

Media freedom and the Internet: a communication rights perspective

Steve Buckley, CRIS Campaign

Introduction

The campaign on Communication Rights in the Information Society, the CRIS Campaign, was established by a loose coalition of civil society organizations in the context of the World Summit on the Information Society (WSIS). The first phase of WSIS concluded in Geneva in December 2003 and the second will conclude in Tunis in 2005.

The aim of the CRIS campaign has been to broaden and deepen the debate on the information society, to promote democratization of access to communications and to strengthen commitments to communications in the service of sustainable development.

It was formally launched at the second World Social Forum in Porto Alegre in 2001.

In many respects the CRIS campaign has already succeeded in its objectives, at least partially. There is no doubt that during the Geneva phase governments moved from a rather technocratic starting point to dealing with much wider issues and a more explicit commitment to human rights principles and sustainable development priorities.

I will endeavour to set out here the communication rights perspective, what we have learnt and how this can bear on the question of media freedom and the Internet.

First I want to trace back the genealogy of communication rights in communications theory and communications policy. Then I will look at whether it can really help us in our understanding of human rights and freedoms. Finally I want to examine the power of the demand for communication rights as a focus for social change and grassroots activism.

Communication rights – a genealogy

The communications theory debate goes back at least to the 1950s after the emergence of electronic communications as a decisive factor in the second world war and the rise of the mass media, radio and, later, television. The wartime paradigm was instrumentalist, drawing on signals theory and concerned with signals processing and information flow.

The political problematic was control versus the free flow of information.

Command based political systems needed to control information to ensure effective lines of command and control over their economies. This was reflected in the communications policy of the command economy governments. Market economy governments supported the free flow of information seeing it as intrinsically linked to freedom of the market.

In the 60s a new structuralist paradigm emerged built on cultural studies and semiotics, and concerned with the relation between the sign and the signified. This approach argued that meaning is revealed by a two way communication process through which mutual understanding is achieved. It implied the human need for communication as dialogue creating shared meaning and identity. The problematic lay in unequal power relations creating dislocation and dissonance at the level of formation of meaning.

It was in this latter context that the concept of the right to communicate emerged. It argued that freedom of expression was not necessarily delivered by freedom of the market. Linked to this was a call for a more equitable flow of information. Unequal power relations were seen as both producing and being maintained by asymmetric information flows. Today the same problem is widely recognized. It is called “the digital divide” but in reality it is both a communications divide and an economic divide, aspects which are mutually reinforcing.

The right to communicate was a radical concept at the time it emerged but was later hijacked by the cold war divisions of the old paradigm. The debate came to a head around proposals in UNESCO for a “new world information and communication order” (NWICO). Proposals for a more equitable flow of information were used as a pretext for command economy states to reassert control over information. Market economy states reacted by rejecting engagement in the issue. The US and the UK pulled out of UNESCO. The real interests of people in developing countries were marginalized. Nothing was done to deal with the problem.

The challenge at that time for developing countries worldwide was “to assimilate but not to be assimilated”. Today the challenge is more brutally posed – to gain a foothold in the global information economy or to remain in poverty and economic marginalisation. The danger is not simply, or even primarily, one confronting nation states, although that was the discourse that predominated during the earlier debate on NWICO. The reality of economic marginalisation most clearly impacts on the poorest rural communities where electricity is scarce or non-existent and modern communications are unaffordable.

In the run up to WSIS both the ITU and the UN Secretary General re-asserted the need for a “right to communicate” and several governments tabled amendments to embed those words in the Declaration of Principles. But the debate on the right to communicate was difficult. Civil society itself struggled to articulate the concept in ways that could protect existing rights. The best that governments could accept was a statement that: *“communication is a fundamental social process, a basic human need and the foundation of all social organization.”*ⁱ No doubt this is true, but does it tell us anything new?

