

# ■ Pluralism and Internet Governance

13th Central Asia Media Conference  
Dushanbe, Tajikistan 29-30 November 2011



The Representative on  
Freedom of the Media

The views expressed by the contributing authors in this publication are their own and do not necessarily reflect those of the OSCE Representative on Freedom of the Media.

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## Foreword

### **Adilia Daminova<sup>1</sup> and Ana Karlsreiter<sup>2</sup>**

Internet governance was the focus of the 13th Central Asia Media Conference, which took place in Dushanbe on 29-30 November 2011, marking yet another milestone for these annual conferences which address timely issues facing journalists throughout the region.

The story of the Internet is the story of our age. Its development and reach, across the region and worldwide, has changed the way we live, communicate and, perhaps, ultimately think about the biggest issues of the day. Today Central Asia is witnessing the ever increasing role of online media in lives of ordinary people, as well as its effects on society. New media brings with it the promise of transnational understanding and civil society development at an unprecedented pace.

This conference addressed the promise and challenges facing Central Asia in its online development. It looked at the countries' development and their views toward online freedom and regulation.

Guest speakers and participants alike gave their views on the current status of freedom of expression online and insights into what the future holds.

Participants had the opportunity to consider and discuss the extent of Internet regulation in the region by examining the findings of the first OSCE regionwide study of Internet regulation, which was commissioned by the Representative's Office.

This book contains papers from the international and regional experts who spoke at the conference, as well as additional matters, including the agenda and conference declaration.

We would like to thank the governments of Germany, Netherlands, Norway and the United States for financially supporting this conference and publication.

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<sup>1</sup> Daminova is a project officer for the Representative on Freedom of the Media.

<sup>2</sup> Karlsreiter is a senior adviser to the Representative on Freedom of the Media.



## Dushanbe Declaration

The 13th Central Asia Media Conference was organized by the Office of the OSCE Representative on Freedom of the Media with the assistance of the OSCE field offices in Central Asia, and was held on 29-30 November 2011 in Dushanbe, Tajikistan. Throughout the years the Central Asia Media Conference has become a unique forum to discuss media issues and co-operation among journalists of states in Central Asia.

The two-day conference hosted more than 150 government officials, parliamentarians, journalists, media experts and civil society representatives from Central Asia.

The focus of the conference was media pluralism and Internet governance. Participants discussed the role of the Internet in promoting pluralism in the OSCE region and Central Asia in particular, analyzed international standards and national practices in this field, exchanged experiences, as well as shared the latest developments in the field of media freedom in Central Asia.

The Conference:

1. Welcomes the fact that representatives of the media, civil society and government representatives from Central Asia took part in the conference, acknowledging the importance of regional as well as multi-stakeholder co-operation in the field of media.
2. Acknowledges that the use of the Internet by media organizations and individuals, including citizen journalists, blogging activities, or the use of social media enjoy the protection of basic human rights and fundamental freedoms, such as the right to freedom of expression.
3. Stresses the importance of Internet literacy to strengthen independent decision-making regarding content by the users, instead of governments' involvement in Internet blocking and filtering.
4. Calls on governments to put in place all necessary legislative and technological parameters to facilitate the freer and wider dissemination of information, including through modern information and communication technologies.

5. Urges governments to support technical development to guarantee access to the Internet for every citizen unhindered by state interventions.
6. Urges the governments to ensure that the Internet remains an open and public forum for freedom of expression and opinion in the countries of Central Asia, as guaranteed by OSCE commitments and enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil Political Rights and the European Convention on Human Rights.
7. Highlights that access to the Internet and access to online information should be recognized by national legislation in conformity with international standards and regarded as inherent to the right to free information and expression.
8. Emphasizes that the Internet offers unique opportunities to foster the free flow of information, also across borders, which is a basic OSCE commitment.
9. Urges governments to avoid general blocking of the Internet as a means of interference.
10. Stresses that the right to freedom of expression applies not only to traditional means of communication, but also including new media on the Internet. Any limitations or restrictions to this right can only be justified if, for a legitimate aim and in the public interest, necessary in a democratic society, prescribed by law and proportionate.
11. Calls on the governments to use good offices and due legal practice in media regulation, to avoid vague legal provisions, and to ensure that implementation of laws and practices are transparent and open to appeal.
12. Urges governments to foster pluralism and refrain from harassment and monopolization of media.
13. Emphasizes that media pluralism is a key value and one of the most important conditions for the existence of a democratic society in which Internet plays a crucial role.

14. Calls on the governments to support the development of affordable and high-quality Internet connection and to create favorable conditions for healthy competition among Internet Service Providers in order to provide all citizens, including those living in rural and remote areas, with access to the Internet.
15. Stresses that ISPs should not be subjected to governmental procedures, except for those that are applicable to any other businesses. Furthermore, ISPs should not be liable for content generated by others, which is disseminated by their service as long as they are not responsible for that content (“*a mere conduit*”) or refuse to obey a court order to remove illegal content.
16. Calls on governments to limit the duration and scope of traffic data storage and minimise the cost burden on ISPs if obliged to store such data - which should only be for narrowly tailored, justifiable purposes.
17. Emphasizes that network neutrality should be respected, so online information and traffic are treated equally regardless of the device, content, author, origin or destination of information.
18. Calls on the governments to ensure that Internet service providers respect the principle of network neutrality and make transparent their data traffic management policies. Non-discriminatory access to networks and services should be guaranteed.
19. Urges the governments to consult with and involve civil society in Internet governance policy development, legislation drafting and digital switchover process. Governments should use digital switchover to foster pluralism in broadcast media.



# Opening Statement

## Dunja Mijatović<sup>1</sup>

Excellencies, Ladies and Gentlemen, Colleagues and Friends,

I am happy to return to Tajikistan on the occasion of our 13th Central Asia Media Conference.

My first visit to Tajikistan was a very successful one. I met with Foreign Minister Hamrokhon Zarifi, Interior Minister Abdurahim Kahorov, members of the Parliament Olim Salimzoda and Akramsho Felaliev, the Head of the Committee on Television and Radio under the Government of Tajikistan Asadullo Rahmonov, and the Head of Tajik Communication Service Beg Zuhurov, with whom I discussed media issues in Tajikistan and future co-operation with my Office.

Our Annual Conferences have become a great tradition as a unique forum bringing journalists, authorities, academia, NGOs from Central Asia together. I would like to thank the government of Tajikistan for generously hosting our conference.

I am pleased to welcome more than 100 journalists, representatives of non-governmental media organizations, parliamentarians, government officials and academics from Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan, as well as our international experts.

I would also like to thank the authorities of Kazakhstan, Kyrgyzstan, and Turkmenistan for ensuring the participation of their delegations in the conference.

I would like to express my appreciation for the excellent work carried out by OSCE field Offices in Ashgabat, Bishkek, Astana and Almaty and Dushanbe, as well as our international partners, because without their tremendous support and assistance this conference would not have been possible.

My thanks go to the governments of the Germany, the Netherlands, Norway and the United States, whose generous financial support to this conference cannot be overestimated and deserves a special mention.

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<sup>1</sup> Mijatović is the OSCE Representative on Freedom of the Media.

Every year we have managed to choose a very timely and important topic. This year we will discuss pluralism and Internet governance, as well as recent successes and challenges in the area of media freedom.

We picked this topic because, in the current digital age, people can access and consume whatever media they want, wherever and whenever through methods never before believed possible. The emergence of new media has completely changed the way people communicate and share and receive information.

Today Central Asia is witnessing the ever increasing role of online media in society.

At the same time, Internet access remains restricted. Websites are blocked and filtered and subject to unwarranted laws and regulations. Online journalists are harassed and persecuted. Equally problematic is an insufficient technical infrastructure that puts the Internet out of reach of many people.

Media pluralism, which is the expression of a multitude of opinions, is a crucial component of and a prerequisite for media freedom. Governments must understand that providing their citizens with a variety of views can only strengthen their democracies. Well-informed people make well-informed decisions, which are the indispensable foundation that democracies can build upon. Governments must ensure pluralism in traditional and online media.

However, to date, the level of media freedom and pluralism throughout the OSCE region are significantly different. Although it is true that today more information is available and more easily accessible, new laws and other restrictive measures in many countries hinder the opportunities that new media can offer. Let me stress that the role of the governments is to support Internet literacy instead of blocking resources. Educated Internet users can make educated independent choices of what to surf, read or learn on the Internet.

Also, attempts to control the Internet are growing everywhere. We are witnessing more and more countries adopting laws aimed at regulating or controlling the web and we also see more and more governments trying to put the topic of web regulation on the international agenda.

Let me be clear here. Governments do have a role to play when it comes to Internet content and to protecting children, fighting racism, inciting hatred and other cybercrimes. The question is not whether governments should or should

not regulate the Internet. The questions are how, what and to what extent content should be regulated? And, perhaps most importantly, to what effect? Has governmental regulation proved to be efficient and, if not, are there alternative free speech-friendly methods that would be more efficient?

With new technologies radically reshaping the media landscape, traditional regulatory assumptions have been called into question and, in many cases, old rules have become counterproductive. These new challenges underline the need to discuss how new technologies necessitate new approaches to safeguarding OSCE commitments regarding media freedom.

Today, during the first day of the conference, international and national experts will speak about their experiences in Internet governance issues.

They include David Goldberg, an academic in media law area, who will discuss how the Internet fits into the media law framework and will talk about possible benefits and likely pitfalls of Internet regulation.

Dainius Radzevičius, the Chairperson of the Lithuanian Union of the Journalists will talk about how Internet serves not only as a technical tool, but unlimited opportunity not only for journalists, but all users, including state authorities.

Erik Albrecht, Deutsche Welle AKADEMIE's Regional Co-ordinator for Projects in Central Asia, will discuss the affect of online media on traditional media.

And Roland Bless, the Principle Adviser in my Office, will present a report commissioned by my Office on "Freedom of Expression on the Internet," a study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States.

You will have a great opportunity to learn about and discuss important aspects of free expression on the Internet, key indicators of Internet pluralism, as well as compare established international practices of Internet governance in the OSCE region with practices in Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan.

On the second day we will hear from national experts. They will focus on the aspects of Internet freedom and free media in their respective countries. They will discuss opportunities for and threats to the Internet, as well as problems and obstacles toward achieving a balanced regulatory environment for the media.

National speakers will also reflect on the developments in media area in their countries since the last conference a year ago.

I hope that our deliberations will prove to be a valuable contribution to the important question of how new technologies necessitate new approaches to safeguarding OSCE commitments regarding media freedom.

I also hope that at the end of the conference we will adopt a declaration on these important subjects which I will share with the authorities of the countries here represented, so it can be then used by all of us as a guide and reference in our everyday work.

I wish you all an interesting and fruitful conference.





# Welcoming Remarks

## Ivar Vikki<sup>1</sup>

First Deputy Minister of Foreign Affairs Mahmudjon Sobirov, Representative Mijatović, Excellencies, ladies and gentlemen:

On behalf of the OSCE Office in Tajikistan, welcome to Dushanbe and to this, the 13th Central Asia Media Conference, which is organized by the Office of the OSCE Representative on Freedom of the Media, headed by Ms. Dunja Mijatović, in co-operation with our Office and with the assistance of the other OSCE field operations in the region.

This is the second time in two years and the fourth time in the 13-year history of the Central Asia Media Conference, that Tajikistan offers its hospitality as host to its neighbors and the OSCE Representative on Freedom of the Media. We express our special gratitude to the Ministry of Foreign Affairs for its support to this important forum.

Over the history of this conference, the topics that participants have discussed and the declarations that they have adopted have reflected the ever-changing media landscape. Some elements, however, have remained constant:

- The participants at this conference have always supported using the maximum opportunities that media and media technology provide,
- They have always supported keeping media open and accessible to all.

As our understanding of media has broadened, so has our understanding of who can be a journalist. Think about the mobile phones that we all carry with us. This little thing here can do what we once needed a TV or radio studio to do. You can use it to call your family to tell them you have arrived here at the conference in beautiful Dushanbe – and you can also use it to reach out to a potential audience of 2.4 billion people.

The participants at the Central Asian Media Conference are not alone in trying to come to terms with the enormous importance of what that means. Technology

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<sup>1</sup> Ambassador Vikki is the Head of the OSCE Office in Tajikistan.

has always changed the way we communicate – and it always will. There is no way to turn back time. We are in the digital age. We are simultaneously consumers and producers of information. We are proof of the vision of the signatories of the Helsinki Final Act, who made it “their aim to facilitate the freer and wider dissemination of information of all kinds.”

Tajikistan has embraced the new communications technology and has been able to benefit greatly from it. Tajikistan opened its market to a large number of Internet and cell phone service providers. Consumer choices are great. Competition has kept prices relatively low. Innovations such as 3G and mobile Internet were available here earlier than in many Western countries. Ten years ago, only one person in 2,000 used the Internet in Tajikistan. Today, one of every 12 people regularly uses the Internet. That is 231 times more than 10 years ago.

There are even more dramatic changes in the mobile telecommunications sector: Ten years ago, there were 1,160 cell phone subscribers in Tajikistan. Today, there are over 6 million.

These developments in technology and communications have created thousands of jobs. They have helped the people of Tajikistan improve their lives, make informed choices and open new opportunities for themselves. They have helped hundreds of thousands of people throughout the world learn more about Tajikistan and its people.

This little phone that we use every day has changed us forever. We literally hold the world in the palm of our hands. This little instrument is the ultimate leveller, the tool that makes media work for everyone’s benefit. It requires care and protection by visionaries who understand its history and are fearless about its future.

I look forward to visionary discussions.

## Welcoming Remarks

### Mahmudjon Sobirov<sup>1</sup>

Dear Ms. Dunja Mijatović, Dear Ladies and Gentlemen,

First of all I would like, on behalf of the Government of the Republic of Tajikistan, to welcome you, dear Ms. Mijatović, as the OSCE Representative on Freedom of the Media, as well as all participants of today's conference.

It is a great pleasure for me to say that co-operation of the Government of the Republic of Tajikistan and the OSCE in the area of strengthening and support of independent media is at a high level. It should be noted that, as a result of continuous co-operation between the Government of the Republic of Tajikistan and OSCE, various measures on the establishment and further development of the media in our republic are undertaken and realized.

I would also like to mention that the creation of relevant conditions to ensure freedom of the media, in particular favorable conditions for free access to information for every member of our society, is one of the key principles of social and economic policy of our country. In this connection, the Government of Tajikistan determined as its priority task to ensure undertaking and realizing relevant measures with regard to freedom of the media. In addition to existing laws legally recognizing freedom of the media, in 2005 and 2009 the President of the Republic of Tajikistan signed two other important documents facilitating the increase of the role of free media in the development of our society and creating additional conditions for access to information for citizens of the country. It should be underlined that within the framework of its obligations as to strengthening democratic principles, the Government of the Republic of Tajikistan intends to continue making all reasonable endeavors for development and support of independent media.

Dear friends,

In our opinion, today's conference is a unique platform where we may share professional skills and study existing positive experience. Let me express my

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<sup>1</sup> Sobirov is First Deputy Minister of Foreign Affairs of Tajikistan.

confidence that in the course of discussions the participants will also make their proposals concerning further improvement of information access mechanisms.

And at the end of my speech, I would like to express my confidence that this Conference will become an additional incentive for strengthening the co-operation of our countries with OSCE in the area of media development and will make its contribution in the further establishment of free media in our region.

Thank you.



**The role of the Internet  
in promoting pluralism:  
International standards  
and practices**





# The Internet: evolving policy, principles, law and self-regulation at the international and national levels

**David Goldberg<sup>1</sup>**

The Internet has become the public arena for our time, a lever of economic development and an instrument for political liberty and emancipation. Freedom of opinion, expression, information, assembly and association must be safeguarded on the Internet as elsewhere. Arbitrary or indiscriminate censorship or restrictions on access to the Internet are inconsistent with States' international obligations and are clearly unacceptable. Furthermore, they impede economic and social growth (G8, Deauville Final Communique, May 2011).

## **Section A**

### **Intergovernmental and transnational statements and activities**

The current year has seen a plethora of intergovernmental and transnational statements and activities regarding Internet governance and regulation. Noteworthy reports, statements and publication include:

#### **Special Rapporteurs Joint Declaration on Freedom of Expression and the Internet<sup>2</sup>**

Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression ('This report explores key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet')<sup>3</sup>

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1 Goldberg is Associate Research Fellow at the Centre for Socio-Legal Studies of the University of Oxford.

