advocacy Principles and Case Studies within the Context of ICT and Conflict Transformation, discussion paper written for the OneWorld South Asia Partners Meeting, Delhi, India, 3-4 February 2003. www.cpalanka.org/page.php?id=0&pubid=174&key=9bdd5f06c37bdab66735ca41a9457925

13 The *Daily Monitor* e-paper is a digital version of the *Daily, Saturday* and *Sunday Monitor* with the same "look and feel" as its print editions. The e-paper comes with built-in features that can allow readers to easily access information in a number of formats like RSS feeds, PDF and audio.

14 See "Uganda's Key Internet Governance Issues", an online discussion report compiled by I-Network in 2008.

- There is a need to devise sustainability plans for RCDF grantees and align some of its programmes to the government's poverty reduction programmes.
- The government needs to enact cyber laws to curb malpractices and to increase confidence in e-business and other online transactions. ■

References

CIPESA (2009) *The Telecommunications Reform Process in Uganda: A Research Report and Policy Narrative.*

de Jager, A. and van Reijswoud, V. (2006) *E-Governance: The Case of DistrictNet in Uganda.*

Gurumurthy, A. (2006) Promoting gender equality? Some development-related uses of ICTs by women, *Development in Practice*, 16 (6), p. 611-616. www.siyanda.org/docs/gurumurthy_icts.pdf

Hattotuwa, S. (2003) Online Advocacy Principles and Case Studies within the Context of ICT and Conflict Transformation, discussion paper written for the OneWorld South Asia Partners Meeting, Delhi, India, 3-4 February 2003. www.cpalanka.org/page.php?id=0&pubid=174&key=9bdd5f06c37bdab66735ca41a9457925

Horrocks, I. and Pratchett, L. (1995) *Electronic Democracy: Central Themes and Issues.* www.clubofamsterdam.nl/contentarticles/Democracy%20and%20New%20Technology.pdf

Ministry of ICT (2008) *Draft Telecommunications Sector Policy Review, August 2008.*

Ssewanyana, J. (2009) Improving Information Dissemination and Knowledge Sharing in Local Governments in Uganda: The e-Governance Model, paper presented at the IST Conference 2009.

WOUGNET (2007) *An assessment of the Rural Communications Development Fund (RCDF) from a gender perspective.*

URUGUAY

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Introduction

The media in Uruguay have historically been dominated by the private sector, with ownership strongly concentrated in a few companies that control television, newspapers and radio. This situation has resulted in some restrictions regarding access to information and the exercise of communication rights, as it has been difficult for social, political and cultural actors to broadcast their information, ideas and productions.

However, it must be said that since the end of the military dictatorship (1973-1985) the country has enjoyed a relatively high level of freedom of expression. It is also one of the countries in Latin America with the highest access to the internet – creating new possibilities outside of the domain of traditional mass media – although there is still much to do compared to other regions in the world.

The current government (2005-2010) has promoted new policies and laws in the field of information and communications technologies (ICTs) that impact on citizen's rights to access online information, and communications rights generally. However, it is too early to evaluate them.

Policy environment

The current government in Uruguay has not implemented relevant policies regarding the concentration of ownership in private media. However, it has encouraged the presence of other actors, strengthening public media (state-owned) and starting to legalise community media.

ANTEL, the state telecoms company, has since 2005 implemented a policy aimed at increasing access to broadband, lowering the cost of household connections and installing free Wi-Fi connections in educational institutions and some public spaces. In 2008, 22% of the population had household internet connections, and it is estimated that 39% of Uruguayans are internet users, including those who connect from public access institutions and cybercafés.[1]

The most visible public policy on increasing access to ICTs has been Plan Ceibal,[2] the local version of the One Laptop per Child (OLPC) initiative. The implementation of this plan began in 2007 in public schools outside the capital, Montevideo. It is expected to be implemented in all public schools in Montevideo by the end of 2009. In addition to the distribution of laptop computers, the plan includes student and teacher training, as well as the creation of educational content.

The Ministry of Education and Culture (MEC) has developed policies to encourage access to online information and the production of local content. This has included the installation of 50 MEC Centres[3] in small towns and villages, offering free internet, training programmes and support for creative content production.

In 2006 the Agency for the Development of Electronic Government and the Information and Knowledge Society (AGESIC)[4] was created, with the aim of modernising the public administration using ICTs.

Legislative environment

Several laws relating to information and communications were recently approved. These include the Community Broadcasting Law (2007), the Cinema Law (2008) and reforms to the Press Law. Among these new laws, three of them have a direct or indirect impact on access to online information.

AGESIC, created by law in 2005 and officially instituted in 2006, has the mission to promote good state practices regarding ICTs, including a modernised and transparent public administration. The agency has also developed the Digital Agenda 2008-2010, which includes goals related to social equality in the use of ICTs and the generation of educational content. The agency has proposed legislation in this regard. It is currently also responsible for implementing the legislation discussed below.[5]

The Personal Data Protection and Habeas Data Law (2008)[6] governs all public and private databases that contain personal information that must be registered. Restrictions were introduced for the use of personal information for commercial purposes, including political preferences and healthcare data. New ways to demand the deletion of personal data and information on how these data were obtained have also been put in place.

The Access to Public Information Law (2008)[7] establishes the right of all citizens to access information generated by public institutions. It is compulsory for all public institutions to have a website where they publish relevant data, including government tenders and the details of official salaries.

1 Grupo Radar (2009) *El perfil del internauta uruguayo. Sexta edición, 2008.* www.gruporadar.com.uy

2 A *ceibal* is a grove of *ceibos*, the Uruguayan national tree, as well as the acronym of "Conectividad Educativa de Informática Básica para el Aprendizaje en Línea" (Basic Computer Connectivity in Education for Online Learning).

3 www.mec.gub.uy/centrosmec

4 www.agesic.gub.uy

5 AGESIC (2008) Agenda digital Uruguay 2008-2010. www.agesic.gub.uy/Sitio/agenda-digital-uruguay.asp; AGESIC (2009) Segundo taller de seguimiento de la Agenda Digital Uruguay. www.agesic.gub.uy/Sitio/descargas/seguimiento_adu.pdf

6 Ley de Protección de Datos Personales y Acción de Habeas Data (2008). www.agesic.gub.uy/Sitio/normativa-y-estandares.asp

7 Ley de Acceso a la Información Pública (2008). www.agesic.gub.uy/Sitio/normativa-y-estandares.asp

Accessing information in schools and from the state

Among the new policies and laws recently formulated, two need closer attention: Plan Ceibal and the Access to Public Information Law.