Communication rights and human rights

The potential power in the concept of communication rights is twofold. First it offers new ways of understanding fundamental human rights and freedoms. Secondly the demand for “the right to communicate” has emerged increasingly as a rallying cry of marginalised communities worldwide and of civil society organizations concerned as much by the rise of private media concentrations and new unaccountable multinational communications gatekeepers as by the more familiar problem of authoritarian governments.

To address the relation between communication rights and the human rights system generally it is essential to look first of all at the right to freedom of expression.

The right to freedom of expression is set out in Article 19 of the Universal Declaration Human Rights. It is incorporated into most national constitutions and the three regional human rights instruments although not always in such clear and strong language as the Universal Declaration. It is also understood to be subject to certain restrictions which are set out in particular in the International Covenant on Civil and Political Rights.

The right to freedom of opinion and expression, as it is formulated in the Universal Declaration of Human Rights, includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

The restrictions on this right, set out in the International Covenant on Civil and Political Rights, a treaty signed by 151 states, and refined in jurisprudence, are strictly limited to those which are provided by law and are necessary for respect of the rights or reputations of others, for the protection of national security or of public order or of public health or morals.

The juxtaposition, in human rights law, of the right to freedom of expression as set out in Article 19 of the Universal Declaration, against this limited regime of restrictions tends to set the parameters of much of the public discourse on information and communication rights on the Internet including the debates on hate speech, pornography and national security.

Communication rights however, can provide us with a more holistic understanding of the relation between human communication needs and fundamental human rights. The right to freedom of opinion and expression is a necessary precondition for communication rights but when we speak of communication rights we are also concerned, among others, with the right to privacy, the right to freedom of thought, the right to education, the rights to freedom of movement and to freedom of association, and the right to participation in cultural life.

These rights are associated closely with and very often necessary for the realization of the right to freedom of expression. When we speak of communication rights we face a complex set of issues but we also begin to better understand their inter-relatedness.

In this perspective we see the limits to freedom of expression which result from lack of access to basic education and literacy. We see the defence of cultural diversity in the face of cultural dominance as reinforcing the need for a plurality of media and limits to media concentration. We see the defence of privacy rights in the face of the surveillance state mirrored in the demand for access to information in the face of state and corporate secrecy. We see the public interest in a global commons of knowledge and information confronted by the corporate defence of information as property through copyright, patents and trademarks.

All of these issues pervade the wider debate about media freedom and the Internet. In order to understand the challenges they pose we have to take a step back and be more explicit about the sort of information society we really want to see. In many respects this is an aspect of the World Summit on the Information Society which can be considered a successful outcome. Given the very diverse actors involved there was a surprisingly high degree of consensus around the vision set out in the WSIS Declaration of Principles.

It proposed: *“a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential.”* The vision set out is based on human rights, sustainable development, democracy and the rule of law.ⁱⁱ

Where the CRIS campaign and many other civil society actors part company with the governments in the World Summit on the Information Society is not so much on the vision, although there are fault-lines in the detail, but in the Plan of Action which retains a technocratic approach focused on infrastructure and technical products and services.

Communication rights and grassroots activism

Finally, I want to turn to the growing demand for communication rights as a focus for grassroots activism and practical initiatives. There are many barriers to access and their removal requires practical actions not principles and words alone. Poor people, in particular, face multiple barriers to communication, to their right to freedom of expression and access to the media which are directly associated with the conditions of poverty. Economic obstacles include the costs of equipment and connection charges; social obstacles include gender, language, education and literacy; logistical obstacles include transport, physical access and electricity; political obstacles include repression and lack of will of many states to allow democratic expression and to give voice to the most marginalised groups.ⁱⁱⁱ

Increasingly we are seeing the demand for communication rights not being articulated in isolation but as a fundamental political demand of social groups facing multiple forms of marginalisation and disadvantage. Remember we live in an age where to gain the attention of the mainstream media people are prepared to risk their right to liberty or to relinquish their right to life, such is the asymmetry of the modern communications environment.