2 The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, <[http://www.ifex.org/international/2011/06/02/international\\_mechanisms\\_for\\_promoting\\_freedom\\_of\\_expression.pdf](http://www.ifex.org/international/2011/06/02/international_mechanisms_for_promoting_freedom_of_expression.pdf)> accessed 29 September 2011

3 Parts 3.4.5 and 6 of 2011 Annual Report <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/132/01/PDF/G1113201.pdf?OpenElement>> accessed 29 September 2011

Human Rights Committee New General Comment 34 on Article 19<sup>4</sup>

OECD Principles for Internet Policy Making<sup>5</sup>

UNESCO study Freedom of connection, freedom of expression: the changing legal and regulatory ecology shaping the Internet<sup>6</sup>

WTO Forum ('In less than a decade, there has been a ten-fold increase in the number of governments establishing obscure privacy and security rules, planning obligations on private companies to install surveillance tools into their IT infrastructure, or imposing onerous local data storage requirements - all measures that would have profound effects on the way the Internet operates; many of these measures also have a direct impact on electronic commerce')<sup>7</sup>

G8 Deauville Statement on the Internet (including the "eG8")<sup>8</sup>

EU at the 6th Internet Governance Forum<sup>9</sup>

Council of Europe at the 6th Internet Governance Forum<sup>10</sup>

Are these coalescing to produce a consensus set of principles and standards for the Internet as a communications platform/phenomenon?

Actually, on some levels, the debate is really "old wine in new bottles". The advocates for freedom of communication using the Internet are applying age-old principles to this newer platform, albeit it has some specific characteristics not shared by earlier platforms (non-electronic media; analogue over-the-air broadcasting etc).

4 Par 12 <<http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>> accessed 29 September 2011

5 <<http://www.oecd.org/dataoecd/40/21/48289796.pdf>> accessed 29 September 2011

6 <[http://portal.unesco.org/ci/en/ev.php-URL\\_ID=31418&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/ci/en/ev.php-URL_ID=31418&URL_DO=DO_TOPIC&URL_SECTION=201.html)> accessed 29 September 2011

7 'A New Trade Barrier: Blocking the Free Flow of Information' [https://docs.google.com/document/d/1\\_nlrZruaWCc0\\_7qK75TzMQ4uv-oEZSPRSolGkiUeuZA/edit?hl=en\\_GB&ndplr=1&pli=1#](https://docs.google.com/document/d/1_nlrZruaWCc0_7qK75TzMQ4uv-oEZSPRSolGkiUeuZA/edit?hl=en_GB&ndplr=1&pli=1#)

8 See <<http://www.g8.utoronto.ca/summit/2011deauville/2011-declaration-en.html#Internet>> accessed 1 October 2011; see also, <http://www.eg8forum.com/en/>> accessed 1 October 2011

9 <<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/605&format=HTML&aged=0&language=en&guiLanguage=en>> accessed 30 September 2011

10 <<http://www.coe.int/portal/web/coe-portal/Internet-governance-forum-2011?dynLink=true&layoutId=737&groupId=10226&fromArticleId=>>> accessed 30 September 2011 ; Human Rights come first – a 'constitutional moment' for Internet governance? <[http://www.coe.int/lportal/c/document\\_library/get\\_file?uuid=919b8827-1a04-4ee1-b52c-8eebbfbdcf&groupId=10227](http://www.coe.int/lportal/c/document_library/get_file?uuid=919b8827-1a04-4ee1-b52c-8eebbfbdcf&groupId=10227)> accessed 30 September 2011

However, the debate does seem to be becoming increasingly polarized between those, on the one hand, urging greater freedom to use the Internet and those, on the other, urging greater regulation of it and its users either by government, law or, indirectly, i.e., through intermediaries, such as Internet access providers.

As to the latter, for example, recently, EDRI/European Digital Rights published a report entitled, "The slide from self regulation to corporate censorship: The scale and significance of moves to entrust Internet intermediaries with a cornerstone of democracy – open electronic communications networks."

Self-regulation has traditionally been used in the Internet sector to permit companies in the fast-moving technology world to manage their networks efficiently in a way which gives flexible protection to their networks and protects consumers from problems like spam. Now, increasing coercion of Internet intermediaries to police and punish their own consumers is being implemented under the flag of "self-regulation" even though it is not regulation – it is policing – and it is not "self-" because it is their consumers and not themselves that are being policed.<sup>11</sup>

But, recent events demonstrate that overlaying all this is an increasing divide between networks and states over who governs the Internet. At the current session of the General Assembly, there is a draft resolution on an international code of conduct for information security and a call for international deliberations within the United Nations framework on such an international code, with the aim of achieving the earliest possible consensus on international norms and rules guiding the behaviour of States in the information space.<sup>12</sup> The covering letter states:

"Recent years have witnessed the considerable progress achieved in developing and applying the latest information and telecommunication technologies which could potentially be used for purposes that are inconsistent with the objectives of maintaining international stability and security. It is of great significance that the common challenges in the sphere of information security should be dealt with through international cooperation and in the spirit of mutual respect. To that end, China, Russia, Tajikistan and Uzbekistan have jointly elaborated, in the form of a potential General Assembly resolution, an international code of conduct for information security and call for international deliberations within the United

11 <[http://www.edri.org/files/EDRI\\_selfreg\\_final\\_20110124.pdf](http://www.edri.org/files/EDRI_selfreg_final_20110124.pdf)> accessed 19 September 2011

12 Letter, 20/09/2011 A/66/359 from China, Russia, Tajikistan and Uzbekistan to UN SG

Nations framework on such an international code, with the aim of achieving the earliest possible consensus on international norms and rules guiding the behaviour of States in the information space (see annex).”

Another very recent event has been the London Conference on Cyberspace, organized by the UK Foreign and Commonwealth Office (November 1 and 2, 2011). The UK Foreign Minister proposed<sup>13</sup> ‘the following principles for governing behaviour in cyberspace, and called for a more focussed and inclusive dialogue between all those with a stake in the Internet – civil society and industry as well as governments - on how we might implement them:

The need for governments to act proportionately in cyberspace and in accordance with national and international law;

The need for everyone to have the ability – in terms of skills, technology, confidence and opportunity – to access cyberspace;

The need for users of cyberspace to show tolerance and respect for diversity of language, culture and ideas;

Ensuring that cyberspace remains open to innovation and the free flow of ideas, information and expression;

The need to respect individual rights of privacy and to provide proper protection to intellectual property;

The need for us all to work collectively to tackle the threat from criminals acting online; and

The promotion of a competitive environment which ensures a fair return on investment in network, services and content.

Another new perspective (as noted) is the paradigm shift from seeing, on the one hand, the Internet as a contested site for freedom of expression and, on the other, seeing the Internet and data circulation in terms of the free flow of information as a global trade paradigm.<sup>14</sup>

13 <<http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=685663282>> accessed 25 November 2011

14 ‘Recognition of Internet Freedom as a Trade Issue Growing’ <[http://www.huffingtonpost.com/edward-j-black/Internet-censorship\\_b\\_975658.html](http://www.huffingtonpost.com/edward-j-black/Internet-censorship_b_975658.html)> accessed 24 September 2011

The weight and force of the statements can neither be ignored nor gainsaid. As Wolfgang Kleinwachter states:

You don't need the power of prophecy to forecast that Internet Governance will become a main political battlefield in the 2010s.<sup>15</sup>

In fact, it has been asserted that, at this point in time:

Nothing less than the fate of the future evolution of the Internet is at stake, and three camps have now staked out their positions and strategy... China and Russia represent a very pro-government view of how the Internet should be governed... The second main group in the Internet governance group is the rapidly expanding and increasingly powerful group of developing countries: India, Brazil and South Africa... on the pro-government side by mentioning both the United Nations and the loaded term of "enhanced cooperation" while not providing equal weight to the multi-stakeholder model. And last, in that third group, come the nations that support a pro-multi-stakeholder approach to the Internet's evolution, made up mostly of Western democracies, with the United States as the most significant proponent.<sup>16</sup>

Access to the Internet: a human right(?)

In addition to the foregoing general conversations that are being held globally, there is one new strand that is worth highlighting: the developing opinion that accessing and communicating using the Internet is (i) either a new, separate human right or (ii) part of the general fundamental/human right to freedom of expression.

15 Op.cit., 'Already the latter half of 2011 will see three major events where the issue will pop up again: in September 2011, the 6th IGF takes place in Nairobi; in October 2011, the 2nd Committee of the 66th General Assembly of the United Nations starts its Internet discussion in New York; and in November 2011, the leaders of the G20, which include China, Brazil, India, South Africa and other G77 members, meet in Cannes.' In addition, as noted in the paper, November saw the London International Cyber-security Conference, focusing on what is called 'Advanced Persistent Threats', see <<http://www.marketwatch.com/story/cyber-security-leaders-rally-to-combat-advanced-persistent-threats-2011-09-13>> accessed 30 September 2011

16 'Global Internet governance fight looms' <<http://news.dot-nxt.com/2011/09/22/Internet-governance-fight-looms>> accessed 24 September 2011. What message is the EU sending out? See, 'European Commission calls for greater government control over Internet' <<http://news.dot-nxt.com/2011/08/31/ec-greater-government-control>> accessed September 24 2011

Certainly, this is a view which has been expressed by (some) citizens of the world:

Four in five adults (79%) regard Internet access as their fundamental right, according to a new global poll conducted across 26 countries for BBC World Service.<sup>17</sup>

A core issue is then “the right to access to the Internet.” Or, as the recent OSCE Report on freedom of expression and the Internet states:

Access to the Internet should be regarded as a human right and recognized as implicit to the right to free expression and free information.

Access to the Internet remains the most important pre-requisite to be part of and take part in the Information Society. Access to the Internet is one of the basic prerequisites to the right to freedom of expression and the right to impart and receive information regardless of frontiers. As such, access to the Internet should be recognized as a fundamental human right.<sup>18</sup>

Correlatively, regarding the so-called “Internet kill switches”, the Report, unsurprisingly recommends Internet ‘kill switch’ plans should be avoided.

Existent legal provisions allow several OSCE participating States to completely suspend all Internet communication and “switch off” Internet access for whole populations or segments of the public during times of war, states of emergency and in cases of imminent threat to national security. Reaffirming the importance of fully respecting the right to freedom of opinion and expression, the OSCE participating States should refrain from developing, introducing and applying “Internet kill switch” plans as they are incompatible with the fundamental right to information.<sup>19</sup>

The OSCE Freedom of the Media Representative has been quite clear on this matter. In testimony before the U.S. Helsinki Commission (July 15 2011) Dunja

17 A poll of more than 27,000 adults conducted by GlobeScan found that 87 per cent of those who used the Internet felt that Internet access should be “the fundamental right of all people.” More than seven in ten (71%) non-Internet users also felt that they should have the right to access the web, see <[http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/08\\_03\\_10\\_BBC\\_Internet\\_poll.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/08_03_10_BBC_Internet_poll.pdf) accessed> 26 September 2011

18 <<http://www.osce.org/fom/80723>> accessed 24 September 2011 p 32

19 See also, ‘Reaching for the kill switch’ <<http://www.economist.com/node/18112043>> accessed 24 September 2011. It is a matter of some discussion as to how such a switch operates, see ‘What Libya Learned from Egypt’ <<http://www.renesys.com/mt-cgi-bin/mt-search.cgi?search=kill+switch&IncludeBlogs=1&limit=20>> accessed 26 September 2011

Mijatović, called on governments to treat Internet access as a human right that should be enshrined in their constitutions.

In order to pay tribute to the unique contribution the Internet has given to participatory democracy, to freedom of expression and to freedom of the media, it is only fitting to enshrine the right to access the Internet on exactly that level where such rights belong, as a human right with constitutional rank...Without this basic requirement, without the means to connect, without an affordable connection, the right to freedom of expression and freedom of the media become meaningless in the online world. The second requirement is to stop restricting free flow of information on the Internet. The free flow of information is the oxygen of cyberspace! Without it the Internet becomes a useless tool.<sup>20</sup>

The UN Special Rapporteur (see supra) has also recently addressed two dimensions of Internet rights, urging, on the one hand, that cutting off users from Internet access, regardless of the justification provided, including on the grounds of violating intellectual property rights law, to be disproportionate and thus a violation of article 19, paragraph 3, of the International Covenant on Civil and Political Rights. And, on the other, from a more socio-economic perspective, given that the Internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all States.

Each State should thus develop a concrete and effective policy, in consultation with individuals from all sections of society, including the private sector and relevant government ministries, to make the Internet widely available, accessible and affordable to all segments of population.<sup>21</sup>

The UN Rapporteur's Report states:<sup>22</sup>

In some economically developed States, Internet access has been recognized as a right. For example, the parliament of Estonia passed legislation in 2000 declaring Internet access a basic human right. The constitutional council of

20 'The Promises We Keep Online: Internet Freedom in the OSCE Region' <<http://www.osce.org/fom/81007>> accessed 26 September 2011

21 <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)> accessed 26 September 2011

22 Ibid par 65 <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)> accessed 26 September 2011

France effectively declared Internet access a fundamental right in 2009, and the constitutional court of Costa Rica reached a similar decision in 2010. Going a step further, Finland passed a decree in 2009 stating that every Internet connection needs to have a speed of at least one Megabit per second (broadband level).

[Notes: 52 Colin Woodard, “Estonia, where being wired is a human right,” *Christian Science Monitor*, 1 July 2003.]

53 Decision 2009-580, Act furthering the diffusion and protection of creation on the Internet.

54 “732/2009, Decree of the Ministry of Transport and Communications on the minimum rate of a functional Internet access as a universal service,” (original: Liikenne- ja viestintäministeriön asetus tarkoituksenmukaisen Internet-yhteyden vähimmäisnopeudesta yleispalvelussa), FINLEX, 22 October 2009. Available from: <http://www.finlex.fi/en/laki/kaannokset/2009/en20090732>].

Finally, the Joint Rapporteurs’ Statement (see *supra*) declares, as regards ‘Access to the Internet’

- a. Giving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.
- b. Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.
- c. Denying individuals the right to access the Internet as a punishment is an extreme measure, which could be justified only where less restrictive measures are not available and where ordered by a court, taking into account the impact of this measure on the enjoyment of human rights.
- d. Other measures which limit access to the Internet, such as imposing registration or other requirements on service providers, are not legitimate

unless they conform to the test for restrictions on freedom of expression under international law.

e. States are under a positive obligation to facilitate universal access to the Internet. At a minimum, States should:

i. Put in place regulatory mechanisms – which could include pricing regimes, universal service requirements and licensing agreements – that foster greater access to the Internet, including for the poor and in ‘last mile’ rural areas.

ii. Provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points.

iii. Promote adequate awareness about both how to use the Internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations.

iv. Put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.

f. To implement the above, States should adopt detailed multi-year action plans for increasing access to the Internet which include clear and specific targets, as well as standards of transparency, public reporting and monitoring systems.

However, for others, the position is not quite so clear-cut. Even if, in a few countries, access to the Internet is a legally protected right, e.g., Finland, that does not necessarily, *eo ipso*, make it a “human right.”<sup>23</sup>

Even the virtuous examples of Finland and Estonia, which the [OSCE/Akdeniz] Report cites as the standard-bearers of the fundamental human right to Internet, beg to be considered with more attention. Finland, for instance, became the first country in the world, in July 2009, to declare broadband Internet access a legal right. The relevant piece of regulation, Section 60(3) of the Communications Market Act (notably, an ordinary statute, not one of constitutional level) requires the telecommunication companies to provide all the citizens with Internet connection that runs at speeds of at least 1 megabit per second. Announcing the

<sup>23</sup> First nation makes broadband access a legal right' <[http://articles.cnn.com/2010-07-01/tech/finland.broadband\\_1\\_broadband-access-Internet-access-universal-service?\\_s=PM:TECH](http://articles.cnn.com/2010-07-01/tech/finland.broadband_1_broadband-access-Internet-access-universal-service?_s=PM:TECH)> accessed 26 September 2011

launch of the provision the legislative counsellor for the Ministry of Transport and Communications was reported to say that the new regulative toolkit was meant to meet the needs of modern society in which Internet connection is simply a primary necessity “like banking services or water or electricity.” Following this stream of reasoning, why could not be the provision of banking services the next human right to come out (and maybe access to on-line banking services could be considered a joint exercise of these new fancy fundamental rights then)? If this sounds queer is only because the whole premise is wrong<sup>24</sup>

## SECTION B

### OSCE Standards

At the global, regional level, the most relevant and applicable statements are the Recommendations, Declarations, emanating from the Council of Europe.<sup>25</sup>

As early as 2003, the OSCE Freedom of the Media Representative adopted the Amsterdam Recommendations: Freedom of the Media and the Internet<sup>26</sup>.

The main provisions include:

#### Access

- The Internet provides a number of different services. Some of them are still in the development phase. They serve as tools, often indispensable ones, for citizens as well as journalists and thus are important for a free media landscape. The technology as such must not be held responsible for any potential misuse. Innovation must not be hampered.