Plan Ceibal was initiated by the Office of the Presidency, and received the support of all political parties. The impact of delivering a computer to each teacher and child, beginning with children living in poverty, became an unquestionable social policy that was seen to narrow the digital divide and promote a "revolution in education".

However, there have been critical views about Plan Ceibal, especially from educational actors. They have pointed out that no previous consultation was undertaken, and there was no participation during the development of the Plan. Other criticisms include a lack of attention to pedagogical aspects and insufficient teacher training programmes. Financial costs have been criticised as well, given the concern that the initiative could not be sustainable in the medium term (due, in part, to laptop repairs and maintenance). Internet access outside schools has also not been satisfactorily resolved yet.

In response, others have said that laptops by themselves do not change education – rather they "shift gears" in the classroom, diversifying knowledge sources. Children rapidly appropriate these technologies, taking advantage of their potential for expression, often teaching their teachers and parents how to use them. Because of this, the initiative's supporters counter, the high investment is worthwhile. They add that the technical problems are being solved during implementation.

Ultimately, the broad social and political legitimacy gained by the plan should facilitate financial sustainability and the proper attention to technical problems. Pedagogical problems require specific, expert attention. The start of this is the creation of the Ceibal website,[8] which offers educational materials and resources.

The Access to Public Information Law was initially prepared by a working group made up of social and academic organisations: journalists, communicators, archivists, etc. The law puts Uruguay in a good position compared to international standards, and it is now one of the few countries in Latin America to have this type of law. Its main objective is the transparency of public administration, and it facilitates the individual and collective right to access public information. By encouraging public accountability, it contributes to the fight against corruption and increases social participation in public issues.

An Access to Information Unit works in AGESIC to implement the law. It has an Advisory Council which includes representatives from civil society.

The principle of transparency is proactively pursued. It is compulsory for all public institutions to include key information on their websites. This includes the institution's structure and functions, budget and balance sheets, salaries of officials, tenders (specifying who they have been awarded to), relevant statistics of general interest and mechanisms for citizen participation, including where to ask for further information. Public institutions have been given a year to comply with this (until 17 October 2009).

The law allows any citizen to ask for further information on any topic in the domain of a public institution. People requesting information must provide their personal details as well as any information that could help in meeting their information request. The reproduction of the requested information (photocopies, etc.) must be paid for by the person requesting information.

There are exceptions to the law, such as information relating to public security or protected by the right to privacy. These exceptions need to be stated in writing to the person requesting information. Information cannot be considered reserved or confidential when it relates to human rights violations.

The person requesting information does not need to explain the motives behind the request. Some lawyers argue that this poses the risk of facing a huge amount of unjustified requests which are impossible to attend to.[9] However, up until now this does not seem to be the case.

It is also remarkable that, although it is compulsory for institutions to have information on a website, requests can only be submitted in writing (i.e., in a letter). This is probably a result of challenges in online security issues, including electronic signatures, as well as a culture that lacks confidence in dealing with telecommunications.

Once the request is presented, it must be responded to immediately, if it is possible, or within twenty days. This can be extended for another twenty days for justifiable reasons which are put in writing. However, these deadlines are not being met by institutions. One of the difficulties stems from the lack of well-organised documents and archives – one of the reasons why institutions have been given two years[10] to meet the requirements of the law. During this period there will not be any penalties if responses to requests do not meet the deadlines. In this regard, the Archives Law was also approved some time ago, which aims to professionalise and regulate the field.

Practical difficulties related to disorganised information, delays in responding to requests, or a failure to respond to requests in the first few months of the implementation of the law can be attributed to the country's historical culture of secrecy. This includes public officials who do not accept that it is part of their job to offer information to citizens. Education and training are needed here.

8 www.ceibal.edu.uy

9 Flores, R. (2009) Análisis de la Ley Nº 18381 de Acceso a la Información Pública, *Revista Electrónica Informática Jurídica*, Nº 2. www.informatica-juridica.com/revista

10 The 17 October 2009 deadline applies to placing information on public institutions' websites only.

New trends and challenges

- Plan Ceibal is extending access to information rights to the next generation. But there is still so much to do and resolve concerning the potential that computers offer in producing knowledge in a collaborative way and promoting students' expression and creativity. If the computers are only being used to access information – copying and pasting and not much more – the risk would be a continuation of the present model of education, which includes passive learning focused on the transmission of knowledge, although the teacher would not be the main source of information.[11]
- The reversal of the culture of secrecy in state institutions is a key challenge. The Access to Public Information Law will not be effective if this culture does not change. At the same time, the organisation of archives needs to be professionalised. Another challenge is how to encourage citizens to use this resource to participate in public issues.
- The Uruguayan government decided in 2007 to adopt the European standard for digital terrestrial television. But there were no resolutions regarding the framework for allocating digital signals. The issue is still pending, as is the installation of an interactive applications laboratory in digital TV, which could grow the Uruguayan software industry.[12]
- It seems necessary to create a new communications legal framework based on technological convergence, as it is increasingly difficult to separate traditional media (radio, newspapers, television) and new media. Between 2005 and 2008 some decisions about triple-play services were postponed. In 2009 there have been some advances but without clear criteria and public discussion.

Action steps

- Stronger action is necessary to promote citizen participation in discussions concerning information and communications policies.
- Institutional reorganisation is necessary to allow the coordinated development of information and communications policies that include traditional media, telecommunications, internet, digital TV, etc.
- There is a need to support the development of good quality local digital content, as well as strategies to promote the active use of ICTs by the people and communities, who should not only be consumers of information.
- There is a need for a systematic research programme to look into the information society, the use and production of local content, as well as information and communications policies, to support the three points mentioned above. ■

References

AGESIC (2008) Agenda digital Uruguay 2008-2010. www.agesic.gub.uy/Sitio/agenda-digital-uruguay.asp

AGESIC (2009) Segundo taller de seguimiento de la Agenda Digital Uruguay. www.agesic.gub.uy/Sitio/descargas/seguimiento_adu.pdf

Flores, R. (2009) Análisis de la Ley Nº 18381 de Acceso a la Información Pública, *Revista Electrónica Informática Jurídica*, Nº 2. www.informatica-juridica.com/revista

Grupo Radar (2009) *El perfil del internauta uruguayo. Sexta edición, 2008.* www.gruporadar.com.uy

Kaplún, G. (2006) ¿Democratización electrónica o neoautoritarismo pedagógico? *Revista Eptic Online*, VIII (3). www.eptic.com.br