At the same time, not only in Europe, but all over the world, grassroots organizations are building alternative models of communication. The Internet has been a factor in these developments but for the great majority of people the Internet, on its own, is of limited use. Most people do not have Internet access at home and traditional media - print, radio and television - remain the most immediate and accessible forms of communication.

The solution to this lack of access to the Internet is not simply to roll out the infrastructure. The rate of increase in electricity supply, a basic technical prerequisite, is slower than the rate of population growth and may decline in the face of rising energy costs. Connectivity costs, the price of equipment, literacy all remain limiting factors. Instead we have to dispel the notion that the network is the Internet. The Internet is just one of a set of overlapping networks including traditional media, telephone and face-to-face communication. To address the question of access to networks and to information we have to place the Internet in the context of the wider communications environment. Practical initiatives such as community

media centers combining access to the Internet with community radio and television provide more realistic solutions to ensuring access by all to networks and to information.

Conclusions and recommendations

In summary a communication rights perspective not only helps to better understand the inter-relatedness of communications, freedom of expression and other human rights but provides a focus for raising awareness of the barriers to access to communications. We need to think about the Internet in the context of the communications environment as a whole including the role of the traditional media, radio and television. In doing so, much more attention needs to be given to understand the relationship between poverty, social and economic exclusion and access to communication networks and information.

A number of conclusions and recommendations emerge from such an analysis:

1. The market driven development of the infrastructure for access to the Internet is characterized by gross asymmetry in access to information and in information flow resulting from but also reinforcing existing social and economic inequality. In an increasingly information-based economy a more equitable access to information is essential if global social and economic inequalities are to be reduced rather than maintained or increased. This must not become a pretext for restrictions on the freedom of expression or the free flow of information but requires positive action to promote inclusive access to communication.
2. Universal access to communication services and networks is essential for the realisation of communication rights but will not be delivered, within the foreseeable future, by household access to the Internet alone. Access for all to the global communications environment requires investment in public access centers and in traditional communication technologies such as community radio and television. Public investment in communications facilities is one approach. Conditionalities or levies placed upon private telecommunications providers is another. Community-based initiatives should be encouraged and supported including legal and/or regulatory reforms where there are legislative or regulatory barriers to establishment.
3. Literacy is an essential pre-requisite to access and use of the Internet. Free and universal access to basic education must be ensured and supported. Media literacy and practical communications skills have become an essential component of a basic education and are necessary for the effective realization of communication rights.

4. The Internet is not intrinsically a guarantor of freedom of opinion and expression. States and new corporate gatekeepers have increasingly developed policies and technologies of control which go beyond the legitimate and include the arbitrary and the indiscriminate. Freedom of expression on the Internet must be protected, as elsewhere, by the rule of law rather than relying on self-regulation or codes of conduct. There must be no prior censorship, arbitrary control or unjustified constraints on the content, transmissions and dissemination of information. Pluralism of the sources of information and the media must be safeguarded and promoted including diversity in systems for information retrieval.

5. The right to privacy faces new challenges and must be protected. Every person must have the right to decide freely whether and in what manner he or she wishes to receive information or to communicate with others including the right to communicate anonymously. The collection, retention, processing, use and disclosure of personal data, no matter by whom, should remain under the control of the person concerned. Powers of the private sector and of governments to access personal data risk abuse of privacy and must be kept to a legally acceptable minimum and subject to a framework of public accountability.

6. The Internet provides enormous scope for the sharing and development of the common pool of human knowledge but this potential is increasingly held back by the reinforcement of private information property regimes in the Internet environment. There is a need for fundamental review of the international regulatory instruments governing copyright, patents and trademarks to incentivise development of the global knowledge commons, to ensure the right of access to information and the right to creative reuse and to adaptation of information and to accelerate the social and economic benefits of freely available information.

ⁱ World Summit on the Information Society, Declaration of Principles, Geneva, 12 December 2003

ⁱⁱ *ibid.*

ⁱⁱⁱ From statement of the Bellagio symposium on media, freedom and poverty, 5 October 2003