24 ‘Catch Me if You Can: The OSCE Report and the hunt for the elusive “human right to the Internet”’ <<http://www.medialaws.eu/catch-me-if-you-can-the-osce-report-and-the-hunt-for-the-elusive-%E2%80%9Chuman-right-to-the-Internet%E2%80%9D/>> accessed 26 September 2011; for the Finnish law, see <<http://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf>> accessed 26 September 2011; “UN declares Internet access a human right” – does it really? <<http://igbook.diplomacy.edu/2011/06/Internet-access/>> accessed 26 September 2011>; see also ‘Right to access the Internet: the countries and the laws that proclaim it’ <<http://igbook.diplomacy.edu/2011/05/right-to-access-the-Internet/>> accessed 26 September 2011

25 At the national level, see (a) the UK, Foreign Minister Hague’s statement on Internet blocking etc <<http://www.securityconference.de/Hague-William.622.0.html?&L=1>> accessed 30 September 2011 and (b) US Secretary of State Clinton’s remarks etc at <<http://www.state.gov/e/eeb/cip/netfreedom/index.htm>> accessed 30 September 2011

26 See <<http://www.osce.org/fom/41903>> accessed 25 November 2011

- Access to digital networks and the Internet must be fostered. Barriers at all levels, be they technical, structural or educational, must be dismantled.
- To a considerable extent the fast pace of innovation of digital networks is due to the fact that most of the basic code and software are in the public domain, free for everyone to use and enhance. This free-of-charge infrastructure is one of the key elements of freedom of expression on the Internet. Access to the public domain is important for both technical and cultural innovation and must not be endangered through the adoption of new provisions related to patent and copyright law.

### **Freedom of Expression**

- The advantages of a vast network of online resources and the free flow of information outweigh the dangers of misusing the Internet. But criminal exploitation of the Internet cannot be tolerated. Illegal content must be prosecuted in the country of its origin but all legislative and law enforcement activity must clearly target only illegal content and not the infrastructure of the Internet itself.
- The global prosecution of criminal content, such as child pornography, must be warranted and also on the Internet all existing laws must be observed. However, the basic principle of freedom of expression must not be confined and there is no need for new legislation.
- In a modern democratic and civil society citizens themselves should make the decision on what they want to access on the Internet. The right to disseminate and to receive information is a basic human right. All mechanisms for filtering or blocking content are not acceptable.
- Any means of censorship that are unacceptable within the 'classic media' must not be used for online media. New forms of censorship must not be developed.

### **Education**

- Computer and Internet literacy must be fostered in order to strengthen the technical understanding of the importance of software and code. This is necessary so as to keep open a window of opportunity for defining the future role of the Internet and its place in civil society.

- Internet literacy must be a primary educational goal in school, training courses should also be set up for adults. Special training of journalists should be introduced in order to facilitate their ability to deal with online content and to ensure a high standard of professional journalism.

### **Professional Journalism**

- More and more people are able to share their views with a widening audience through the Internet without resorting to ‘classic media’. Privacy of communication between individuals must be respected. The infrastructure of the Internet is used for many different purposes and any relevant regulatory bodies must be aware of that.
- Journalism is changing in the digital era and new media forms are developing that deserve the same protection as ‘classic media’.
- Traditional and widely accepted values of professional journalism, acknowledging the responsibility of journalists, should be fostered so as to guarantee a free and responsible media in the digital era.

The recent (July 2011) OSCE Freedom of the Media Representative office’s study, Freedom of Expression on the Internet Study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States outline the fundamental, basic OSCE Commitments:<sup>27</sup>

In various documents, the OSCE participating States committed themselves to uphold freedom of the media and guarantee their citizens the right to free expression. In the Helsinki Final Act, the participating States decided to “act in conformity with the purposes and principles of the [...] Universal Declaration of Human Rights.” They agreed to recognize “the importance of the dissemination of information from the other participating States”, “make it their aim to facilitate the freer and wider dissemination of information of all kinds” and “encourage cooperation in the field of information and the exchange of information with other countries”.

At the Budapest Summit in 1994, the participating States reaffirmed “that

<sup>27</sup> <<http://www.osce.org/fom/80723>> accessed 26 September 2011

freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They take as their guiding principle that they will safeguard this right.”

This was echoed by the 1996 Lisbon Summit where the OSCE participating States declared that “[f]reedom of the press and media are among the basic prerequisites for truly democratic and civil societies. In the Helsinki Final Act, we have pledged ourselves to respect this principle.”

Only three years later, in the 1999 Charter for European Security, the participating States reaffirmed “the importance of independent media and the free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra- State flow of information, which we consider to be an essential component of any democratic, free and open society.”

This was further defined to explicitly include the Internet by the OSCE Permanent Council Decision No. 633 where the participating States pledged to “take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools.” The OSCE PC Decision 633 further asks the participating States to “study the effectiveness of laws and other measures regulating Internet content.”

The Report itself deals with four main issues: Internet access, Internet content regulation, blocking, filtering and content removal and licensing and liability and Internet hotlines.

### **Council of Europe<sup>28</sup>**

The Council of Europe has been engaged on analysing and making recommendations for the information space and the Internet for nearly a decade.

Historically, the scene was set in 2003: the Council of Europe adopted the

<sup>28</sup> See <[http://www.coe.int/t/dghl/standardsetting/media/themes/Internet\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/themes/Internet_EN.asp)> accessed 30 September 2011 and see also, *Information Society and Internet Governance* <[http://www.coe.int/t/informationociety/default\\_EN.asp](http://www.coe.int/t/informationociety/default_EN.asp)> accessed 30 September 2011; see also, The Council of Europe at the IGF 2011 <<http://www.coe.int/portal/web/coe-portal/Internet-governance-forum-2011?dynLink=true&layoutId=737&dlgroupId=102226&fromArticleId=>>> accessed 30 September 2011

Declaration on freedom of communication on the Internet (adopted 28 May 2003). In the same year, The OSCE published the Amsterdam Recommendations on 'Freedom of the Media and the Internet'.<sup>29</sup>

The 2003 Declaration commits Council Member States to several main principles:

The importance of freedom of expression and free circulation of information on the Internet,

States should not invent new restrictions for this new platform of content delivery,

Member States should encourage self-regulation or co-regulation concerning Internet content,

The setting up of and running of individual web sites should not be subject to any licensing or other requirements having a similar effect,

The desire of Internet users not to disclose their identity should be respected

Public authorities should not employ "general blocking or filtering measures" in order to deny access by the public to information and other communication on the Internet.

In line with the Directive 2000/31/EC on electronic commerce, it is stated that service providers should be under no general obligation to monitor content on the Internet to which they give access, that they transmit or store.

In a detailed comment on the Declaration, published at the time, Páll Thórhallsson (Council of Europe, Directorate of Human Rights) set out its main elements:<sup>30</sup>

[1] The aim of the Declaration is to reaffirm the importance of freedom of expression and free circulation of information on the Internet. As stated in the preamble, the Committee of Ministers is concerned about attempts to limit public access to communication on the Internet for political reasons or other motives contrary to democratic principles.

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29 <<http://www.osce.org/fom/41903>> accessed 19 September 2011: which asserted that *Convinced that no matter what technical means are used to channel the work of journalists to the public – be it TV, radio, newspapers or the Internet – the basic constitutional value of freedom of the media must not be questioned;*

30 See, <<http://merlin.obs.coe.int/iris/2003/7/article3.en.html>> accessed 19 September 2011

[2] The Declaration states that content on the Internet should not be subjected to restrictions that go further than those applied to other means of content delivery. Leaving open the question as to whether broadcasting standards, printed press standards or other content standards should apply to the Internet, this statement nevertheless gives a clear signal that States should not invent new restrictions for this new platform of content delivery.

[3] Furthermore, it is underlined that Member States should encourage self-regulation or co-regulation concerning Internet content, these being the forms of regulation most appropriate to the new services.

[4] The Declaration emphasises that barriers to the participation of individuals in the information society should be removed and that the setting up of and running of individual web sites should not be subject to any licensing or other requirements having a similar effect.

[5] Falling short of stipulating a right to anonymity, the Declaration states that the desire of Internet users not to disclose their identity should be respected, subject to limitations required by law enforcement agencies in order to tackle criminal activity. (emphasis added)

[6] The most important part of the Declaration is to be found in Principle 3: when and under which circumstances public authorities are permitted to block access to Internet content...e.g., crude filtering methods to censor the Internet should be regarded as prior censorship. As stated in the Explanatory Note to the Declaration, Principle 3 is in particular aimed at situations where State authorities would block access by the people to content on certain foreign (or domestic) web sites for political reasons.

At the same time it outlines the circumstances in which, in general, blockage of content may be considered acceptable, a matter which is or will be relevant to all Member States.

The Declaration states first of all that public authorities should not employ “general blocking or filtering measures” in order to deny access by the public to information and other communication on the Internet, regardless of frontiers. With “general measures”, the Declaration refers to crude filtering methods that do not discriminate between illegal and legal content.

NB: This principle, which is quite broad in its scope, does not prevent Member States from requiring the installation of filtering software in places accessible by minors, such as libraries and schools.

Member States still have the possibility, according to the Declaration, to block access to Internet content or to order such blockage.

NB several conditions which need to be fulfilled: a) the content has to be clearly identifiable, b) a decision on the illegality of the content has to have been taken by the competent national authorities and c) the safeguards of Article 10, paragraph 2, of the European Convention on Human Rights have to be respected, i.e., a restriction has to be prescribed by law, be aimed at a lawful purpose and be necessary in a democratic society.

[7] Principle 6 on the limited liability of service providers is also worth highlighting.

In line with the Directive 2000/31/EC on electronic commerce, it is stated that service providers should be under no general obligation to monitor content on the Internet to which they give access, that they transmit or store.

They may, however, be held jointly responsible for content which they store on their servers, if they become aware of its illegal nature and do not act rapidly to disable access to it. This is fully in accordance with the Directive on electronic commerce. The Declaration, however, goes one step further, emphasising that when defining under national law the obligations of service providers that host content, “due care must be taken to respect the freedom of expression of those who made the information available in the first place, as well as the corresponding right of users to the information”.

The questions that are addressed here are currently widely debated, for example in the context of defamatory remarks on the Internet. The Explanatory Note underlines that questions about “whether certain material is illegal are often complicated and best dealt with by the courts. If service providers act too quickly to remove content after a complaint is received, this might be dangerous from the point of view of freedom of expression and information. Perfectly legitimate content might thus be suppressed out of fear of legal liability.”

As has been noted (*supra*) the Council of Europe has issued four new Recommendations and Declarations, in the context of the 6th Internet

Governance Forum on (i) a new notion of media (ii) the protection and promotion of the universality, integrity and openness of the Internet (iii) 10 Principles for the governance of Internet and (iv) freedom of expression and freedom of assembly and association with regard to domain names and name strings.<sup>31</sup> and there are a plethora of Recommendations etc which have been adopted over the years.<sup>32</sup>

### **European Court of Human Rights cases<sup>33</sup>**

Perrin v. the United Kingdom (application no. 5446/03)

Declared inadmissible 18.10.2005

Concerned the conviction and sentencing to 30 months' imprisonment of a French national based in the UK – and operating a US-based Internet company with sexually explicit content - for publishing obscene articles on Internet.

The Court was satisfied that the criminal conviction was necessary in a democratic society in the interests of the protection of morals and/or the rights of others and that the sentence was not disproportionate

Complaint under Article 10 (freedom of expression) rejected as inadmissible

PAEFFGEN GMBH v. Germany (nos. 25379/04, 21688/05, 21722/05 and 21770/05)

Declared inadmissible 18.09.2007

Concerned proceedings brought against the applicant company, engaged in e-commerce, by other companies and private individuals claiming that its registration and use of certain Internet domains breached their trademark rights and/or their rights to a (business) name.

The Court found that the court orders requiring the applicant company to cancel

31 <<http://www.coe.int/t/dghl/standardsetting/media/>> accessed 2 October 2011

32 <[http://www.coe.int/t/dghl/standardsetting/media/Themes/Internet\\_en.asp](http://www.coe.int/t/dghl/standardsetting/media/Themes/Internet_en.asp)> accessed 2 October 2011, [http://www.echr.coe.int/NR/rdonlyres/CA9986C0-BF79-4E3D-9E36-DCCF1B622B62/0/FICHES\\_New\\_technologies\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/CA9986C0-BF79-4E3D-9E36-DCCF1B622B62/0/FICHES_New_technologies_EN.pdf)> accessed 30 September 2011;

33 [http://www.echr.coe.int/NR/rdonlyres/CA9986C0-BF79-4E3D-9E36-DCCF1B622B62/0/FICHES\\_New\\_technologies\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/CA9986C0-BF79-4E3D-9E36-DCCF1B622B62/0/FICHES_New_technologies_EN.pdf)> accessed 30 September 2011; see also Internet : case law of the European Court of Human Rights < <http://bit.ly/rYTPzy>> accessed 25 November 2011

the domains had struck a fair balance between the protection of its possessions and the requirements of the general interest (ie to prevent the company from continuing to violate third parties' trademark rights)

Complaint under Article 1 of Protocol No. 1 (protection of property) rejected as inadmissible

Muscio v. Italy (application no. 31358/03)

Declared inadmissible on 13.11.2007

Concerns the president of a Catholic parents' association who received unsolicited e-mails (spam) of an obscene nature. Having instituted proceedings against a person or persons unknown, he contested the decision to take no further action on his complaint. The Court considered that receiving undesirable messages amounted to interference with the right to respect for private life. However, once connected to the Internet, e-mail users no longer enjoyed effective protection of their privacy and exposed themselves to the risk of receiving undesirable messages. In that context, the legal action brought by the applicant had had no chance of succeeding, since the national authorities and Internet service providers encountered objective difficulties in combating spam. The Court could not therefore require the State to make additional efforts to discharge its positive obligations under Article 8.

Complaint under Article 8 (right to respect for private and family life) declared inadmissible.

K.U. v. Finland (no. 2872/02) 2.12.2008

The case concerned an advertisement of a sexual nature posted about a 12-year old boy on an Internet dating site. Under Finnish legislation in place at the time<sup>1</sup>, the police and the courts could not require the Internet provider to identify the person who had posted the ad. In particular, the service provider refused to identify the person responsible, claiming it would constitute a breach of confidentiality.

The Court considered that posting the ad was a criminal act which made a minor a target for paedophiles. The legislature should have provided a framework for reconciling the confidentiality of Internet services with the prevention of disorder

or crime and the protection of the rights and freedoms of others, and in particular children and other vulnerable individuals.

Violation of Article 8 (right to respect for private and family life)

Times Newspapers Ltd v. the United Kingdom (nos. 1 & 2) (nos. 3002/03 and 23676/03)

10.03.2009

The Times Newspapers Ltd complained that the UK Internet publication rule exposed them to ceaseless liability for libel (ie each time an article is accessed in electronic archives, a new cause of action in defamation arises) following the publication of two articles, in September and October 1999, reporting on a massive money-laundering scheme carried out by an alleged Russian mafia boss. Both articles were uploaded onto The Times website on the same day as they were published in the paper version of the newspaper. During the subsequent libel proceedings against the applicant newspaper, it was required to add a notice to both articles in the Internet archive announcing that they were subject to libel litigation and were not to be reproduced or relied on without reference to Times Newspapers Legal Department.

The Court noted that the domestic courts had not suggested that the articles be removed from the archive altogether. Accordingly, the Court did not consider that the requirement to publish an appropriate qualification to the Internet version of the articles constituted a disproportionate interference with the right to freedom of expression.

No violation of Article 10 (freedom of expression)

Willem v. France (no.10883/05) 16.07.2009

Concerned the call for a boycott of Israeli products by the mayor of Seclin, notably via the municipality's Internet site. The mayor was subsequently convicted of provoking discrimination.

No violation of Article 10 (freedom of expression)

Renaud v. France (no. 13290/07) 25.02.2010

Patrice Renaud complained of his conviction in 2005 for defaming and publicly insulting the mayor of Sens on the Internet site of the association of which he was president and webmaster.

The Court considered that Mr Renaud's conviction had been disproportionate to the legitimate aim of protecting the reputation and rights of others

Violation of Article 10 (freedom of expression)

Editorial Board of Pravoye Delo and Shtekel v. Ukraine (no. 33014/05) 05.05.2011

The case mainly concerned the lack of adequate safeguards in Ukrainian law for journalists' use of information obtained from the Internet. In particular, defamation proceedings were brought against a local newspaper in Odessa and its editor-in-chief.

## **SECTION C**

Consideration of specific Internet topics

An ever-growing list of specific "Internet topics" about which there is regulation (or dispute over if there should be? What precisely should the object of that regulation be and how much?) is beginning to emerge. As noted (*supra*), the July 2011 OSCE Report focuses on four topics:

Internet access, Internet content regulation, blocking, filtering and content removal and licensing and liability and Internet hotlines.