Kaplún, G. (2008) Uruguay y la televisión digital: decisiones técnicas, (in)decisiones políticas, *Revista Diálogos de la Comunicación*, Nº 77, FELAFACS. www.dialogosfelafacs.net

Rivoir, A. L. and Ríos, M. (2007) *Libro verde de la SIC en Uruguay*. www.agesic.gub.uy/Sitio/libro-verde.asp

11 Kaplún, G. (2006) ¿Democratización electrónica o neoautoritarismo pedagógico? *Revista Eptic Online*, VIII (3). www.eptic.com.br

12 Kaplún, G. (2008) Uruguay y la televisión digital: decisiones técnicas, (in) decisiones políticas, *Revista Diálogos de la Comunicación*, Nº 77, FELAFACS. www.dialogosfelafacs.net

UZBEKISTAN

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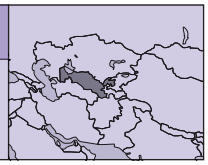

Introduction

For some time after the country's independence (upon the dissolution of the Soviet Union in 1991), Uzbekistan did not pay close attention to the issues of intellectual property (IP) protection. The country had developed a number of relevant laws and participated in global dialogue in the field, but its legislative focus was elsewhere, and its powers to enforce the laws had not been evident. This is understandable given that it was necessary to establish all the core institutions of the newly built state first.

About ten years after independence, however, the time came to reassess the situation and really face the issues that by then were calling for immediate attention and urgent action. IP protection became a hot issue in all respects, including in the area of information and communications technologies (ICTs). Ignoring it would be devastating for the needs of Uzbekistan's developing economy and evolving society.

Today, inspired by the examples of developed states, the country protects IP in its national legislation, through participation in international conventions, as well as through multilateral agreements.

Article 42 of the Uzbek Constitution guarantees, *inter alia*, "the freedom of scientific and technical research" and "the right to enjoy cultural achievements." It also says that "the state protects the cultural, scientific and technical development of the society."[1]

Online information policy in Uzbekistan

Recently Uzbek officials have stopped denying the fact that online information is controlled and filtered for domestic users. While much information relating to education, entertainment, science, travel and other areas of general interest is accessible, the websites of Islamic extremists (e.g, Hizb-ut-Tahrir, Muslim Brothers, etc.), a number of Western voices (such as the BBC and Radio Free Europe/Radio Liberty) that constantly criticise human rights violations and other political choices made by Uzbek leader Islom Karimov and the government, as well as sites covering the political situation in the region, have been blocked.

On top of this Uzbek officials pay serious attention to the moral aspects of the information accessible to the public. Although a secular state, 90% of the population is Muslim and religious influence is growing from year to year. For instance, it is impossible to watch pornography or any other sexually provocative content on Uzbek TV. The same goes for anything to do with gay and lesbian lifestyles. Based on this, it is easy to understand that all similar online material is blocked upon detection.

Domestic legislation also threatens the originators and even the providers of restricted content with criminal prosecution for publishing the content online. A special department dealing with intelligence is known to monitor the content produced domestically. The fear of such prosecution results in heavy self-censorship, not only by those who prepare the information for publishing (including independent journalists and even bloggers) but also by internet service providers (ISPs), who are compelled to control (as much as they can) the information circulated by their clients. In the case of repeated breaches of the country's restrictive media and information laws, a special regulatory body – the Uzbek Agency for Press and Information (UzPIA) – is authorised to suspend and even discontinue the operating licence of an ISP.

Legislative environment

The legal framework for online information and communication is formed by:

- The Civil Code of Uzbekistan: This piece of legislation is widely applicable in all areas of civil society and as such has direct influence on the issues at stake. It lays down the main principles of contractual relationships, and civil liability for all types of breaches, describing the area of IP and the rights of copyright holders (including in the online domain).
- Criminal Code of Uzbekistan: This addresses types of crimes in the area of information technologies in a new chapter (Chapter XX) adopted in late 2007. It also deals with IP.

Particular statutory acts having immediate relevance to the online sphere are as follows:

- The Law on Telecommunications (adopted in 1999 and amended in 2007)
- The Law on Informatisation (2004)
- The Law on Legal Protection of Software and Databases (1994, amended in 2002)
- The Law on Media Freedom (2003)
- The Law on E-Commerce (2004)
- The Law on Electronic Signatures (2004)
- The Law on Electronic Documentation (2004)[2]
- The Law on Electronic Payments (2005)
- Enactment of the Cabinet of Ministers #155 on Domain Names Registration (2008)

1 www.lex.uz/ru/doc/zak.html

2 Dealing with the circulation of e-documents amongst government institutions and other public bodies.

- Enactment of the Cabinet of Ministers #242 on Registration and Licensing of Activities in the Field of the Cryptographic Protection of Information (2007).

Further statutes, although not directly dealing with the online domain, are applicable in certain circumstances:

- The Law on Copyright and Allied Rights (new edition of 2006)
- The Law on Bank Secrets (2005)
- The Law on State Secrets (1993).

Finally, the online arena is also governed by a large number of subordinate laws produced by the Cabinet of Ministers, the National Agency for Press and Information (formerly the Ministry of Communication), the Central Bank, and the Ministry for Foreign Economic Relations, amongst others.

Intellectual property rights in Uzbekistan

The IP policy sphere in Uzbekistan in general is quite positive. The country is already a signatory to a series of international conventions and treaties by the World Intellectual Property Organization (WIPO) on IP protection. Key amongst them are:

- The Berne Convention for the Protection of Literary and Artistic Works[3]
- The Paris Convention for the Protection of Industrial Property[4]
- The Rome Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organisations[5]
- The Geneva Trademark Law Treaty.[6]

On the face of it, Uzbek legislation dealing with IP generally conforms to these international treaties and agreements. In general, as partly suggested above, the area of IP is governed by civil, criminal and customs codes. These include laws on authors' rights and allied rights; inventions, models and industrial samples; trademarks, service marks and places of origination; the legal protection of topologies of integral micro-schemes; the legal protection of computer software and databases; and the names of companies.[7]

The Law on Authorship (Copyright) and Allied Rights,[8] adopted in 1996 and amended in 2006,[9] plays a special role in the protection of creative works. This was the first piece of legislation that addressed not only the rights of authors, but also the rights of the authors of allied products. Their rights and monetary interests were not protected at all before. Currently the law governs the creation and use of scientific, artistic and literary products as well as performances, audio recordings and broadcasts (the so-called "allied rights").

