GLOBAL INFORMATION SOCIETY WATCH 2009

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

Global Information Society Watch 2009

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

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

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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

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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