A rather longer list of issues might include

General Principles

Control over domain names

Intermediary Liability (and licensing)

Filtering and Blocking

Restriction of content (online censorship); Adolescents and online pornography)

Network Neutrality

Access to the Internet

Privacy/anonymity/right to be forgotten

Cybercrime/security

<http://www.coe.int/lportal/web/coe-portal/workshop-cybercrime?dynLink=true&layoutId=753&dlgroupId=10226&fromArticleId=>

Protection of cross border flow of Internet traffic

Protecting children's dignity, security and privacy on the Internet

Right of reply in online environment

Online behavioural advertising

Search engines and social networking services

Licensing of Internet content providers

Intellectual property and copyright infringement

### **General principles**

The Declaration by the Committee of Ministers on Internet governance principles sets out a number of over-arching principles, e.g.:

#### 1. Human rights, democracy and the rule of law

Internet governance arrangements must ensure the protection of all fundamental rights and freedoms and affirm their universality, indivisibility, interdependence and interrelation in accordance with international human rights law. They must also ensure full respect for democracy and the rule of law and should promote sustainable development. All public and private actors should recognise and uphold human rights and fundamental freedoms in their operations and activities, as well as in the design of new technologies, services and applications. They

should be aware of developments leading to the enhancement of, as well as threats to, fundamental rights and freedoms, and fully participate in efforts aimed at recognising newly emerging rights.

## 2. Multi-stakeholder governance

The development and implementation of Internet governance arrangements should ensure, in an open, transparent and accountable manner, the full participation of governments, the private sector, civil society, the technical community and users, taking into account their specific roles and responsibilities. The development of international Internet-related public policies and Internet governance arrangements should enable full and equal participation of all stakeholders from all countries<sup>34</sup>

Further, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ETS No. 5) and other Council of Europe standards apply to the Internet and, more generally, to the information society as a whole in the same way as they apply to offline activities. All Council of Europe member states have undertaken to secure to everyone within their jurisdiction the rights and freedoms protected by the European Convention on Human Rights and Fundamental Freedoms in Article 1 of this Convention<sup>35</sup>

### **Protection of cross border flow of Internet traffic**

Following the 11th meeting of the Council of Europe's Steering Committee on the Media and New Communication Service (CDMC), which took place from 20 to 23 October 2009 The Ad-hoc Advisory Group on Cross-border Internet (MC-S-CI) was set up. Its Mandate was to make proposals, in particular, relating to the prevention and management of events, including malicious acts, falling within member states' jurisdictions or territories, which could block or significantly impede Internet access to or within fellow members of the international community with the objective of guaranteeing the ongoing functioning and universal nature and integrity of the Internet.

<sup>34</sup> <<http://bit.ly/mPTFT1>> accessed 30 September 2011

<sup>35</sup> <<http://www.coe.int/t/dghl/standardsetting/media-dataprotection/conf-Internet-freedom/Internet%20Governance%20Principles.pdf>> accessed 30 September 2011

Its interim report, international and multi-stakeholder co-operation on cross-border Internet concluded and recommended that:

The MC-S-CI concludes that international and multi-stakeholder co-operation is needed in order to preserve and reinforce the protection of cross-border flow of Internet traffic and the stability and on-going functioning of the Internet as a means to safeguard freedom of expression and information regardless of frontiers.

On that basis, the MC-S-CI recommends to the CDMC:

to continue action aimed at drawing up new international legal instruments on cross-border Internet, which may include the development of mechanisms to identify issues where commitments or regulation are needed and for clarifying what the “respective role of governments” is in the development of such commitments and regulations;

to prepare, as a first step, a draft Committee of Ministers’ Declaration on the general principles of Internet governance and a draft Committee of Ministers’ Recommendation on international cooperation in respect of resources that are critical for the functioning of the Internet, on the basis of the analysis included respectively in Parts III and IV of this report;

to continue the examination of the feasibility of drafting instruments designed to preserve or reinforce the protection of cross-border flow of Internet traffic, openness and neutrality; and

to organise a dedicated event to discuss with stakeholders the feasibility of international law responses to issues related to international cooperation in respect of resources that are critical for the functioning of the Internet<sup>36</sup>

In September 2011, the Recommendation of the Committee of Ministers to member states ‘on the protection and promotion of the universality, integrity and openness of the Internet’ was adopted (CM/Rec(2011)).

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<sup>36</sup> The Report is at <<http://www.coe.int/t/dghl/standardsetting/media/MC-S-CI/Interim%20Report.pdf>> accessed 30 September 2011

General principle No 1 states:

1. General principles

1.1. No harm

1.1.1. States have the responsibility to ensure, in compliance with the standards recognised in international human rights law and with the principles of international law, that their actions do not have an adverse transboundary impact on access to and use of the Internet.

1.1.2. This should include, in particular, the responsibility to ensure that their actions within their jurisdictions do not illegitimately interfere with access to content outside their territorial boundaries or negatively impact the transboundary flow of Internet traffic <sup>37</sup>

And General principle No 3 states:

3. Resources that are critical for the functioning of the Internet:

States should take all reasonable measures to ensure that the development and application of standards, policies, procedures or practices in connection with the management of resources that are critical for the functioning of the Internet incorporate protection for human rights and fundamental freedoms of Internet users in compliance with the standards recognised in international human rights law.

**Access to the Internet**

This has been referred to, see Section A (supra).

The OSCE Representative for Freedom of Media states:<sup>38</sup>

Access to the Internet remains the most important pre-requisite to the right to freedom of expression...So, despite progress, some challenges and preconditions remain. The first one is surely access to the Internet. Without this

<sup>37</sup> <<http://bit.ly/na3cckm>> accessed 30 September 2011

<sup>38</sup> <<http://csce.gov/index.cfm?FuseAction=ContentRecords.Home&ContentType=H,B&Year=2011>> accessed 30 September 2011

basic requirement, without the means to connect, and without an affordable connection, the right to freedom of expression and freedom of the media become meaningless in the online world... Participating States should steadfastly refrain from developing or adopting measures which could result restricting citizens' access to the Internet.<sup>39</sup>

In their Joint Declaration, the four Special Rapporteurs for Freedom of Expression state:<sup>40</sup>

## 6. Access to the Internet

a. Giving effect to the right to freedom of expression imposes an obligation on States to promote universal access to the Internet. Access to the Internet is also necessary to promote respect for other rights, such as the rights to education, health care and work, the right to assembly and association, and the right to free elections.

b. Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.

c. Denying individuals the right to access the Internet as a punishment is an extreme measure, which could be justified only where less restrictive measures are not available and where ordered by a court, taking into account the impact of this measure on the enjoyment of human rights.

d. Other measures which limit access to the Internet, such as imposing registration or other requirements on service providers, are not legitimate unless they conform to the test for restrictions on freedom of expression under international law.

e. States are under a positive obligation to facilitate universal access to the

<sup>39</sup> Quoting OSCE Permanent Council Decision No. 633 of 2004, explicitly including the Internet, the participating States pledged to: "...take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools." "...to study the effectiveness of laws and other measures regulating Internet content".

<sup>40</sup> <<http://www.cidh.oas.org/relatoria/showarticle.asp?artID=848&IID=1>> accessed 30 September 2011

Internet. At a minimum, States should:

- i. Put in place regulatory mechanisms – which could include pricing regimes, universal service requirements and licensing agreements – that foster greater access to the Internet, including for the poor and in ‘last mile’ rural areas.
- ii. Provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points.
- iii. Promote adequate awareness about both how to use the Internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations.
- iv. Put in place special measures to ensure equitable access to the Internet for the disabled and for disadvantaged persons.
- f. To implement the above, States should adopt detailed multi-year action plans for increasing access to the Internet which include clear and specific targets, as well as standards of transparency, public reporting and monitoring systems.

### **Control over domain names**

The EC has recently issued some policy papers which, if implemented, might give governments greater control over the naming system.<sup>41</sup> However, on 21 September 2011, the Council of Europe adopted a Draft Declaration ‘on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings’. Article 7 states

- Expressions contained in the names of Internet websites, such as domain names and name strings, should not, a priori, be excluded from the scope of application of legal standards on freedom of expression and the right to receive and impart information and should, therefore, benefit from a presumption in their favour. The addressing function of domain names and name strings and the forms of expressions that they comprise, as well as the content that they

<sup>41</sup> The EC has recently issued 6 policy papers which arguably, if implemented, ‘Combined together, the measures would provide governments with de facto control over the Internet’s naming systems and bring an end to the independent and autonomous approach that has defined the Internet’s domain name system since its inception’ <<http://news.dot-nxt.com/2011/08/31/ec-greater-government-control>> accessed 30 September

relate to, are inextricably intertwined. More specifically, individuals or operators of websites may choose to use a particular domain name or name string to identify and describe content hosted in their websites, to disseminate a particular point of view or to create spaces for communication, interaction, assembly and association for various societal groups or communities... the Committee of Ministers – declares its support for the recognition by member states of the need to apply fundamental rights safeguards to the management of domain names; – alerts to the risk which over-regulation of the domain name space and name strings entails for the exercise of freedom of expression and the right to receive and impart information and of freedom of assembly and association; as a form of interference, any regulation should meet the conditions of Articles 10 and 11 of the European Convention on Human Rights and the related case law of the European Court of Human Rights;<sup>42</sup>

Earlier, the Ministers had adopted a Declaration on the management of Internet Protocol address resources in the public interest.<sup>43</sup>

### **Intermediary Liability (and licensing)**

The 4 Special Rapporteurs Joint Declaration concerning the Internet states<sup>44</sup>

- a. No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so ('mere conduit principle').
- b. Consideration should be given to insulating fully other intermediaries, including those mentioned in the preamble, from liability for content generated by others under the same conditions as in paragraph 2(a). At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression (which is the case with many of the 'notice and takedown' rules currently being applied).

42 <<http://bit.ly/ojNKTn>> accessed 30 September 2011

43 <<https://wcd.coe.int/wcd/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1647877&SecMode=1&DocId=1631218&Usage=2>>

44 <<http://www.cidh.oas.org/relatoria/showarticle.asp?artID=848&IID=1>> accessed 30 September 2011

And the UN Special Rapporteur on Freedom of Opinion and Expression noted that [Internet] Intermediaries play a fundamental role in enabling Internet users to enjoy their right to freedom of expression and access to information. Given their unprecedented influence over how and what is circulated on the Internet, States have increasingly sought to exert control over them and to hold them legally liable for failing to prevent access to content deemed to be illegal.”

Further, the Rapporteur concluded:

that censorship measures should never be delegated to private entities, and that intermediaries should not be held liable for refusing to take action that infringes individuals’ human rights. Any requests submitted to intermediaries to prevent access to certain content, or to disclose private information for strictly limited purposes such as administration of criminal justice, should be done through an order issued by a court or a competent body which is independent of any political, commercial or other unwarranted influences.

The Special Rapporteur thus recommends intermediaries to only implement restrictions to these rights after judicial intervention; be transparent to the user involved about measures taken, and, where applicable, to the wider public; provide, if possible, forewarning to users before the implementation of restrictive measures; and minimize the impact of restrictions strictly to the content involved. Finally, there must be effective remedies for affected users, including the possibility of appeal through the procedures provided by the intermediary and by a competent judicial authority. The Special Rapporteur commends the work undertaken by organizations and individuals to reveal the worldwide status of online impediments to the right to freedom of expression. He encourages intermediaries in particular to disclose details regarding content removal requests and accessibility of websites.<sup>45</sup>

Limit Internet intermediary liability:

Appropriate limitations of liability for Internet intermediaries have, and continue to play, a fundamental role, in particular with regard to third party content. Internet intermediaries, like other stakeholders, can and do play an important role by addressing and deterring illegal activity, fraud and misleading and unfair practices conducted over their networks and services as well as advancing

<sup>45</sup> <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)> accessed 30 September 2011

economic growth. Limitations play an important role in promoting innovation and creativity, the free flow of information, and in providing the incentives for co-operation between stakeholders. Within this context governments may choose to convene stakeholders in a transparent, multi-stakeholder process to identify the appropriate circumstances under which Internet intermediaries could take steps to educate users, assist rights holders in enforcing their rights or reduce illegal content, while minimising burdens on intermediaries and ensuring legal certainty for them, respecting fair process, and more generally employing the principles identified in this document. In achieving these current objectives the social and economic costs and benefits, including impacts on Internet access, use, security and development of the policy options should be assessed as part of their development process as should also be their compatibility with the protection of all relevant fundamental rights and freedoms and their proportionality in view of the seriousness of the concerns at stake.<sup>46</sup>

### **Filtering and Blocking**

The OSCE Representative for the Media has recently stated that:

Participating States should refrain from using blocking as a permanent measure, solution or as a means of punishment. Indefinite blocking of access to websites and Internet content could result to “prior restraint”.<sup>47</sup>

As already noted (supra), Páll Thórhallsson’s comment on the 2003 Council of Europe Declaration noted that:

The most important part of the Declaration is to be found in Principle 3: when and under which circumstances public authorities are permitted to block access to Internet content...e.g., crude filtering methods to censor the Internet should be regarded as prior censorship. As stated in the Explanatory Note to the Declaration, Principle 3 is in particular aimed at situations where State authorities would block access by the people to content on certain foreign (or domestic) web sites for political reasons.

<sup>46</sup> <<http://www.oecd.org/dataoecd/33/12/48387430.pdf>> accessed 30 September 2011

<sup>47</sup> <<http://csce.gov/index.cfm?FuseAction=ContentRecords.Home&ContentType=H,B&Year=2011>> accessed 30 September

At the same time it outlines the circumstances in which, in general, blockage of content may be considered acceptable, a matter which is or will be relevant to all Member States.

The Declaration states first of all that public authorities should not employ “general blocking or filtering measures” in order to deny access by the public to information and other communication on the Internet, regardless of frontiers. With “general measures”, the Declaration refers to crude filtering methods that do not discriminate between illegal and legal content.

NB: This principle, which is quite broad in its scope, does not prevent Member States from requiring the installation of filtering software in places accessible by minors, such as libraries and schools.

Member States still have the possibility, according to the Declaration, to block access to Internet content or to order such blockage.

NB: several conditions which need to be fulfilled: a) the content has to be clearly identifiable, b) a decision on the illegality of the content has to have been taken by the competent national authorities and c) the safeguards of Article 10, paragraph 2, of the European Convention on Human Rights have to be respected, i.e a restriction has to be prescribed by law, be aimed at a lawful purpose and be necessary in a democratic society.

In addition, there is Council of Europe Committee of Ministers Recommendation (2008)6 on ‘Measures to Promote Respect for Freedom of Expression and Information With Regard to Internet Filters’:

Recommends that member states adopt common standards and strategies with regard to Internet filters to promote the full exercise and enjoyment of the right to freedom of expression and information and related rights and freedoms in the European Convention on Human Rights, in particular by:

taking measures with regard to Internet filters in line with the guidelines set out in the appendix to this recommendation;

bringing these guidelines to the attention of all relevant private and public sector stakeholders, in particular those who design, use (install, activate, deactivate and implement) and monitor Internet filters, and to civil society, so that they may contribute to their implementation<sup>48</sup>

Of current interest is the recent Opinion of Advocate General Cruz Villalon of the European Court of Justice. The Court of Justice of the European Union (CJEU) is currently considering the validity of a potential Belgian court order that would provide for prior restraint of Internet communications by requiring a Belgian Internet service provider (ISP) to install software that is capable of permanently monitoring and blocking all traffic that might violate the intellectual property rights of a national association of artists. The case is undecided. The Advocate General concluded that as the order would include both illegal and perfectly legal communications, the measure amounted to an interference with the ISP's clients' freedom of expression, within the meaning of Article 10 § 1 of the Convention and the corresponding Article 11 § 1 of the EU Charter of Fundamental Rights. In the Advocate General's opinion, such a conclusion was inevitable, irrespective of the technical procedures by which the communication control is actually achieved, the breadth and depth of the control exercised, and the effectiveness and reliability of any such controls. His Opinion states that:

a measure ordering an Internet service provider to install a system for filtering and blocking electronic communications in order to protect intellectual property rights in principle infringes fundamental rights...In order to be permissible, such a measure must comply with the conditions laid down in the Charter of Fundamental Rights to govern restrictions on the exercise of rights. It must therefore be adopted, inter alia, on a legal basis that meets the requirements concerning 'the quality of the law' at issue<sup>49</sup>

The European Court of Human rights is also currently considering two conjoined cases regarding blocking, *Yildirim v Turkey* and *Akdeniz v Turkey*.<sup>50</sup>

48 <<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1266285>> accessed 30 September 2011

49 Case C-70/10, *Scarlet Extended SA v. Société belge des auteurs compositeurs et éditeurs* (undecided). Opinion of 14 April 2011, para. 85, <<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=recherche&numaff=C-70/10>> accessed 30 September 2011

50 The Justice Initiative has filed a third-party intervention in *Yildirim* - the first case of blocked access to Internet content to be taken up by ECtHR, or any other international HR tribunal, see <<http://xa.yimg.com/kq/groups/11131452/206164458/name/FOE-1109-Yildirim-5-Written%20Comments%20As%20Filed-RS-7%206%2011v2.pdf>> accessed 30 September

## **Restriction of content (online censorship): Adolescents and online pornography/child sex abuse content**

Regarding restriction of content in general, the UN Special Rapporteur's position is as follows:

... legitimate types of information which may be restricted include child pornography (to protect the rights of children), hate speech (to protect the rights of affected communities), defamation (to protect the rights and reputation of others against unwarranted attacks), direct and public incitement to commit genocide (to protect the rights of others), and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others, such as the right to life).