Based on the international conventions mentioned above, a key piece of legislation in the economic and civil sphere – the Civil Code of Uzbekistan – underwent material changes in its parts dealing with authorship as a non-property right and copyright as a property right.[10] There is also substantial work being done in the domain of industrial property laws.

The Criminal Code of Uzbekistan stipulates that the violation of copyright, compelled co-authorship,[11] as well as the dissemination of copyrighted information before its official publication and registration results in criminal punishment by way of a fine (25 to 75 times the minimum wage), the deprivation of certain rights up to a five-year period, correctional tasks (up to five years) or imprisonment (up to six months).

Uzbekistan has started to take its first steps in the field of online IP protection. Since 2006, law enforcement bodies have started paying attention to the problem of online piracy, but little success has been achieved so far.

Another growing and already dangerous problem in the online field is hacking. Once the internet became popular, especially with young people, it became more difficult to ensure the safety of copyright holders and industrial property online. There are reported cases of hackers attacking private as well as public and governmental sites (including those on the highest levels of secrecy).

In reaction to this emerging problem the government provided a two-fold solution. First, it established statutory barriers against online IP violations. The Criminal Code of Uzbekistan (since 25 December 2007) introduced an entire chapter dedicated to crimes in the field of information technology (IT), along with another four articles addressing online IP violations. These are:

- Article 278-2. *Illegal access to online information:* Includes unauthorised copying and interception of online information. Sanctions provided begin with 100 times the minimum wage and extend to three years imprisonment.
- Article 278-3. *Production and distribution of software allowing illegal access to computerised systems:* With sanctions from 200 times the minimum wage up to three years imprisonment.
- Article 278-4. *Modification of computer information:* Describes the illegal alteration of, harm to, or destruction of computer information, including inserting false information into existing data. Sanctions provided are from 200 times the minimum wage up to a maximum of three years imprisonment.
- Article 278-6. *Creation, use or distribution of harmful programmes:* Deals with all kinds of computer viruses, including those that allow the copying and interception

3 www.wipo.int/treaties/en/ip/berne

4 www.wipo.int/treaties/en/ip/paris

5 www.wipo.int/treaties/en/ip/rome

6 www.wipo.int/treaties/en/ip/tlt

7 www.lex.uz/ru/doc/zak.html

8 www.lex.uz/ru/doc/zak.html

9 After joining the Berne Convention in 2006, the law was considerably redrafted to bring its provisions in line with international principles.

10 Authorship rights are the rights of the author which are not alienable from his/her immediate personality (such as the author's right to use his/her name), as opposed to copyright, which can be alienated against some pecuniary interest. For instance, if I write a novel I can pass the right to publish, distribute and receive payment for it to anyone I like, but that person will be under the obligation to identify me as the author of this particular novel.

11 For example, if someone lends an author money to complete a work, and then tries to compel the author to place his/her name as co-author on the work to enjoy all the rights pertaining to the author.

of information saved in computer memory. The maximum sanction is three years imprisonment.

There are ongoing discussions regarding the strictness of the punishment. For instance, some feel that three years imprisonment for someone whose crime was just a case of pressing the buttons on a keyboard is too much. However, this ignores the great harm that can be brought on by such "innocent" activity. If anything, criminal punishment will become more severe in the future.

ICT development is increasingly rapid and although amendments to the Criminal Code were recently made, there is already a growing need for this area of the law to evolve. Special working groups have been established and work under the Parliament and the Cabinet of Ministers to address these needs. In their work they mainly use United States and European Union legal models.

While there are some 25 law firms primarily concentrating on the issues of IP protection in the capital (Tashkent), two years ago the first law firm – *Uzbekistan mualliflar va ijrochilar gildiyasi* (UMIG) – declared its readiness and willingness to focus on cases of online IP violation. According to the latest data there are two more law firms that now actively work in the field.

Reports are made on the growing number of cases against online violators of IP rights, including those located abroad. UMIG has entered into bilateral agreements with law firms in the region (Kazakhstan, Kyrgyzstan) as well as in Russia and Ukraine, allowing it to defend the interests of its clients at a regional level.

The very existence of professional lawyers with growing experience in the defence of online IP rights not only secures the interests of the rights holders, but provides incentives for the faster development of the sector as a whole.

New trends

Uzbek legislation has only relatively recently started to address emerging issues in the online area. For instance, the issue of "cyber squatting" first appeared in official documents as late as 16 December 2005 in the "Provision on order of domain name use in the national segment of the internet for the .uz domain." Paragraph 3.1.16 of the above Provision defines cyber squatting as a "specific kind of business dealing with domain names registration for the purpose of their further sale."

Attempts by law enforcement bodies to fight against IP violations generally have produced no visible effect. When it comes to cyber squatting, no one has yet been punished in line with the legislation. The reason is practical: there are still plenty of free names in our national domain – no comparison to .de or .ru. At the same time, there are few newly registered sites (3,380 as of April 2009).

Representatives of well-known international companies have registered their brands in the Uzbek domain (such as sony.uz or hitachi.uz) and apparently have had no complications in doing so. Yet the absence of cyber squatting at this particular stage of ICT development in the country does not mean that it will not become a serious problem in the future (given the experiences in developed markets).

Taking into account that among the Commonwealth of Independent States (CIS) countries, Uzbekistan is the undisputed leader in applying internet controls, and the fact that the government employs sophisticated multilayered mechanisms to exercise this control over the internet, one may expect that in the field of detecting online IP violations the country has a good chance at success.

Another issue that Uzbek legislation is seeking to address is peer-to-peer file sharing of copyrighted works. While the person at the beginning of this distribution chain is clearly subject to copyright liability, under what circumstances should other parties to the internet communication be responsible for copyright infringement at all? So far there is no clear answer to this, but the issue is being debated.

Finally, following international examples, copyright holders of Uzbekistan started raising the issue of "fair use" violations. Traditionally, the doctrine of fair use permitted individuals to record television programming onto videotape, share a newspaper article with colleagues, or copy a scholarly article from the net for research. It was an attempt to balance public interest with the rights of copyright holders. When it comes to the internet, this remains a burning issue.

Action steps

Given the above, the followings measures must be taken:

- The country should accede to all relevant international treaties on IP protection.
- Bilateral agreements in the field should be made with neighbouring countries.
- Civil society and other stakeholders should participate in the activities of international and regional organisations on the protection of online IP rights.
- There should be harmonisation of national legislation between different states.
- Administrative and criminal measures against intellectual piracy and other online wrongs should be further developed.
- There should be support for private entities/organisations (including non-profit organisations) that deal with the monitoring of online IP violations.

