



United States Mission to the OSCE

Regulation inherently threatens liberty, so beware

As delivered by Chadwick R. Gore of the United States
Commission on Security and Cooperation in Europe
Supplemental Human Dimension Meeting on Freedom of the Media:
Protection of Journalists and Access to Information
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Thank you, Mr. Haraszti, for holding this event. I think we have covered a lot of ground and I think that for the most part that it has been very constructive.

First I would like to remind everybody about the late recent French philosopher Jean François Revel and his book *The Totalitarian Temptation*, in which he points out that when times get difficult, governments – even democracies – have a temptation to become totalitarian or to move in that direction. That is something that we must resist.

Both yesterday and today we have discussed a variety of matters concerning freedom of the media. For a moment, let's remind ourselves that freedom of the media exists to allow the expansion of a fundamental human liberty, the freedom of speech. Enshrined in the U.S. Bill of Rights as Freedom of the Press, this includes oral, written and electronic expressions of thought.

We must also face the fact that some new ideas can be perceived as potentially dangerous. The bad ones are obvious. However, good ideas still can be threatening, because they can bring about change - and with any change, someone's position, whether physical or intellectual, must adapt.

The West has concluded some time ago that the primary arena to sort out these ideas is in the marketplace. They have their own marketplace and it costs us nothing to shop there.

Much of what has been discussed here is based on an assumption that there are problems in that marketplace that need control.

Some speakers have assumed that we all agree that State management of the marketplace of ideas is rejected by all of us as democracies in the OSCE. I suggest we all look at the States sitting around this table – or not sitting, in some cases. An honest appraisal of our members will lead, sadly, to a different conclusion. Not only do some of our States control speech and media partly, but others do so in their entirety.

Likewise the call for self-regulation by members of the news industry. Non-government business organizations historically try to be out front ahead of government regulation to put controls in place before they become law.

Thus, in effect, is there really a difference other than the appearance of choice and of independence?

The United States does not pretend to have attained perfection in this area, but we do strive to do so.

However, we are skeptical of State or implied control of speech, including hate speech. So I would like to express a friendly warning: to blithely travel along many of the paths advocated here will inevitably lead to a smaller marketplace of ideas and the slow strangulation of individual liberties, especially speech.

Speech is the warning bell of alarm. Without it, we will not be able to react in time to future or even current threats. Lost liberty is difficult, if not impossible, to regain. I think our speaker in our last session country-by-country laid out exactly what the situation is in some of the States that have yet to regain those lost liberties.

We should approach any system of regulation with great care.

We do have a few recommendations that I will submit for distribution with this statement [see below] so that I can remain refreshingly brief.

Thank you all.

Recommendations on Access to Information and Protection of Journalists

- Participating States should enact and enforce laws such as Freedom of Information Acts that help ensure routine public access to government records, sources, press conferences and judicial trials.
- Participating States should enact and enforce laws or regulations that promote parliamentary transparency such as granting timely public access to draft and enacted laws and regulations, legislative voting records and key government decisions.
- Participating States should remove administrative obstacles that hinder journalists from doing their job. These include but are not limited to:
 - Libel laws that criminalize criticism of the government or government officials;
 - Restrictive and expensive accreditation requirements;
 - Travel bans prohibiting journalists from traveling internally or abroad; and
 - High taxes on ink, paper and media equipment.
- Participating States should also ensure that journalists who are arrested, detained and charged have timely access to competent legal counsel and are immediately informed of the particular charges filed against them.
- Participating States should ensure the timely, thorough and independent investigation and, if necessary, prosecution of those who harass, intimidate or attack journalists.