The Special Rapporteur is cognizant of the fact that, like all technological inventions, the Internet can be misused to cause harm to others. As with offline content, when a restriction is imposed as an exceptional measure on online content, it must pass a three-part, cumulative test: (1) it must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); (2) it must pursue one of the purposes set out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights, namely: (i) to protect the rights or reputations of others; (ii) to protect national security or public order, or public health or morals (principle of legitimacy); and (3) it must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality). In addition, any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory. There should also be adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application.<sup>51</sup>

The recent OSCE Report states that:

Content regarded as harmful or offensive does not always fall within the boundaries of illegality. Usually, the difference between illegal and harmful content is that the former is criminalized by national laws, while the latter is considered offensive, objectionable, or undesirable by some but is generally

<sup>51</sup> <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf) accessed> 30 September 2011

not legally criminalized. While child pornography could be regarded as a clear example of content being criminalized in most, if not all the participating States, Internet content that is often labelled as “harmful” may include sexually explicit or graphically violent material. Strong or extreme political or religious views may also be regarded as harmful by states. Although this type of content falls short of the “illegality threshold”, concern remains about possible access to this type of content by children.

Highlighting this fundamental difference, in 1996 the European Commission stated: “These different categories of content pose radically different issues of principle, and call for very different legal and technological responses. It would be dangerous to amalgamate separate issues such as children accessing pornographic content for adults, and adults accessing pornography about children”. More recently, the European Court of Human Rights argued that: “.... the Internet is an information and communication tool particularly distinct from the printed media, in particular as regards the capacity to store and transmit information. The electronic network serving billions of users worldwide is not and potentially cannot be subject to the same regulations and control. The risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, ... is certainly higher than that posed by the press.”

The report concludes that OSCE participating States should avoid vague legal terminology in speech-based restrictions.

Definitional problems and inconsistencies exist with regards to certain speech-based restrictions.

Clarifications are needed to define what amounts to “extremism”, “terrorist propaganda”, “harmful” and “racist content” and “hate speech”. Legal provisions are often vague and open to wide or subjective interpretation. Any restriction must meet the strict criteria under international and regional human rights law. The necessity for restricting the right to speak and receive information must be convincingly established to be compatible with international human rights standards.<sup>52</sup>

<sup>52</sup> <<http://www.osce.org/fom/80723>> accessed 30 September 2011

No one asserts the legitimacy of online child sex abuse content. However, a recent Motion for a Resolution on ‘Adolescents and online pornography’ was presented to the Parliamentary Assembly of the Council of Europe:

In recent years, various member countries of the Council of Europe have reported an alarming increase in the number of adolescents entering the most explicit and violent pornographic websites. A survey published in February 2011 by the Italian Society of Medical Andrology and Sexual Medicine (Società Italiana di Andrologia Medica e Medicina della Sessualità - SIAMS) based on a sample of 28,000 pornographic site users, has revealed that children as young as 14, before they have matured an affectivity-linked sexuality, are surfing websites showing very hardcore images. Of the roughly 27 million Internet users in Italy, 7.8 million, i.e. 28.9%, use pornographic websites. This ranks Italy as Europe’s fourth largest pornographic website user, after Germany (34.5%), France (33.6%) and Spain (32.4%). In some cases, children begin even before 13 years of age (3.9%), and the contacts increase considerably between the ages of 14 and 18 (5.9%).

The excessive use of online pornography from the early adolescence interrupts the maturity of sexuality linked to affectivity and creates a kind of addiction to even the most violent images, leading to a kind of “sexual anorexia”. In more general terms, pornography and above all ease of access and the resultant overexposure to it can even create the same kind of addiction and sickness as that caused by drugs, compulsive gambling and sadomasochism. We believe that the time has come for the Assembly to open up a debate on these issues to sensitise public opinion, the Committee of Ministers and the parliaments of the Council of Europe member countries to their implications.<sup>53</sup>

### **Network Neutrality<sup>54</sup>**

During June 2011 the Dutch Parliament agreed to make the Netherlands the first nation in Europe to officially put net neutrality principles into law. The law will force ISPs and telecom operators to ensure access to all types of content, services or applications available on the network.<sup>55</sup>

53 <[http://www.assembly.coe.int/ASP/Doc/DocListingDetails\\_E.asp?DocID=13530](http://www.assembly.coe.int/ASP/Doc/DocListingDetails_E.asp?DocID=13530)> accessed 30 September 2011

54 *Resources on Network Neutrality and Open Internet* <<http://www.diplomacy.edu/ig/nn/>> accessed 30 September 2011; for the issue of network capacity and who should finance it, see <<http://www.totaltele.com/view.aspx?ID=468082>> accessed 1 October 2011

55 ‘Network Neutrality in law – a step forwards or a step backwards?’ <<http://igbook.diplomacy.edu/2011/06/net-neutrality/>> accessed 30 September 2011

The OSCE Representative for Media Freedom has recently stated that:

Network neutrality is an important prerequisite for the Internet to be equally accessible and affordable to all. It is, therefore, troubling that more than 80% of the participating States do not have legal provisions in place to guarantee net neutrality. Finland and Norway stand out as best-practice examples with Finland having anchored network neutrality in its laws while Norway, together with the industry and Internet consumers, developed workable guidelines

The Joint Rapporteurs stated that:

### 5. Network Neutrality

a. There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.

b. Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders

<http://www.totaltele.com/view.aspx?ID=468082>.

### **Privacy/anonymity/right to be forgotten**

The 2003 Council of Europe Declaration states that the desire of Internet users not to disclose their identity should be respected, subject to limitations required by law enforcement agencies in order to tackle criminal activity.

In his Report, the UN Special Rapporteur draws attention to the ‘Inadequate protection of the right to privacy and data protection’.<sup>56</sup> The Report states:

The right to privacy is essential for individuals to express themselves freely. Indeed, throughout history, people’s willingness to engage in debate on controversial subjects in the public sphere has always been linked to possibilities for doing so anonymously. The Internet allows individuals to access information and to engage in public debate without having to reveal their real identities, for

<sup>56</sup> <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)> accessed 30 September 2011

example through the use of pseudonyms on message boards and chat forums. Yet, at the same time, the Internet also presents new tools and mechanisms through which both State and private actors can monitor and collect information about individuals' communications and activities on the Internet. Such practices can constitute a violation of the Internet users' right to privacy, and, by undermining people's confidence and security on the Internet, impede the free flow of information and ideas online.

The Report concludes:

The Special Rapporteur is concerned that, while users can enjoy relative anonymity on the Internet, States and private actors have access to technology to monitor and collect information about individuals' communications and activities on the Internet. Such practices can constitute a violation of Internet users' right to privacy, and undermine people's confidence and security on the Internet, thus impeding the free flow of information and ideas online. The Special Rapporteur underscores the obligation of States to adopt effective privacy and data protection laws in accordance with article 17 of the International Covenant on Civil and Political Rights and the Human Rights Committee's general comment No. 16. This includes laws that clearly guarantee the right of all individuals to ascertain in an intelligible form whether, and if so what, personal data is stored in automatic data files, and for what purposes, and which public authorities or private individuals or bodies control or may control their files. He also calls upon States to ensure that individuals can express themselves anonymously online and to refrain from adopting real-name registration systems. Under certain exceptional situations where States may limit the right to privacy for the purposes of administration of criminal justice or prevention of crime, the Special Rapporteur underscores that such measures must be in compliance with the international human rights framework, with adequate safeguards against abuse. This includes ensuring that any measure to limit the right to privacy is taken on the basis of a specific decision by a State authority expressly empowered by law to do so, and must respect the principles of necessity and proportionality.

A new issue in this area is the so-called right-to-be-forgotten. Initiated by the European Commission in the context of strengthening data protection/privacy rules, the Commission proposes:

Strengthening individuals' rights so that the collection and use of personal data is limited to the minimum necessary. Individuals should also be clearly informed in a

transparent way on how, why, by whom, and for how long their data is collected and used. People should be able to give their informed consent to the processing of their personal data, for example when surfing online, and should have the “right to be forgotten” when their data is no longer needed or they want their data to be deleted.<sup>57</sup>

It is the subject matter of a Spanish action by the Spanish DPA against Google.<sup>58</sup>

## Cybercrime

The extraordinary development of information technology has obvious consequences for “traditional” organised crime. While the use of data processing systems and networks is undeniably a step forward for society, it also makes it more vulnerable. Terrorist groups, pornographers and paedophile networks, illegal traffickers in weapons, drugs and human beings, money launderers and cybercriminals exploit this vulnerability. The expansion of new communication tools makes it easier for them to develop their activities. The Council of Europe Convention on Cybercrime, which entered into force in July 2004, is the only binding international treaty on the subject to have been adopted to date. It lays down guidelines for all governments wishing to develop legislation against cybercrime. Open to signature by non-European states, the convention also provides a framework for international co-operation in this field. An additional Protocol outlaws acts of a racist and xenophobic nature committed through computer systems.<sup>59</sup>

There is to be a special 10th anniversary conference on the Budapest Convention, under the aegis of the Octopus Conference: the Global Project on Cybercrime during November 2011.<sup>60</sup> This project, now at Phase 2, functions under the following premise:

Computer networks have turned the world into a global information society in which any kind of information is available to Internet users almost anywhere

57 <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1462&format=HTML&aged=1&language=EN&guiLanguage=fr>> accessed 30 September 2011

58 See, <<http://peterfleischer.blogspot.com/2011/09/right-to-be-forgotten-seen-from-spain.html>> accessed 30 September 2011

59 <<http://www.coe.int/t/portal/web/coe-portal/what-we-do/rule-of-law/cybercrime?dynLink=true&layoutId=36&dId=10227&fromArticleId=>> accessed 1 October 2011; see also, <[http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/default\\_EN.asp?>](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/default_EN.asp?>) accessed 1 October 2011

60 <<http://bit.ly/pSusGM>> accessed 1 October 2011

and which provides unique opportunities for people to develop their economic potential and exercise their fundamental rights and freedoms. However, this process is accompanied by an increasing dependency on information and communication technologies (ICT) and a growing vulnerability to criminal misuse and attacks. ICT facilitate illegal access to information, attacks on private or public computer systems, distribution of illegal content as well as cyber-laundering, terrorism and other forms of serious crime. Online fraud is expanding rapidly as cybercrime is increasingly aimed at generating illegal proceeds and as offenders are organising to commit crime on the Internet. This is true for all societies, including developing countries which are relying on ICT without the necessary legal and institutional framework. Cybercrime thus poses new challenges to criminal justice and international cooperation. In order to counter cybercrime and protect computer systems, Governments must provide for:

- effective criminalisation of cyber-offences. The legislation of different countries should be as harmonized as possible to facilitate cooperation;
- investigative and prosecutorial procedures and institutional capacities which allow criminal justice agencies to cope with high-tech crime;
- conditions facilitating direct cooperation between State institutions, as well as between State institutions and the private sector;<sup>61</sup>
- efficient mutual legal assistance regimes, allowing for direct cooperation among multiple countries.

The Council of Europe ran a workshop on cybercrime and cyber-security strategies at the 6th IGF in Nairobi, producing a comprehensive discussion paper.<sup>62</sup>

### **Children and the Internet**

Safer Internet Day (SID) is organised by Insafe in February of each year to promote safer and more responsible use of online technology and mobile phones, especially amongst children and young people across the world. Safer Internet Day 2012 will take place on Tuesday 7 February 2012, centred on the theme

61 <<http://bit.ly/qdfNaC> > accessed 1 October 2011

62 *Cybercrime Strategies: Discussion Paper* <<http://bit.ly/oz7X0y>> accessed 1 October 2011

“Connecting generations and educating each other”, where we encourage users young and old to “discover the digital world together...safely”!<sup>63</sup>

On the occasion of Safer Internet Day 2011, the European Commission announced that it will step up talks with ICT industry and children’s organisations to encourage the design of safer products to help keep children safe online. Moreover, the Commission will shortly review the 2006 Recommendation on minors and how to protect them in audiovisual media and Internet and on the 2008 Communication on the protection of youngsters from harmful content in video games. See also the speech by Neelie Kroes Vice-President of the European Commission responsible for Digital Agenda Safer Internet Day 2011: protecting children online Child Focus, Safer Internet Centre in Belgium, Safer Internet Day, 8 February, 2011<sup>64</sup>

As for the Council of Europe, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse responds to the potential risks faced by children when using the Internet by imposing criminal penalties for online access to child pornography, grooming, i.e the soliciting of children for sexual purposes via Internet chatrooms or online games sites. In order to promote respect for human rights in the virtual world, the Council of Europe and European Internet Service Providers (ISPs), have developed two sets of guidelines for ISPs and online game designers and publishers.<sup>65</sup>

## **Right of reply in the online environment**

Recommendation of the Committee of Ministers to Member States on the right of reply in the new media environment (Rec(2004)16<sup>66</sup>

## **Online behavioural advertising**

EU’s Privacy and Electronic Communications Directive as amended is applicable:

63 <<http://www.saferinternetday.org/web/guest/home>> accessed 1 October 2011

64 <<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/73>> accessed 1 October 2011

65 <<http://www.coe.int/lportal/web/coe-portal/what-we-do/media-and-communication/children-and-the-internet>> accessed 1 October 2011

66 <<http://bit.ly/rael5z>> accessed 1 October 2011; Note that ‘When adopting this Recommendation, the Permanent Representatives of the United Kingdom and the Slovak Republic indicated that, in accordance with Article 10.2 c of the Rules of Procedure for the meetings of the Ministers’ Deputies, they reserved the right of their Governments to comply or not with the Recommendation, in so far as it referred to online services.’

## Regulation 6 of the Privacy and Electronic Communications Regulations

(1) Subject to paragraph (4), a person shall not store or gain access to information stored, in the terminal equipment of a subscriber or user unless the requirements of paragraph (2) are met.

(2) The requirements are that the subscriber or user of that terminal equipment—  
(a) is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information; and (b) has given his or her consent.

(3) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user on more than one occasion, it is sufficient for the purposes of this regulation that the requirements of paragraph (2) are met in respect of the initial use.

(3A) For the purposes of paragraph (2), consent may be signified by a subscriber who amends or sets controls on the Internet browser which the subscriber uses or by using another application or programme to signify consent.

(4) Paragraph (1) shall not apply to the technical storage of, or access to, information—(a) for the sole purpose of carrying out the transmission of a communication over an electronic communications network; or (b) where such storage or access is strictly necessary for the provision of an information society service requested by the subscriber or user.<sup>67</sup>

### Online gambling

The European Commission is reviewing online gambling laws across Europe and will use the evidence it gathers to decide whether or not new laws are needed<sup>68</sup>

### Broadband advertising claims

Should the claims which ISP's make about broadband services in adverts be restricted?<sup>69</sup>

<sup>67</sup> See <[http://www.ico.gov.uk/for\\_organisations/privacy\\_and\\_electronic\\_communications/the\\_guide/cookies.aspx](http://www.ico.gov.uk/for_organisations/privacy_and_electronic_communications/the_guide/cookies.aspx)> accessed 1 October 2011

<sup>68</sup> <[http://ec.europa.eu/internal\\_market/services/gambling\\_en.htm](http://ec.europa.eu/internal_market/services/gambling_en.htm)> accessed 1 October 2011

<sup>69</sup> See, e.g., Changes in advertising of 'unlimited' and broadband speed claims <<http://www.cap.org.uk/Media-Centre/2011/Changes-in-advertising-of-'unlimited'-and-broadband-speed-claims.aspx>> accessed 1 October 2011

## Search engines and social networking services

In Strasbourg on 23 August 2011, the Council of Europe published Measures to protect and promote respect for human rights with regard to social networking services. The Draft Recommendation was discussed by the Committee of Experts on New Media at its 5th Meeting, 20 – 21st September 2011.