In this context it should be said that Uzbekistan cooperates with a number of international organisations dealing with copyright protection, including the United Nations Educational, Scientific and Cultural Organization (UNESCO), WIPO and the World Trade Organization (WTO). Recently joining the Berne Convention for the Protection of Literary and Artistic Works strengthens authors' rights and the position of allied rights holders.

Uzbekistan is taking steps towards the better protection of IP rights in general, as well as in the online domain. However, so far, the results are not too impressive. This is understandable given that the online sphere is not highly developed. What is inspiring, however, is that the country and its legislation are already moving in the right direction. ■

ZAMBIA

Panos Southern Africa
Caesar Jere
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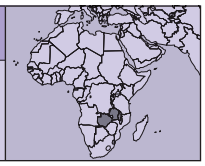


Introduction

In 2002 a Freedom of Information (FOI) Bill to liberate the flow of public information was presented to parliament for enactment. This was after the government was pressured by media activists and civil society to submit the Bill to parliament. However, parliament, dominated by members of the ruling Movement for Multi-Party Democracy (MMD), rejected the Bill on frivolous grounds of state security, citing acts of terrorism taking place around the world, with specific reference to the 11 September 2001 terrorist attack in the United States (US). At the time, parliament argued that the FOI Bill would be inimical to state security as it would abet terrorists with easy access to sensitive information held in public offices.

Up to the time of writing this report (mid-2009), Zambia has yet to enact a law that will pave the way for easy retrieval of information held in public offices. Currently, information seekers, including the media, have to deal with bureaucrats in government: they have to send written press queries to permanent secretaries and wait for as long as a month to get a response. This has negatively affected access to information of public interest, including online. The public's fundamental right to access information to help people make informed opinions and decisions on issues affecting their livelihoods has been relegated.

Additionally, there is no specific legislation that backs media freedom as is the case in some countries in the region (e.g., Namibia and Mozambique). Media freedom, including that of new media (online), is merely implied through the general constitutional provision on freedom of expression. This impedes the media's performance in serving the public interest. However, media activists are pushing for the inclusion of a media freedom clause in the constitution, which is currently being reviewed.

Policy environment

Although no law exists enshrining the right to access public information, the 2007 National Information and Communications Technology (ICT) Policy addresses issues related to access to online information. The policy appears to be the guiding document under which all relevant legal and regulatory structures are designed. It addresses thirteen focus areas, among them human resources, education, content/access and culture, e-governance, e-commerce, health, agriculture, the legal and regulatory framework, and security. It envisages universal access through ICT roll-out to rural areas – including increasing the number of access points, affordable rates and toll-free services targeting poor and marginalised groups. The policy recognises that "access to information forms the basis for creating an information society – and therefore, availability of public access points, ICT tools, content and services are as important as the information itself in the deployment and exploitation of ICTs to support rural development, community-based initiatives and projects in Zambia's developmental effort."[1] The goal for ICT access focuses on enhancing "widespread public access to information through appropriate traditional and new technology solutions based on relevant local content while promoting cultural heritage."[2] The policy also outlines guidelines on the promotion of government and commercial information (e-government and e-commerce) to benefit the public through increased availability of public and private information.

Legal and regulatory framework

The ICT sector is regulated by the Communications Authority of Zambia (CAZ)[3] under the 1994 Telecommunications Act. This Act primarily focuses on the regulation of the telecommunications industry and its infrastructure, and does not specifically address issues of access to information. Under this Act, the minister of communications appoints the regulator's board which oversees the communications industry with regard to licensing, consumer protection, technical services, research, competition, compliance and enforcement. However, the legal and regulatory framework is inadequate to address present changes in technology and related markets. There is a need for a review and reformulation of the framework so that the legal and regulatory structures sufficiently respond to new developments, including convergence in the ICT industry.

This fact has been acknowledged by the current ICT policy itself, which suggests that the legal and regulatory framework should be constantly reviewed in relation to the emerging changes in the communications sector – there is a need to "implement a flexible and dynamic technology neutral legal/regulatory and licensing framework that restricts regulation to the barest minimum; takes into account and reflects issues relating to convergence within the sector; reinforces innovation, competition and fair play in the industry as well as ensure that the basic rights, choices and preference of consumers are protected; and that the principle of equitable universal access and service [is] reinforced".[4] However these "basic rights and choices" do not yet include access to information.

1 Ministry of Communications and Transport (2007) *National Information and Communication Technology Policy*, Lusaka: Ministry of Communications and Transport, p. 29. www.mct.gov.zm/pdf/ict.pdf

2 Ibid., p. 29.

3 www.caz.org.zm

4 Ministry of Communications and Transport (2007), op. cit., p. 49.

Pending legislation

An ICT Bill, which is in draft form and is expected to repeal the 1994 Telecommunications Act when enacted, addresses issues on technology convergence, innovation, competition and fair play and consumer rights. In addition, an Electronic Communications Bill that seeks to deal with issues concerning the protection of information, security, access to online information, computer and cyber crimes has also been drafted.[5] This bill, which also addresses e-banking and other online commercial transactions, does not relate to the kind of access that is expected from a FOI Act that will make public information easily accessible. Both Bills are yet to be enacted into law by parliament (this is expected to happen before the end of 2009). In the meantime, a national cyber security working group, under the auspices of CAZ, has been formed to strategise on issues of cyber security and crime.

It can therefore be asserted that the ICT legal and regulatory framework, especially as relates to online access, cyber security and crime, censorship, and privacy and intellectual property rights, is still in its development stage.

Online education

This report focuses on access to online educational materials (including access to libraries for educational purposes). This topic is central and cuts across the development of all the focus areas that are part of the country's ICT policy: knowledge through education is critical for the success of all the sectors.

The National ICT Policy acknowledges that education using modern technologies, especially computers, is critical to the development of a knowledge economy and society. The policy notes that the Zambian education system has low levels of ICT penetration, especially in public schools. While some ICTs have been rolled out to public schools, from primary to secondary and tertiary levels, only a few schools have incorporated ICTs into their teaching curriculum.

In 1998, the Ministry of Education embarked on a programme to introduce computer studies in selected public secondary schools. But while the outcome of this initiative is not documented, it is quite obvious that the bulk of the schools and the pupils themselves have not benefited, owing to the scanty resources that have been invested in the project. Conversely, private schools appear to have performed better in promoting ICT literacy among their pupils.