Draft Article 6 reads:

The Committee of Ministers recommends that member states, in cooperation with private sector actors and civil society, develop and promote coherent strategies to protect and promote respect for human rights with regard to social networking services, in line with the European Convention on Human Rights (ETS No. 5), especially Article 8 (Right to respect for private and family life) and Article 10 (Freedom of expression) and with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), in particular by:

- i. ensuring users are aware of possible challenges to their human rights on social networking services (in particular their freedom of expression and information and their right to private life and protection of personal data) as well as on how to avoid having a negative impact on other people's rights when using these services;
- ii. protecting users of social networking services from harm from other users while also ensuring all users' right to freedom of expression and access to information;
- iii. encouraging transparency about data processing, and in particular about the kinds of personal data that are being collected and the legitimate purposes for which they are being processed, including further processing by third parties;
- iv. preventing the illegitimate processing of personal data;
- v. encouraging providers of social networking services to set up co- or self-regulatory mechanisms;
- vi. taking measures with regard to social networking services in line with the principles set out in the appendix to this recommendation;

vii. bringing these principles to the attention of all relevant public authorities and private actors, in particular social networking providers, and civil society.

At the 6th IGF in Nairobi, UNESCO inaugurated discussion on “social networks for democracy”:

While acknowledging social networking’s important use for free expression and democratic participation, panellists and participants exchanged their various concerns about the risks and challenges that arise from the use of social networks, including the quality and ethical standards of user generated content, privacy of citizens and their security, insufficient children protection, opacity of personal data collection and processing, governments’ surveillance and filtering, etc. In this regard, the representative of the Council of Europe shared a draft recommendation on measures to protect and promote freedom of expression and the right to private life in the context of social networking services. Participants also debated whether governments should cut off social networking during riots and whether and how to properly put Internet regulation in place.<sup>70</sup>

The new published General Comment No 34 concerning Article 19 ICCPR, states that:

Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to extent that they are compatible with paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.<sup>104</sup> (Concluding observations on the Syrian Arab Republic (CCPR/CO/84/SYR). (par 43)<sup>71</sup>

70 <<http://bit.ly/oEoY4s>> accessed 1 October 2011; for the Draft Recommendation, see <<http://bit.ly/nvRICF>> accessed 1 October 2011

71 <<http://www2.ohchr.org/english/bodies/hrc/comments.htm>> accessed 1 October 2011

As noted in the section on privacy, there are increasing questions about the privacy aspects of search engine retained data (and also, it should be noted, defamation too).<sup>72</sup>

## Licensing and accessibility of websites

There are variations between countries regarding licensing of Internet content providers. However, Principle 5 of the 2003 Council of Europe Declaration on Freedom of Communication on the Internet states:

### Freedom to provide services via the Internet

The provision of services via the Internet should not be made subject to specific authorisation schemes on the sole grounds of the means of transmission used.

Member States should seek measures to promote a pluralistic offer of services via the Internet which caters to the different needs of users and social groups. Service providers should be allowed to operate in a regulatory framework which guarantees them non-discriminatory access to national and international telecommunication networks.<sup>73</sup>

(In some countries, e.g., China, content on the Internet is regulated through licensing and oversight of Internet companies (by issuing an “ICP licence”).<sup>74</sup>)

Further, ‘Discrimination against people with disabilities is prohibited by law, but website owners often don’t realise how the law affects websites.’<sup>75</sup>

72 ‘Google warns against ‘foolish’ legislation’ <<http://www.ft.com/cms/s/0/fe240804-816d-11e0-9c83-00144feabdc0.html#axzz1ZWErLdPL>> accessed 1 October 2011

73 <<http://bit.ly/poKJQD>> accessed 1 October 2011

74 <<http://www.bbc.co.uk/news/business-14832392>> accessed 1 October 2011

75 See, in the UK context, <<http://www.website-law.co.uk/blog/Internet-law/website-accessibility-and-the-equality-act-2010/>> accessed 1 October 2011



# Offline or Off Track? The effect of the rise of online media on traditional media

**Erik Albrecht<sup>1</sup>**

“I have this recurring nightmare,” New York Times senior writer and long-time Internet enthusiast John Markoff wrote in 2001. (De Wolk 2001, 179). “Online journalism succeeds only well enough to completely undercut the existing financial underpinnings of print journalism. In their place online publications fail to erect any grand new institutions committed to the journalistic enterprise.” His fear was that online media would cripple both newspapers’ circulation and ad revenues without being able to generate sufficient profit in order to maintain the high journalistic standards on which traditional media had built their strong position in society.

The picture Markoff painted 10 years ago is dark: a world without strong, independent media outlets that could provide their audiences with relevant, unbiased and operative information and monitor those in power. Markoff feared that a world in which the media no longer guarantee a pluralism of opinion might be the price we have to pay for the so-called digital revolution.

Markoff’s dark prophecy seems to be far off from the general discourse on the opportunities of the Internet, where praise for Twitter revolutions or new ways of participation through Facebook is commonplace. “The core of the media revolution is the fact that the structures for distribution of information changed fundamentally,” writes German online journalist and media scholar Anton Simons (Simons 2011: 144). Simons shares the vision of an age of information in which the big media companies essentially lose their gate-keeping monopoly: “Those who offer information and those who demand it no longer have to rely on media companies. Whether content reaches its audience is no longer a question of the power of your printing machines and broadcast transmitters, but simply a question of the potential of your content.”

Talking about the effects of the Internet, one is accustomed to thinking about the big opportunities it offers in terms of expanding pluralism. In the era of Web 2.0 and social media, everyone can convey facts and opinions to a wider public

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without having to find a media outlet that deems it worthy of publication. There is some truth to such views, but it is also important to look at the flip-side.

The great opportunities for more pluralism that the new online media world offers have often been talked about.

The Internet is already an important new means of distribution that offers opportunities to new online media as well as to traditional media outlets. On the one hand, this allows media outlets to operate more independently from distribution systems for print, radio or television which in many post-Soviet countries are still controlled by the state. It also allows them to work more independently from licensing authorities, as long as the state has not established any licensing rules for the Internet. (Even where this is the case, licensing rules for the Internet are often less restrictive than those for TV, where the number of available frequencies is limited.) In mountainous countries like Tajikistan or Kyrgyzstan, the Internet can also help radio or TV stations to deliver their programmes to regions in which the service of a terrestrial transmitter would be too costly. As a matter of fact, some of DW Akademie's partners in the region are already proceeding this way. At the same time, new media outlets can be established at much lower operational costs, challenging traditional media generally or biased state-run media in particular. Thus, they can operate in unfavourable economic environments that do not generate the big revenues needed to print a newspaper or set up a radio or TV station.

On the content side, citizen journalists can blog, tweet, post video on YouTube or comment on media reports online, adding new sources of information to the public discourse. As Simons pointed out, Web 2.0 makes it much easier to gather an audience for one's message. Throughout the post-Soviet area, there have been some very impressive examples of bloggers having a big impact on public opinion on such important matters as corruption. The Russian blogger Alexey Navalny is one of them. At the same time, the bigger part of the blogger community indulges in a form of Samizdat 2.0, where readership is confined mostly to their own peers, with no considerable impact on the general public.

With regard to censorship, the Internet is much harder to control than the traditional media. Servers can be set up in neighbouring countries and the mass of information is simply too great for any single authority to control. (Of course, some countries in the region simply block access to certain sites.) As Russia's President Medvedev put it, "We can't stop the bureaucrats from controlling the

media. But when we have digital television with a thousand channels, nobody will be able to censor all of them.” What Medvedev does not say is that nobody will be able to watch all of these thousand channels. Thus, the Internet might only create an illusion of pluralism of opinion.

At the same time, the digital revolution has its drawbacks. The assumption that the Internet will foster pluralism is not self-evident. Currently, traditional media print, radio and TV face several new challenges due to the rise of online journalism. Many outlets are still struggling to find their place in the new digital media world. Some of them face life-threatening challenges: many local newspapers in the US have gone bankrupt and regional newspapers in Germany are encountering ever greater difficulties. In Central Asia, those independent media outlets which do not receive any funding from the state might be the most endangered if revenues break away. This constitutes a substantial threat to pluralism. There are several more that seem to be worth mentioning.

First, the Internet has substantially changed the way we consume media. In the past, people would listen to the radio during the day to get important news every hour, watch TV to get an overview of the day’s news and read in-depth reporting in the morning paper. At the end of the process, they would ideally attain a well-rounded picture of events from different sources.

With the rise of online media, this order is threatened. Convergence and new technologies such as on-demand services, newspaper apps and hard disk recorders dissolve our routines of media consumption and put different types of media in direct competition with each other. The traditional partition of tasks between the media doesn’t work anymore. This has several implications. At first glance, the dominant effect is that citizens get the news much faster than before since there are more media outlets offering video, sound and text. But convergence also implies that there is no need anymore to receive one’s news from different sources. In the worst case, people are now able to get their news all day long in different forms from one website. This too is a threat to pluralism.

Second, online media today often serve as the fastest source for breaking news. However, due to lack of funding, they still cannot compete with traditional media on in-depth reporting. Although online media are improving their background coverage, hardly any online media has uncovered a major scandal in Germany – unless they’re backed by a major conventional medium (Spiegel Online, tagesschau.de, bild.de). Thus, people informing themselves online will get a less

diverse view, since breaking news often lacks the pluralism of opinions that one finds with in-depth reporting.

Third, it has never before been so easy for media outlets to check what their competitors are up to. One click to their web site now suffices whereas in the past one had to wait for the paper to be printed or the news programme to be broadcast. Given the fact that it has also become easier for Internet users to compare different media, many outlets seem to consider it more important to cover what their competitors cover than to work on genuinely new stories that would help to distinguish them from their competitors. This, in combination with the faster rhythm of online publishing, leads to many media becoming more conformist, with a few dominant media outlets determining which direction the journalistic pack is running in. In Germany, for example, the online outlets of Der Spiegel and of Tagesschau (the country's most-watched TV news programme) serve this function. Thought through to its logical conclusion, this constitutes a danger to media pluralism. Journalists checking the most important websites will be more prone to cover stories in ways similar to what they have read on the web. The range of opinion covered will decrease, especially with regard to important, breaking news.

Fourth, and perhaps most important, are the financial challenges foreseen by Markoff. Today, the Internet is on its way to becoming the leading form of media in terms of ad revenue. In fact, among young people it has attained this status already. At the same time, companies pay much less for internet ads than for advertising in print media or on TV. Thus, with print advertising revenues declining, online media can only compensate for a small part of it. The U.S. news site, the Huffington Post, for example, has a large audience, but it does not monetize it well. Its revenue per reader is \$1 per year. Newspapers collect hundreds of dollars per year from each subscriber and generate ad revenue on top of that.

So how can traditional journalism react to these challenges triggered by the rise of the Internet? Finding ways to provide a strong financing of journalism in the digital age is definitely one of the most crucial questions in ensuring a pluralistic media landscape in the future. Western media is still looking for a viable model. In Central Asia, this will be even more difficult. Nevertheless, strong funding is crucial for strong journalism. Otherwise, it cannot fulfil its important role in society.

At the same time, it seems important for journalists to bring to the attention of their audiences the high quality of professional journalism. Reading about

“Journalism 2.0”, one finds what at first glance appear to be amazing examples of how online media need so many fewer journalists since they can rely on citizen journalists to upload video or post small pieces of news. But this kind of citizen journalism or blogging should not be confused with professional journalism. While citizen journalism is an important source of information that offers great opportunities for public discussion within society, it does not function according to the strict professional standards journalism should apply. Heribert Prantl, a leading editor of “Süddeutsche Zeitung”, made a quite accurate comparison: “There are several hundred thousand policemen in Germany and Austria. But there are far more citizens keeping an eye on what happens in their neighbourhood.” But those citizens will never be able to replace the police. The same applies to citizen journalists and professionals. (Jakubetz, Langer, Hohlfeld 2011, 15)

Quality journalism has to be the answer to the rise of online journalism. Only this will ensure pluralism in the long run. In a world where information flows are growing exponentially due to sites like YouTube, Twitter, etc. journalistic gatekeeper skills like the ability to select, analyse and evaluate news are more needed than ever. The idea that anyone can make his or her voice heard via the Internet is an illusion. Although barriers are lowered by the Internet, the media might be even more important as gatekeepers. Social media is no real competition for quality journalism.

Nevertheless, social media and citizen journalism offer huge opportunities also for traditional journalists. Hardly anybody will watch the uprising in Syria on YouTube. On the other hand, if used wisely, YouTube, Twitter and Facebook can be great new sources of information for events that journalists would not have been able to cover in the past.

At the same time, communicating with one’s audience has never been easier. Internet platforms and social media can be used to get new ideas for stories and to learn how audiences feel about certain topics.

Online journalism is evolving more and more as an independent type of journalism. The days when reporters were asked to adapt their newspaper article just a little bit for the web belong to the past. Online journalism today is much more than the print journalism for the web that it started out as. Leading journalistic websites incorporate sound bites, interactive graphics, video, commentary functions, picture galleries and much more.

Basically, the story of the rise of online media seems to be as old as journalism itself: new types of media have repeatedly been invented, sought to take their share of the media market and pushed more established media to the side. In the 17th century, newspapers put bards travelling from town to town to tell the news out of business. In the early 20th century, radio became a new competitor for the papers. Later on, radio itself came under pressure by the rise of television. As dramatic as those changes may have been, looking back at these developments, one has to state that neither newspapers nor radio ceased to exist. What happened was that each media focused on what it could do best. This is how traditional media has to find its way to counter the challenges of online journalism.

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# The Internet is not just a technology. It is an opportunity for everybody

**Dainius Radzevičius<sup>1</sup>**

The June 2011 announcement of the U.N. Council for Human Rights states that the Internet is fundamental right of a human being. The U.N. report specifies that the Internet is “an irreplaceable tool required for realization of various human rights, fighting against inequality, and acceleration of human progress.”

The comprehensive report was the result of negotiations during the year between U.N. representatives and organizations for protection of human rights from all over the world. The report specifies that “simplification of Internet access for all persons with as few possible restrictions shall be the priority of each state.”

Rapid development of information and telecommunication technologies (ITT) is known to have created the prerequisites for modernization of public administration system. Yet from the first days of using these technologies at public administration institutions, the discussion started concerning how ITT may assist in creation of closer relations with citizens and improvement of public services. These ideas got new impulse with the intensive growth of Internet users.

Modern information technologies provide public authorities with essentially new opportunities for improvement in productivity and efficiency of the work. Possible changes are so great that we may speak of a new way of power realization – “e-power” or “e-government.”

In scientific discussions new information technologies are often evaluated as the “rationalizing” force of the public sector. The force which will possibly help overcome the problem of bounded rationality when making public decisions. Some scientists even offer to stop talking about a “new public administration” in public organizations and to start investigating Internet-related changes in public administration.

I admit that every announcement about new technologies, modernization of the public sector and various related issues gives rise to contradictory thoughts within me.

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In Lithuania it is sometimes difficult to realize what more may be shown to ordinary Lithuanians that will improve e-services provided on the Internet. Private persons and businesses may communicate with tax inspectorates in an electronic way already, and submit declarations, receive responses to inquiries, consult, etc. All public authorities not only distribute announcements about their activities among printed media, but also place data on salaries of their employees on their websites. One may see published declarations of public and private interests of politicians or government officials. One may receive different forms of documents and get answers to difficult questions.

Those who do not wish to communicate by phone may communicate electronically or even make an appointment with the doctor. Moreover, some ministers or other important government officials publish in their personal blogs informational announcements and reports and also express their opinion or share impressions of the meetings with the Government, politicians or phenomena. One may directly or indirectly have an Internet discussion with the ministry of law and the chairman of the Union of Journalists of Lithuania.

Those for whom the Internet is too expensive service, or those who don't want to order it at all may use public access to the Internet at libraries, cafes, city parks or other places on a free and unlimited basis. It is very convenient.

However, I have been travelling for many years. Visiting some countries outside EU, for example, countries of the Central Asia, I understood that cheap, fast, accessible and unlimited Internet is available not for everybody and not all the time.

Speaking of the practice of e-power projects both in Lithuania and foreign states, one may notice significant contradictions. In theory, advanced technologies had to become the force modernizing government service. All IT projects often substantially exceed the prescribed budgets, their implementation is delayed, and tasks set are often not achieved.

Usually there is the hope that e-power will be more responsible, more transparent. At the same time, there is a fear that information technologies will provide authorities with new opportunities to control citizens and create a threat for private life of people. This surrealistic scenario may allow final bureaucratization of society. And although e-power actually helps make services more accessible, information technologies often only intensify existing social differences in the

state: e-services are primarily used by the youth earning higher salaries and persons living in cities.

Therefore, the U.N. report not only evaluates the Internet as a communication means which is useful for all democratic societies, but also warns that the unique architecture of the Internet creates a threat for the powers that be in such societies.

The basis of the potential and strength of the Internet is its unique properties – speed, worldwide extension, and relative anonymity. These properties provide an opportunity for certain persons to distribute information in real-time mode and mobilize people – this frightens the governments and the powers that be in the states. Therefore, Internet access in certain states is limited to application of various complicated technologies and blocking of content, recognition of activists and critics, as well as supervision over them and adoption of laws justifying such limitations.