ICT literacy has also been enhanced in well-to-do households that have access to computers, especially in urban areas. In urban areas the infrastructure is readily available to support ICT roll-out, affording opportunities to many people, including school pupils, to access educational materials online. This is, however, not the case in rural communities, where income levels are extremely low and people cannot afford computers. In addition, the infrastructural support to enable the use of ICTs in rural communities is almost non-existent: a lack of electricity and poor roads, among other requisites, makes it difficult to roll out ICTs to these underserved communities.[6]

In order to integrate ICTs into teaching and learning, as well as education management, the ICT Steering Committee of the Ministry of Education was formed[7] to develop an ICT policy for education. The policy will adapt and drive the educational provisions contained in the National ICT Policy and other government strategies on ICTs and education. The committee collaborated with the International Institute for Communication and Development (IICD), the Commonwealth of Learning (COL) and various other stakeholders to develop a draft policy which outlines guidelines on the development and implementation of ICTs for education, including teacher training, content development, distance education, financing, and administrative and support services.[8]

Online educational materials

While it can be stated that the country has an inadequate number of online sites that are actively engaged in servicing educational needs, especially educational materials for schools from primary to tertiary levels, some credible efforts have been made by different institutions in collaboration with the Ministry of Education. One key project, called ischool, is run by Africonnect, an internet service provider (ISP) and leading supplier of high-speed wireless broadband internet services in Zambia. Other projects are those run by IICD in conjunction with the Ministry of Education: Enhancing Educational Content (ENEDCO), Educational Support Network (ESNet) and the Global Teenager Project (GTP).

The ischool project

The ischool project was developed and implemented in 2007 and aims at empowering Zambian schoolchildren and communities at large so that they have access to information and educational content from across the world. The focus of the project is "to provide schools with sustainable internet connectivity, computers and learning materials and improve the quality of education delivery."[9]

The project has several components: acquisition of computers and necessary infrastructure; high-speed broadband internet connectivity; capacity building in the use of the internet; technical trouble-shooting skills; content development to generate education material based on the Zambian school curriculum; online courseware for self-directed study; and websites so that schools can promote themselves to a global audience.

The implementation period is divided into three phases, the first phase being a pilot stage which involved sixteen schools (2007-2008). Phase two involves 100 schools (the current stage of project), while the last phase will be a countrywide roll-out.

5 Chulu, K. (2009) Government endorses global cyber-security protocol, *Times of Zambia World Telecommunication Day Supplement*, 17 May, p. 9.

6 Jere, C. (2008) Zambia, in Finlay, A. (ed.), *Global Information Society Watch 2008*, APC, Hivos and ITeM. www.giswatch.org/gisw2008

7 Subsequent to the 1998 programme.

8 www.ebrain.org.zm

9 www.ischool.zm

Enhancing Educational Content

This project aims at enhancing educational content through the use of illustrations, animations and video that visually explain and demonstrate certain learning processes. This method has been used in capturing demonstrations in science laboratories on video for the purpose of explaining how certain science laboratory experiments can be done. IICD has been supporting Mpelembe Secondary School in the city of Kitwe to produce this kind of material for educational use at the school. The materials produced are packaged and made available online, and are also produced on multimedia devices like DVDs and CD-ROMs. The visual emphasis of the project has benefited other schools with no science laboratories and schools that are unable to afford expensive chemicals for use in science experiments.[10]

Education Support Network

The ESNet project, which is funded by IICD and managed by One World Africa (OWA), involves eight schools across the country. The goal of this initiative is to build ICT capacity among teaching staff for them to package locally developed handwritten materials, including teaching notes, into digital formats (i.e., website, DVDs and CD-ROMs). These will then be shared with other interested groups, especially other teachers and school pupils.

Global Teenager Project

This project, which is managed by Trio Consult and also funded by IICD, is active in fifteen schools in the capital Lusaka and in Kitwe. This is a worldwide project that brings together about 600 schools from 32 countries around the globe to engage in online discussions on various issues and topics. The main focus of the project is to encourage intercultural consciousness and understanding, and catalyse structured interactions – especially online discussions – among schools and teachers through the use of ICTs. This system of learning is adopted from US educator Margaret Riel's "learning circle" concept. The initiative also aims at identifying and promoting new techniques of learning and teaching that open new windows of opportunities for the youth.

Online libraries

Internet library facilities are in their formative stages, especially among colleges, universities and research institutions. However, the University of Zambia, the oldest and largest public university in the country, is making efforts to improve its online library. Currently, the library provides links to a variety of international journals covering a range of subjects and topics in various fields. The university plans to upgrade its e-library services by making more electronic materials including student theses and other studies available. This service has not yet been launched.

New trends

The penetration of ICTs in the education sector remains low. However, it is worth noting the efforts being made by the Ministry of Education in collaboration with local and international non-governmental organisations (NGOs). The formulation of the ICT draft policy on education is a welcome move that will guide and drive the implementation of ICTs in education.

It is also encouraging to note that some private colleges and universities that have recently emerged have plans to scale up distance learning programmes and make educational materials available online to their students. The Zambia Open University is among them.

The hosting of an annual e-learning conference since 2007 by the Ministry of Education is a commendable attempt to bring all ICT actors in Zambia together to share experiences, take stock of Zambia's progress in relation to international trends, and chart the way towards sustainable education through the use of ICTs, especially online connectivity. Parallel to this annual event, Zambia will host the 5th International Conference on ICT for Development, Education and Training (e-Learning Africa) in May 2010. The forum will attract delegates from various countries across the continent and will be an avenue for sharing developments and best practices among African countries in the development of ICTs for education.

Action steps

The following measures should be put in place to address challenges that constrain widespread access to ICTs in schools:

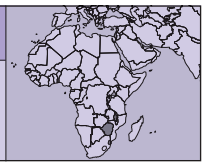
- Roll out high-speed broadband connectivity to schools in underserved communities, especially in rural areas. Currently, the fibre-optic backbone being installed in some parts of the country ends up feeding the city and town centres, and does not reach the grassroots.
- Intensify the rural electrification programme as part of ICT infrastructure development.
- Waive/reduce the tax regime on imported computer hardware and software for schools and research institutes.
- Integrate ICT literacy into the school curriculum (from primary to tertiary level).
- Enhance the ICT skills of teachers in schools through capacity-building programmes.
- Tighten online security for schoolchildren who may become vulnerable and exposed to online intruders.

For the above milestones to be attained, collaborative efforts among all ICT actors and stakeholders (the state, policy makers, schools, communities, donors, ISPs, NGOs, etc.) are a must. ■

10 www.ebrain.org.zm

ZIMBABWE

E-Knowledge for Women in Southern Africa (EKOWISA)
Margaret Zunguze
www.ekowisa.org.zw



Introduction

This report focuses on the policy, legislative and regulatory environment governing online access to information in the context of advancing human rights and democracy. Zimbabwe may have a real opportunity to bring vibrancy and life to its citizens by improving their access to information, freedom of expression and human rights. This hope is pinned on the Government of National Unity (GNU)[1] agreement signed in September 2008, with a new government that took office in February 2009 and has promised to prioritise economic recovery and growth. It has published the Short Term Emergency Recovery Programme (STERP) which will cover the period February to December 2009.

A key priority of STERP with relevance to this report is the focus on the constitution and constitution-making process, media and media reforms, and legislative reforms aimed at strengthening governance and accountability, promoting governance and rule of law, and promoting equality and fairness, including gender equality. In this quest, the GNU has a new Ministry of Information and Communication Technologies (ICTs) that is responsible for ICT development in Zimbabwe. The Ministry of Media, Information and Publicity has the responsibility of reforming media laws that have been described variously as draconian, repressive to civil liberties and stifling to the growth of media in Zimbabwe.[2] The hope is that those legal clauses that hindered Zimbabweans' freedom of expression and their rights to be heard will be repealed and help "send a message to the international community that the GNU has turned from the past and is leading the country towards an open, tolerant society."[3]

Policy environment

In 2004 an e-readiness survey[4] was "carried out to assess Zimbabwe's readiness to become an information/knowledge-based society." Zimbabwe's e-readiness is 1.4 on the Harvard University Guide (HUG) scale of 1 to 4.[5] According to Brilliant Mhlanga, the results of the survey were used to formulate the country's national ICT Policy and e-strategy and plot the roadmap towards a knowledge-based society.[6] The ICT Policy[7] was officially launched in 2007. Jameson Mukaratirwa summarises the salient points of the ICT Policy[8] as:

- An emphasis on convergence
- The establishment of a National Information and Communication Technology Authority (NICTA) that will ensure policy coherence across all sectors of the economy
- The establishment of a single regulator for the ICT sector
- The need to develop a legislative framework to guide the ICT sector in its totality (i.e., including online transactions, telecommunications, postal and broadcasting services).

Legislative environment

Zimbabwe has five laws that govern the terrain of information and communications:

- Postal and Communications Act (2004)
- Broadcasting Act (2001)
- Access to Information and Protection of Privacy Act (AIPPA) (2002)
- Interception of Communications Act (ICA) (2007)
- Criminal Law (Codification and Reform) Act (Criminal Code) (2004).

However, no one law addresses issues of online access to information. This is one major reason why the GNU seeks to harmonise the legislative terrain in response to the convergence of technologies and to table an ICT Bill in parliament. This section looks closer at the AIPPA, ICA, and Criminal Code, laws that have clauses that closely relate to access to online information.

AIPPA has three components: the first deals with access to information, the second prohibits misuse of personal information held by public bodies, and the third has clauses that regulate and restrict the media and journalists.[9]

Although the first component gives everyone the right to access recorded information held by the government and public bodies, the enjoyment of this right is very difficult as the type

1 Government of Zimbabwe (2008) Global Political Agreement, Ministry of Constitutional and Parliamentary Affairs.

2 www.bbc.com, www.cnn.com, www.misazim.co.zw

3 Bill Watch, Legislative Reform Series No. 1: AIPPA, email communication 17 June 2009 (bill-watch@veritas.co.zw).

4 MISA Zimbabwe (2004) *Zimbabwe e-Access to Information: A Comparative Analysis of Zimbabwe's Media Laws with Other Jurisdictions*. www.ict.org.zw

5 HUG is an internationally recognized scale for measuring e-readiness in developing countries, on which 1=very low and 4=ideal state of e-readiness.

6 Mhlanga, B. (2006) ICT Policy for Change and the Mask for Development: A Critical Analysis of Zimbabwe's E-Readiness Survey Report, *Electronic Journal of Information Systems in Developing Countries*, 28. www.ejisdc.org/ojs2/index.php/ejisdc/article/view/339

7 National ICT Policy Framework 2005. www.ict.org.zw

8 Mukaratirwa, J. M. (2008) Review Report of the Findings on the Existing Legal and Regulatory Framework Related to ICT in Zimbabwe, distributed by email.

9 Bill Watch, email communication 17 June 2009, op. cit.

and nature of information available is restricted and procedures for disclosure are cumbersome. One has to lodge an application through the Zimbabwe Media Commission (ZMC). Additionally, there are no provisions requiring the government to be open and transparent and to assist the public by publishing information regularly and making it widely accessible.

The second part prevents the misuse of personal information contained in databases of public bodies, but does not include commercial and private bodies. Moreover, as Mukaratirwa notes, there is a need to expand this section to include clauses that relate to "individual privacy, security, cyber crimes, ethical and moral conduct, encryption and digital signatures,"[10] amongst others.

The third section controls the media and the conduct of journalists and has been much criticised. According to VERITAS this portion of AIPPA could be regarded as "the cornerstone of the repressive Zimbabwean State,"[11] while the Media Institute of Southern Africa (MISA) argues that "AIPPA, through the MIC [Media Information Commission], imposes statutory regulations in breach of the Banjul Declaration on the Principles of Freedom of Expression in Africa."[12] It says the greatest threat to online access to information lies in securing the independence of the sector's regulatory framework. Meanwhile, Reporters Without Borders say "AIPPA has been used by government to crack down on dissent within the media by controlling the licensing of journalists and the jamming of radio stations critical of government."[13]

The ICA provides for the lawful interception and monitoring of certain communications in the course of their transmission through any telecommunication, postal or other related service or system in Zimbabwe. This law requires operators of telecommunications companies to install software and hardware to enable them to intercept and store information as directed by the state. The Minister of Transport, Communications and Infrastructure[14] has power to issue warrants for interception. Supporters of the ICA argue that Zimbabwe has the right to defend itself from terrorism and other unwarranted acts of sabotage, and that the government should protect the territorial integrity of the nation. MISA argues that this law infringes on an individual's constitutional right to "freedom of expression [and] freedom to receive and impart ideas without interference." The Supreme Court ruled in 2004 that the sections of the law that permit monitoring violated the constitution.[15]

For its part, the Criminal Code contains various clauses that warn journalists against publishing false statements prejudicial to the state.