Important facts. Every minute:

695,000 new entries appear on Facebook.

695,000 search words are entered in Google.

925 new iPhones are sold.

The famous futurist in the sphere of business and the author of 15 books, Patrick Dickson, mentioned as one of 20 most influential thinkers in the sphere of business, is confident that business will have the future solely in case of human time saving and positive emotions. What will be if we apply these principles to e-power?

In Lithuania there are quite clear principles according to which society shall be provided with information:

- 1) completeness of information meaning that the applicant shall be provided with all information required by legislative acts according to content of his/her application;
- 2) accuracy meaning that information provided to the applicant shall comply with that available at the institution;
- 3) legitimacy meaning that actions of institutions in the course of providing information are based on existing and other laws or other legal acts;
- 4) objectivity meaning that government officials or employees of the institution in the course of providing information are impartial and unbiased.

One may state that simultaneously with the growth of modern society's needs and the reduction of state-managed resources, e-power becomes vitally important. Any governmental institution should actually avoid unnecessary technologies, bureaucratic and even human filters and brakes. For example, persons specially appointed for relations with public and press are often unnecessary intermediaries embellishing and, thus, falsifying information concerning the real activity of public authorities. So, not only valuable time is spent, but also service quality often only formally meets societies' requirements.

A member of the European Parliament from Denmark and a member of the Alliance of Liberals and Democrats for Europe, Morten Løkkegaard, who is responsible for improvement of EU communications, said:

“For government officials and politicians the official courses shall be organized at which they could master skills required to make the public informed and communicate with it. It has been already proved that social media are a perfect way to do this providing society with an opportunity to see what is happening behind the wall [institution]. And finally, this is the simplest way of direct communication of citizens and keeping discussions with politicians making decisions.”

Thus, supported with the communications way of life of modern society aimed at various areas of knowledge actually sets new requirements on democracy relying on management of interactions and the participation of people.

Now, it is obvious that the efficiency of modern public administration depends only on successful management of social ideas. However, the public sector, which often lives behind closed walls in figurative and direct sense, is simply unaware of changing needs of people and dominating social ideas. Therefore, very often great and ambitious decisions of public authorities for which millions and millions are spent, are just unacceptable for ordinary people. It is good if they do not sour or oppose the population. Let us imagine how would feel a person living on a \$100 salary in the country in which public authorities build fountains costing dozens millions of dollars just wishing to show off? Did public authorities ask this person whether he or she really wanted to spend such great money for splashing water?

Social ideas are actually public political initiatives of both citizens and public authorities. However, their realization and management is the priority of public authorities. One may even state that efficiency of modern public administration

depends on successful management of social ideas. Only social ideas ensure a partnership of public authorities and citizens, a feedback, correction of decisions, actions and programs, as well as linkage and union of citizens to realize the goals of management and support of decisions made by public authorities.

This significantly changes the political mechanism of democracy aimed at transformation into the forms of participative democracy, and acquiring elements of online and deliberative democracy. It is obvious that in each important case convening referendums is too expensive for public authorities and takes time. However, successful expansion of the Internet allows society to directly and quickly response to proposals of public authorities. To support them, deny or even propose good alternatives. This must be also applied when creating new laws or an entirely new model of legal regulation.

Forms of this democracy differ from the formal democratic principle of “taking into account only opinion of citizens and representing it.” Direct communication involves citizens in the process of regulation. In the community of knowledge or in global environment, regulation acquires such features which cardinaly change its nature, way of action and role in the system of public relations.

The term “regulation of the community of knowledge” reflects the fact that in the modern period regulation is more and more integrated in diversified social relations and actions. Boundaries of its specialized formal competence are disappearing, and the object of regulation becomes the society as a whole rather than its separate segments. The changing way of life starts to dictate its requirements to public administration as well.

In today’s society the following structures start to dominate: different communities, interest groups, social networks. The structure of society is less seen as systematic, i.e. consisting of relatively stable classes, layers or groups. It is more often construed as the union of changing networks, groups of interest, public institutions with quite original, individual visions, values and interests expressed at different levels and in different aspects starting from political and economic aspect and ending with communicative one.

These public innovations are the product of the community of knowledge and actually operate according to new rules. They are dynamic, changing and very individual. These mobile and changing social complexes create specific valuable fields, form unique expectations and relations with public authorities, have their

own culture, establish their own relationships which are constantly changing, etc.

How does this affect the organization of regulation?

First, traditional formal ways of administration are simply incapable to cover such changing diversity. Changing social structure requires other forms of regulation. The only way to keep the balance of growing diversity and to level different interests are modern communication means. They try to find similarities, agreed interests and individual visions. This means that traditional formal tools of political decisions, which are strictly governed in legal terms, are insufficient. As an example of insufficiency of legal methods one may present the typical excuses of governors and politicians with regard to few regulations. Usually as the reason for failure bad laws are cited.

However, this actually points out to two things: laws are behind reality and may not regulate an “explosive” society.

Therefore, it is obvious that public authorities of democratic countries are afraid of such explosive diversity and try to keep under their control all possible media – from press and TV to the Internet. It is, however, easier to control the press and TV. Expensive technologies may be directly managed through control of financing. And conditional freedom of the Internet may be limited by prohibiting people to use cheap and accessible Internet. Nevertheless, I am sure that the Internet provides journalists with huge opportunities. Traditional mass media kept under the control of public authorities are known both for external censorship and self-censorship. The Internet allows every journalist to do what he wishes. Moreover, it is obvious that Internet development may be slow or fast, but it is nevertheless development. Therefore, each journalist is perfectly aware which symbolic annual payment the media channel of a global scale may have. It has been proven by Wikileaks. Wikileaks awakened many thoughts and stirred up a storm of assessments. Which is it? Is it dangerous? Is it controversial? Is it useful? Or all in one?

The author of these lines also keeps his journal on the Internet. Since in free and democratic Lithuania a free speech may sometimes challenge, having published information in Wikileaks about possible corruption of some Lithuanian publishers and having expressed his critical attitude to such Lithuanian publishers, the author of this article appeared before the court in connection with libel case brought against him. This proves once more that traditional media are ill and try

to fight with new technologies. But Internet opportunities are growing and their impact on society is increasing. Therefore, new initiatives of public authorities appear, intending to regulate and control content not only of the press and TV, but also of the Internet.

Famous Russian programmer Yevgeniy Kasperskiy stated that in the future in most companies employees will not have Internet access. According to Kasperskiy, such measures will be inevitably taken since it is the only way to ensure security of both private companies and government institutions.

“I think that next year security standards which are observed only by militaries will be implemented at all enterprises,” Kasperskiy in an interview with one TV channel in December 2011. The programming company Kasperskiy created 15 years ago is one of four largest companies in the world in the sphere of IT security. According to Kasperskiy, in the near future new security systems have to be created and implemented.

More and more announcements appear in the world about cybernetic responses to penetrations into databases of enterprises and institutions. Secret information was stolen even from HBGary in USA creating IT security systems.

However, at present it is obvious that dangers of the Internet appear for several reasons. One of them is the low information literacy of the society and the unreadiness to use and understand new media properly. Public authorities may do a lot to this end. Providing people with an opportunity to use proper services, protecting consumer's rights and encouraging development of electronic services, public authorities may create a new type of society which would be able to use services of public authorities and offer its own services to public authorities – make proposals, ideas, assist in improvement of legal regulations, create its own media channels, and ensure diversity of opinions. Providing free Internet access, public authorities would not only save the time and money of people, but also significantly eliminate any conversations about a regulated democracy. Since “explosive diversity” exists in any society, and by preventing people to directly communicate with public authorities and participate in decision-making process, such “explosive diversities” will transform into explosive revolutions such as those that occurred in Egypt and the other states of North Africa.

# Internet governance in Central Asia





# Internet Misgovernance as a Threat to the Silk Road 2.0

**Asomuddin Atoev<sup>1</sup>**

I'd like to thank OSCE for this possibility to share my thoughts concerning advantages of the information society for landlocked countries of the Central Asia, particularly mountainous Tajikistan. The information society is about knowledge-driven society. It is about empowering countries independent of their economic status in the preceding industrial society, since now "power is with the knowledgeable" as Firdawsi put it many centuries ago in his well-known poem "Shahnama". The information and communication technologies (ICTs), as a driving force of this society, can empower many to become as creative as one's capability allows. It provides favourable conditions to many developing countries to contribute to the global economic benefits as creative consumers, if not producers.

The information society for landlocked countries of Central Asia is a second opportunity after the Great Silk Road to find their own niche in the global economy. This opportunity, for the sake of simplicity named Virtual Silk Road or Silk Road 2.0 in this paper, has much stronger potential. However, an opportunity is like energy, which as Law on Conservation of Energy states "it can be transformed from one to another or transferred from one place to another" (Wikipedia 2011). If it is used consciously it can bring expected or even beyond benefits. If it is not used or, even worse, misused it can turn into a challenge for an ignorant country or the whole region. This is an assumption. Nevertheless, it can be empirically proved.

The Silk Road 2.0 opportunity cannot wait forever. It can repeat the sad destiny of the first opportunity, the Silk Road, the end of which started once Columbus discovered America. As Adam Smith argued:

"The discovery of America, and that of a passage to the East Indies by the Cape of Good Hope, are the two greatest and most important events recorded in the history of mankind. Their consequences have already been very great: but, in the short period of between two and three centuries which

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has elapsed since these discoveries were made, it is impossible that the whole extent of their consequences can have been seen. What benefits, or what misfortunes to mankind may hereafter result from those great events no human wisdom can foresee.” (Smith (2007 [1776]):59)

Indeed, this great discovery has brought many benefits to many countries worldwide. But it has brought many misfortunes to the landlocked countries of the region. The emergence of the Silk Road 2.0 offers the capacity that can meet these misfortunes. Assuming that being landlocked is one of the key causes of these challenges, the initiatives of Silk Road 2.0 focused on applying ICTs for developmental goals (ICT4D) can be a viable approach to open this lock. Indeed, with ICT4D, paraphrasing Jeffrey Sachs, even the ‘geography is not a destiny’ (Sachs 2008:217). The achievements of the ICT market in Tajikistan can be a good proof to that. The technological breakthrough of the mobile telephony market is impressive not only with its unimaginable coverage of rural population countrywide but also with deployment of advanced technological solutions as well as with development of new technologies of communications (PF Internet 2010).

### **Threats to the Silk Road 2.0**

The second opportunity, the information society, might be similar to the Silk Road 1.0 destiny if the ICT market and emerging ICT4D initiatives in the region are misgoverned. Attributes of misgovernance can be (1) promoting of technological deterministic approach ICTs “demonization”; (2) treating least developed countries of the region as beneficiaries of ‘cunning development programs’ (Sen 1999:11) with almost no interests in local creativity potential; (3) industrial feudalism of regulators that “can’t see the forest for the trees”.

#### ***ICTs “demonization”***

The evolution roadmap of the ICT4D can be thoroughly described by 5Is, borrowed from Heeks ‘chronology of views about ICT and development (Heeks 2008:31), such as Ignore, Isolate, Idolize, Integrate, and Innovate (Heeks 2008). However, with the growth of technological deterministic approach of presenting digital technologies as enabler of revolution like “Twitter revolution” or “Facebook revolution”, one more view has a right to be included in this roadmap. It is a “demonize” view in terms of its impact in the transition and developing countries. This view is a good excuse for some leaders in these countries to tighten

regulatory rules in the field of ICTs, regardless of the actual benefits that digital technologies have already delivered and their developmental promises.

Perhaps people and institutions that believe that this revolutionary power of digital technologies strengthen democracy in developing countries have strong evidences and they might expect to see liberated society in newly emerged democracies. However, on one hand, what happens in reality does not necessarily meet expectations. On the other hand, these expectations, mainly seen from the developed countries perspective, might not be valid in the context of developing countries. With ICTs, as Heeks specifically suggests “it often makes sense to take the organic approach of following fashion, rather than the inorganic approach of trying to create your own fashion statement” (Heeks 2005:5). Thus, for countries that experienced the Arab Spring what was a “fashion statement” developed locally – a technologically driven revolution or application of technologies to socially-driven revolution? Or, as Zuckerman argues in Foreign Policy is about technologies or ‘decades of frustration’ (Zuckerman 2011)?

The goal of this work is not an assessment of the experience of countries faced social networking revolution, rather this experience’s impact to some Central Asian countries, members of the Collective Security Treaty Organization (CSTO). The political actions that have been taken in these countries as a consequence of the Arab Spring show that CSTO has no doubt that it is a revolution driven by the social networking media. For example, this regional cooperation partnership considers “to take control of social networking sites in order to prevent Tunisia- and Egypt-like mass riots in its member states” (RT 2011) and it has raised in several occasions issues of ‘electronic sovereignty’ of the states and necessity to build ‘electronic borders’ (Tengri News 2011, Livejournal 2011).

This intention of CSTO is a threat to the Silk Road 2.0 and its advantages that countries of the region have started to make use of. The problem is not actual implementation of this intention. The problem is that these false attempts are discouraging for least developed members of the region in their endeavours to deploy ICT as a platform for development. Attempts to transform ICTs from such a platform into tools of revolution can take away more desirable revolution. This is a technological revolution in the mindset of these societies that is capable to bring real development by encouraging local creativity and promoting dis-intermediated interactive access to the regional and global markets as active consumers, if not producers.

### ***Treating least developed countries as passive beneficiaries***

Another thread is treating least developed countries of the region as passive consumers of the developing programs of the international development actors and regional leaders. Local ICT4D initiatives are often found either “too ambitious” or “unbiased” by these parties. An example can be an initiative of Tajikistan to run e-voting in large cities for the next parliamentary election in 2015. Sadly, the ODIHR expert view found that ‘the current circumstances were unfavourable for the introduction of e-voting in Tajikistan.’ (ODIHR 2010). The report justifies this conclusion by listing ‘a wide range of challenges’ including ‘limited infrastructure, high costs, low levels of familiarity with ICT...’ (ibid).

Though the local experts view is that this initiative could be used, at least, in districts of Dushanbe, where its ‘limited infrastructure’ includes 4G (WiMAX) Internet access and the state data transfer fiber-optic network interconnecting 48 government agencies, not mentioning fiber-optic infrastructure of at least 4 Internet service providers and 3G mobile coverage of at least 4 cellular operators (PF Internet 2010:15-6). Even if this and the other challenges were impossible to meet inside the country, this e-voting initiative could be piloted in more advanced cities of Russian Federation, where the majority of oversea workers from Tajikistan are situated. This category of citizens is almost excluded from the conventional voting system, which creates a great demand for applying e-voting for them. Nevertheless, ODIHR, ‘ready to support the electoral reform process’, found this inclusive voting mechanism ‘unfavourable for the introduction’ (ODIHR) in Tajikistan.

Most of local initiatives on e-government development in the country that are outcomes of the multi-stakeholder partnerships<sup>2</sup> (MSP) can be a proof of availability of political will to promote ICTs for supporting ‘reform of public administration with a view to creating a national development system in the country, the principal features of which are transparency, accountability and a focus on combating corruption’ (NDS 2007:9) in Tajikistan. They are fostering activity of the ICT policymaking institution like the ICT Council under the President of Tajikistan since the beginning of 2011, implementing number of ratified policy documents and initiating drafts of policy documents like e-government concept and e-government development master plan, applications of ICTs in activities of some public sector agencies for providing e-services.

<sup>2</sup> Public-private partnerships (PPP) including civil society institutions

However, despite of being interested in growth of MSP and promotion of transparency and accountability as principal features of public administration, most of the international donor-funded ICT projects are often focused on building technical infrastructure with poor consideration of the available commercial infrastructure. Today private networking infrastructure can be easily deployed for providing many more value-added services that might enforce MSP as well as more efficient implementation of the state programs. For example, IPTV, already tested in the country in 2007 and 2008, could be a significant help in migration to the digital TV broadcasting lead by government of Tajikistan. Sadly, neither this capacity nor potential partnership with any ICT market stakeholder is considered in the State Program on Digital TV Broadcasting in the Republic of Tajikistan.

Though the local ICT market of Tajikistan is not only adapting the advance digital technologies but also producing new technologies, for example the conception of 5G or ‘system and method of wireless mobile communication’ (EAPO 2009), local creativity capacity has been still ignored.

### ***Industrial feudalism***

The third threat is so-called ‘industrial feudalism’ quite commonly practiced among state regulatory authorities. This concept can be shortly described by an English proverb that says “can’t see the forest for the trees”, which indicates those actions of the state regulators that cannot see the national interests for a specific industry interests. A few examples that can help to illustrate this concept in the context of Tajikistan can be (a) state tax policy that lobbied and succeeded in making mobile communication service an object of the excise tax and it is now trying to do the same with the full range of electrical communications services; (b) endless attempts of the communication industry regulator to create a single communication gateway to receive the entire incoming data traffic and to interconnect the networks of all its licensees (communication operators). In other words, to make the national cyberspace more vulnerable in order to lobby the interests of one of its licensee, i.e. the state telecommunication operator Tajiktelecom; (3) dual position of the regulators, ICT market and television and radio broadcasting market, that are both regulator and operator simultaneously.