Put together, these clauses in the current legislative framework on access to information have led to self-regulation[16] by many journalists, poets and musicians for fear of criminalisation.

The need to grow access

To date, Zimbabweans have limited access to online information for many reasons: low income levels, declining economic conditions and (as a consequence) a declining quality of life, high tariffs, unreliable electricity supply, narrow bandwidth, and so on. In such circumstances, the demand for luxury goods such as computers is low,[17] as is internet use (only 10%).[18] Due to limited infrastructure in rural areas where the majority of Zimbabweans live, there is very little access to online information.

The country has only one internet gateway through TelOne, and the Ministry of ICTs aims to increase bandwidth to the internet gateway by 40% by 15 July 2009. Increased bandwidth will greatly improve access to online information for users. Currently, a Zimbabwean online experience is expensive and frustratingly slow due to dial-up connectivity that has deteriorated as a result of vandalism of the telecommunications infrastructure. It is very difficult to access certain sites due to the narrow bandwidth. A recent study conducted by the OpenNet Initiative (ONI)[19] reports that "despite the country's highly repressive regime, ONI found no evidence of website [filtering] in Zimbabwe." The report continues to say that "[although] the ZANU-PF regime is very repressive, this is not an unexpected finding. Internet use in Zimbabwe is generally limited to email rather than web browsing. As a result, Zimbabwe's main efforts toward control of the internet are email focused. A large-scale internet filtration system in all likelihood does not hold much value to the Zimbabwean government relative to the price of its implementation."

Another topical policy and legislative issue is the independence of the regulator. Lydon Nkomo argues that "the independence of any public regulatory utility body is a necessary *sine qua non* for the success of the utility sector it governs."[20] Several provisions in the Postal and Telecommunications Act authorise the minister to interfere with the decisions or actions taken by the Postal and Telecommunication Authority of Zimbabwe (PORTAZ) board. During the validation workshop on the draft ICT Bill, stakeholders discussed ways to ensure the independence and accountability of the proposed single regulatory body.

10 Mukaratirwa, J. M. (2008) op. cit.

11 Bill Watch, email communication 17 June 2009, op. cit.

12 MISA-Zimbabwe (2008) Statement on proposed ICT Bill. www.misa.org/mediarelease/2008archieve/proposedictbill.html

13 Reporters Without Borders (2007) Zimbabwe Annual Report 2007. www.rsf.org/article.php3?id_article=20744&Valider=OK

14 This is a different Ministry to the Ministry of ICTs, frequently resulting in turf wars.

15 Reporters Without Borders (2004) Zimbabwe Annual Report 2004. www.rsf.org/en-rapport49-id_rubrique416-Zimbabwe.html

16 Eyre, B. (2001) *Playing with Fire: Fear and Self-Censorship in Zimbabwean Music*, Freemuse, Copenhagen. www.freemuse.org/sw1252.asp

17 Wines, M. (2007) Economic free fall in Zimbabwe, *International Herald Tribune*, 6 February. www.iht.com/articles/2007/02/06/news/zim.php?page=1

18 Charlesworth, A. (2007) Global online censorship rising fast, *vnunet.com*, 18 May. www.v3.co.uk/vnunet/news/2190232/online-censorship-rising-fast

19 OpenNet Initiative (2007) Zimbabwe country report. opennet.net/research/profiles/zimbabwe

20 Nkomo, L. (2008) Does the Current Regulatory Framework Support Regulatory Independence in Zimbabwe? Article published by the Association of Africa Communication Lawyers distributed by email (aaclcoordinator@gmail.com).

Another pending issue is devolving the government's stake in the ICT sector. Calls have been made for government to significantly reduce its equity or completely exit as a player from the ICT industry in order to create a level playing field amongst all ICT operators.[21] Nkomo says, "[W]e now expect central government to loosen its grip on its seriously undercapitalized businesses and allow fresh capital to resuscitate them."[22] Currently, TelOne, NetOne and Powertel are institutions in the telecommunication industry receiving government funding. However, these institutions all perform similar work, and there is a need to remove this duplication of function and effort.

New trends

There is general optimism regarding the role and importance of ICTs for development and their role in alleviating poverty. The GNU has realised the need to improve infrastructure and increase bandwidth to facilitate access to online information. The emerging trend in the ICT arena is a review of the ICT Policy[23] and the tabling of the draft ICT Bill before parliament. As a result there is a need for civil society organisations to understand what is in the current ICT Policy so they can meaningfully engage in the review process and also make inputs into the draft ICT Bill.

The political climate is conducive to these kinds of interactions. A recent report by CAJ News says that despite the tough times Zimbabweans have gone through, there is a spirit of optimism, positive attitude and sense of humour dubbed the "Zim Spirit" within the ICT sector.[24] There are also a number of investment opportunities in the sector given that Zimbabwe is on its way to a rapid economic recovery and is expected to overtake many of its neighbours in a very short period. The new political dispensation, the new approach to doing government business, the use of several currencies and the flow of funds into the country has led to a slow but sure resuscitation and the zeal to get Zimbabwe working again. Change is taking place at the individual, family, community and national level and affordable and appropriate access to online information can greatly facilitate and promote this change process.

Action steps

It is essential to undertake activities that facilitate transparency and inclusion in the ICT Policy and ICT Bill review processes. As we undertake these activities, it is important to work with national and regional experts. The activities should include:

- Holding discussion forums where ICT policy, regulatory and legislative issues are discussed. A special focus should be on removing those clauses that infringe on civil liberties. Discussions should highlight the gender impact on access to information, and get various critical groups involved in the policy and legislative reform process. These groups should include civil society groups, academia, media practitioners, parliamentarians and the general public, especially those living in rural areas.
- Visiting the ICT Ministry and making the positions and outcomes of the above discussion forums known to them.
- Publishing discussion papers in the local press.
- Running a radio discussion or television programme using local languages to bring issues to the general public and solicit feedback in the form of phone-ins or using short message service (SMS).
- Holding an ICT policy and advocacy workshop for civil society organisations and other interested players to build capacity. ■

21 Nkomo, L. (2008) op. cit.

22 Ibid.

23 Although the ICT Policy was recently passed, there have been rapid technological changes that need to be taken into consideration. In addition, the drafting of the converged ICT Bill must have prompted the need for a revision of the ICT Policy.

24 CAJ News (2009) Zim ICT sector's prospects bright, *Sunday Mail*, 21-27 June. www.herald.co.zw

GLOBAL INFORMATION SOCIETY WATCH 2009

GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels
- **Encouraging** critical debate
- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy.* It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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