### **Conclusion**

The information society, referred as the Silk Road 2.0 in this paper, offers unprecedented opportunities for the development of the landlocked Central Asia.

The development that, if borrow Amartya Sen's argument, expands "the real freedoms that people enjoy" (Sen 1999:3). Certainly, it is not as easy as it sounds. There are many impediments that these countries might face in this process. However, none of them is as hard as those created by these countries for one another and for themselves. Political actions in various levels of partnerships, either regional or international, to liberate or restrict ICTs regulation and deployment have to be taken with a true consideration of all partners interests and potential gains and/or loss. Actions have to encourage integration and innovation dimensions of the Heeks 5Is (2008) with ICT4D.

As for the country level, in taking the ICT4D-relevant actions a "fashion statement" (Heeks 2005:5) to follow has to can be chosen from the local context, for example private sector approach in deployment of ICTs who already act, paraphrasing Heeks (2008), as active producers and creative innovators of the Silk Road 2.0 age. In this context, an organic approach can be a multi-stakeholder partnership. In this case, countries possible success in their ICT4D efforts, despite threats, mentioned above and potential ones, might be very high.

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# National Internet Development Policy in Kazakhstan

## Makazhan Shaiken<sup>1</sup>

Internet development is one of the strategic approaches in Kazakhstan on the matters of media freedom and opinion pluralism. One of important priorities for our country in this area is enlargement of the global network access. For this purpose the state undertakes measures on the expansion of Internet coverage and development of information technologies.

As a result the number of users of the Kazakhstan segment of the global network is constantly growing. Whereas in 2008 2.3 million Kazakhstan Internet users were registered, now this figure equals 6.8 million people. At present the Internet is used by 40.1% of Kazakhstan population, whereas in 2008 Internet users amounted only to 15.1%.

In addition to the increase of users, the number of domain names in kz zone is also increasing each year – the growth is 20-25% per annum; over 60,000 domain names are registered. Average daily number of visits to Kazakhstan Internet resources as of October of that year was approximately 14 million.

A particular role in this matter is played by national policy for liquidation of information inequality. In particular, the work on development of rural communication is continuing – CDMA wireless access network in the range of 450 MHz is under construction that will ensure access of distant regions to communication services, digitization of rural telephone networks and the provision of Internet access services in villages. Plans for development of CDMA radio access network prescribe an increase of coverage from 59% in 2009 to 100% in 2013.

Pilot projects have been already been launched in a number of regions. For the time being, CDMA 450 wireless access system covers over 1,500 rural settlements.

In 2010 the project of high-speed mobile Internet access based on 3G technology was launched. At present, the issues of implementation and realization of

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projects for development of 4G and Wi-Max fixed and wireless networks are being analyzed that will reach 100% coverage of households with telephony and broadband Internet access services.

The second trend of national Internet development policy is improvement of Internet network content.

Thus, to support Kazakhstan Internet resources the Program for State Support of Kazakhstan Websites is being realized. Participants of this Program get hosting for 6 months (VPS) on a free of charge basis. At present, support was given to about 40 socially important resources.

One of the world tendencies of Internet development is attraction of printed media in the global network, when large newspapers and magazines open their analogues on the Internet. For the time being, Kazakhstan print media actively uses Internet opportunities.

For this purpose Baq.kz has been launched. This website consolidates all Kazakh-language media which have their own sites. They include Internet resources of 13 TV channels, 10 radio channels, 35 newspapers, 4 magazines and 27 information resources. Now Internet users may learn the world and Kazakhstan news in any area in Kazakh language. Regional Kazakh-language media, having no sites of their own, have an opportunity to place own news at Baq.kz – 54 pages are opened.

An important trend in the work is building the contact between the state and the population through the Internet network. Here an important role is played by the e-government. According to published information of the United Nations, in 2010 the Kazakhstan e-government system took 46th place among systems of all countries, 35 places higher compared with 2008. Due to the appearance of new services rendered to population via e-government, in 2011 we expect to achieve positive results in this rating.

Within the framework of this project the Government created an official blog platform containing blogs kept by the officials of public authorities. The popularity of such a communicative format is proven by the amount of citizens' applications. Now, the blog platform has registered over 100,000 questions. Communication via blogs has become popular among citizens because of promptness and quality of responses.

In addition, great popularity among the officials of public authorities was gained by social networks (Facebook) and microblogs (Twitter). The media often refer to information received from such sources.

Against this background, improvement of legislative support of development of the Kazakhstan segment of global network is entering a new stage. It is caused by the necessity to determine the rules of the game common for all market participants.

For this purpose in 2009 the Law On Amendments in Certain Legislative Acts of the Republic of Kazakhstan on Information and Communication Networks was adopted.

The main goal of the Law is legislative recognition of provisions governing relations connected with distribution of information in Kazakhstan using information and communication networks.

To bring legislation in compliance with modern level of development of Internet technologies, the law recognizes provisions determining key concepts and governing rights and obligations of participants of the data transmission process in information and communication networks. Thus, for example, the concept of a “website” did not cover placing of information on the Internet network using portals, forums, blogs, Internet TV and other technologies. Therefore, the law prescribes for change of the concept of a “website” to a wider concept of “Internet resource.”

Adoption of the law has led to a quality change of principles of legislative regulation of relations in the data transmission process in information and communication networks. The law achieved the strategic goal – to establish legal mechanisms of regulation of the matters of placing information on Internet resources and ensure protection of constitutional rights of citizens and legal entities in this area of public relations.

It should be noted that improvement of the legislation was primarily aimed at the fight against crimes connected with use of information and communication networks rather than at censorship on the Internet, as stated by opponents of the law.

Thus, for example, substitution of the concept of a website with that of Internet

resource contributed to the increase of responsibility of resource owners for distribution of illegal information determined by legislation.

Forums, blogs, chats placed on the Internet resources are not counted as media. Responsibility for placed information, including illegal information, shall be rested upon resource owners. The adopted law facilitates a shift of relations between entities of Kazakhstan zone of global network into a civilized channel.

Adopted amendments facilitate pre-trial resolution of conflict situations on the Internet and the prevention of cybercrimes.

It should be noted that upon adoption of the law on the Internet, until 2011 there were no cases of closing Internet resources or other limitations on information distribution. All court decisions were made in the current year and with regard to resources distributing information calling for terrorism and extremism, being of pornographic nature, and encouraging suicidal behavior.

Information about court decisions is placed on the Internet resources of the relevant judicial authorities, as well as is regularly made public at briefings of the General Prosecutor's Office.

It should be mentioned that the state undertakes measures on pre-trial resolution of conflicts. If any illegal content is revealed, the respective letters will be sent to editorial offices of Internet resources requesting the illegal information be deleted. In case of a positive response by the editorial office, no measures will be taken with regard to the resource.

Kazakhstan will continue creating the most optimal conditions for development of the Internet segment and improvement of legislation on Internet regulation.





# Internet space regulation in Kyrgyzstan

## Begaim Usenova<sup>1</sup>

Websites are not considered as mass media in Kyrgyzstan; it is not included in the ‘media list’ in the Law *On Mass Media*, and therefore not subject to compulsory registration as such. Similar to any legal entity being subject to registration with the Ministry of Justice, websites should be registered with the Ministry of Justice as non-profit organizations or economic entities (limited liability companies). Thus, creation and maintenance of a website without registration (as a mass media outlet) contains no administrative offence.

### Internet and legislation

However, there is no specific legislation for the Internet in Kyrgyzstan. Existing laws govern Internet relations mostly in the same way as other forms of communication. Regulatory legal acts applicable to protection of honor and dignity, pornography, copyright, divulgence of state secrets and other legally protected information shall also apply to Internet materials in the same way it applies to traditional media.

These laws apply to all individuals, irrespective of whether they are journalists, editors, producers, distributors of the media or not. Thus, Kyrgyzstan’s off-line legal framework<sup>2</sup> enables reasonable regulation on the use of the Internet. For example, when examining information disputes at courts, Internet content may serve as material evidence according to provisions of the Guidance of the Ministry of Justice

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<sup>2</sup> List of regulatory legal acts governing the matters of honor, dignity and business reputation protection: the Constitution of the Kyrgyz Republic (Articles 20, 29, 31), the Civil Code of the Kyrgyz Republic (Articles 16, 18, 1027, 1028), the Criminal Code of the Kyrgyz Republic – Article 128; the Labor Code of the Kyrgyz Republic – Article 421 (examination of individual labor disputes at courts connected with honor, dignity and business reputation protection and moral damage compensation); the Law *On Mass Media* (Articles 17, 23, 27), the Law *On Protection of Journalist’s Professional Activity* (Article 13), the Law *On Advertising* (Article 31).

of the Kyrgyz Republic *On the Procedure of Notarial Actions*, 2004.<sup>3</sup>

However, there were several attempts in Kyrgyzstan to establish certain legal frameworks for Internet space applicable to traditional media. As a result of extensive discussions, the Kyrgyz society chose not to assign the status of traditional media to all Internet resources. The institutional memory of deputy corps is unfortunately too short, and new legislators once again attempt to “invent the wheel” and encounter the same mistakes.

In 2011, the Parliament of Kyrgyzstan adopted documents prescribing for application by the state of website filtration technology<sup>4</sup> (although no mechanism for realization of these provisions is specified). It should be noted that prior to the presidential elections the Central Election Commission failed to accredit information agencies for political agitation<sup>5</sup>. Later on, referring to this decision and the absence of a concept for “web publications” in existing legislation, the press services of the parliament refused to give accreditation to IWPR journalists. Still, other web publications continued to highlight the activities of Zhogorku Kenesh.

These decisions confirm that the absence of legislation specifically for use of the Internet may also have negative consequences, allowing too much freedom to state officials, leading to arbitrary and contradictory decisions on what and whom to permit, and what and whom to prohibit.

## The media or not

Currently, discussions about the legal status of websites in Kyrgyzstan are essentially of two schools of thought:

- Websites on the Internet do not belong to the media, and hence are not subject to registration.

3 “Application for perpetuation of testimony should specify the purpose of perpetuation of testimony, web page address, document requisites, text or image title, if required, its location at the web page, certain quotations from the text. A notary should examine the web page, whereupon it is printed out on paper specifying printing date and file address which are assigned automatically. Printed version is then compared with electron one. Having matched the web page address and text or image requisites a notary should draw up the minutes of perpetuation of testimony specifying examination date and place; initials and surname of a notary who carried out examination, name of notary office; full names of other participants of examination, their place of residence; facts revealed during examination, in particular consequence of notary’s or specialist’s actions to get screen image of a particular page. The minutes should be signed by examination participants and notary. Notary’s signature should be affixed with an official seal. Printed pages should be attached to the minutes”.

4 Resolution of Zhogorku Kenesh “prohibiting to place photo and video about Osh events in all sources of information, websites, TV during the week of people’s friendship from June 10 through June 16; Resolution ordering “to take measures to block ferghana.ru in the republic’s information space”.

5 Upon wide public discussion the relevant parliament committee made the decision allowing websites along with other media to participate in placing propaganda materials of candidates for the president.

- Only some of them may be considered as part of the media, and they are registered on a voluntary basis.

#### Viewpoint (1):

Provisions on information distribution periodicity, territory and circulation shall not apply to websites<sup>6</sup>. A website, with an electronic network, representing the part of PC memory connected to the network has no issues, counterparts or subscribers. It exists in a single version and has an individual name<sup>7</sup>. In this regard, registration system inherent to traditional media is not required for the Internet and is incompatible with its openness and easy access. Ill-considered registration requirements to website designers on the Internet will just prevent creation of websites in national and official languages for citizens of our country.

#### Viewpoint (2):

Even if the activity of Internet publications is to be prescribed by law, it shall be done selectively. When comparing the rights of Internet publications to those of print media, it is rather difficult to determine whether certain Internet content can be considered media or not. The owners of network resources and services shall ensure assignment of legal status of the media to websites on a voluntary basis. It is important to determine clear criteria to which Internet resources may be labeled as the media, and which may not.

### OSCE recommendations

When discussing the draft law on legal regulation of national segments of Internet networks, the legislators must take into consideration existing international commitments, including the OSCE Representative on Freedom of the Media's recommendations concerning freedom of the media in OSCE participating States on the matters of media freedom on the Internet:

1. All legislation regulating the Internet shall be based on constitutional values, such as freedom of speech and must follow international and European court practice standards. Introducing new legislation should be limited to cases when its application is absolutely necessary, and with minimum limitations to the freedom of expression and user's rights.

6 L.K. Tereschenko. Internet and Law Problems//Theses of the Conference "Law and Internet: Theory and Practice", 2 November 1999, the Academy of National Economy of the Russian Federation Government.

7 D.V. Gribanov. Legal Regulation of Cyberspace as Information Relations: Thesis of PhD in law: 12.00.01: Yekaterinburg, 2003 227 p., Theses Department of Russian State Library, 61:03-12/1482-2.

2. Internet itself does not guarantee freedom of expression. Internet is primarily the technology and network that provides connectivity. States are developing political measures and controlling technologies which go beyond the law. Freedom of expression on the Internet shall be *protected* by rule of law rather through self-regulation or codes of conduct. Prior restraint and censorship, arbitrary control, unwarranted restrictions on content transmission and distribution are not allowed. Pluralism of information and sources and their distribution, including information retrieval systems shall be protected.
3. Presence of the media on the Internet includes websites of traditional media, but there are also websites of individual “desktop” publishers expressing their opinions on individually established websites (i.e. blogs). Some of them have many readers, others not. But when discussing the margins of media freedom, we must identify that this goes beyond traditional media, and should include the rights of an ordinary citizen to express his/her viewpoints freely using a personal website.
4. All content on the Internet shall be governed by legislation of the country of its origin (“rule of downloading”). Any legislation imposing liability for content downloaded – to the author, or to the publisher – is an excessive limitation on freedom of expression.
5. Most Internet related legislative acts concern the World Wide Web (WWW), however WWW sources are only part of the content that exists on the Internet, and various online communications require different degrees of confidentiality. Therefore, a provider shall not be liable for any transfer or positioning of content.
6. Search systems embody the central function of the Internet, as a device of global access and opportunity to connect to content. Search filtration and restrictions will contradict this principal purpose of delivering comprehensive and reliable results. Automated search systems shall not filter data or be liable for content of received results<sup>8</sup>.

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<sup>8</sup> The Media Freedom Internet Cookbook. Edited by Christian Möller and Arnaud Amoroux. Vienna, 2004, p. 14-15.





# Internet development in Kazakhstan

## Adilzhan Nurmakov<sup>1</sup>

Positive trends are often associated with national policies for the development of the ICT sector – the government sees in it a potential for economic growth and a way to raise competitiveness for the country. The state undertook measures on liberalizing the telecommunication sector, enlargement of access to the Internet, and the development of an e-government.

The Ministry of Communications and Information reformed last year and is now responsible for both, the promotion of information technologies and of media matters, they also revised a number of government programs and strategies and replaced them with a new document until 2015. The goal – to achieve 4% shares of the ICT sector in the country's GDP (\$7.5 million) – to be achieved in the near future.

According to official statistics, the level of Internet penetration grew from 1% in 2000 up to 41% (6.7 million) in September 2011. There are some questions concerning these figures – some experts believe that the government counts the same users several times, but even if this is the case the number of connected households is quite high – 27% (1.3 million households) it is predicted that by 2015 the percentage of connected households will be at 63% (3,064,000), many using broadband access (BBA).

BBA speeds are gradually increasing, but the cost remains the same – meaning it is still inaccessible for the majority of the population. One may expect the gradual decline of penetration growth rates once property threshold of digital inequality is achieved.

The level of cellular communication penetration exceeds 140%. At the end of last year the government, by the rule of thumb, issued a permit to introduce 3G technology, and declared it a priority to implement more advanced data transmission standards in the nearest future.

The e-government portal offers approximately 70 public services, issued over

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<sup>1</sup> Nurmakov is director of the Centre for Competitiveness Research in Almaty.

750,000 electronic statements so far, and developed an electronic business licensing system. Industry representatives consider the legislative recognition of e-money mechanisms in Kazakhstan to be a positive development contributing to the stability of domestic Internet projects.

Nonetheless, according to statistics of web-service “Aleksa”, the web preferences of Kazak Internet users go beyond their national borders – most visited websites are Russian and Western multifunctional portals and social networks. Some officials, including those of the ministry, also have accounts in blogs and social networks.

The state invests in creating local online resources, with the goal developing the domestic Internet segment, but it does so with the use of taxpayers’ money for projects or doubtful expediency, or with the potential of further commercialization.

There are many negative trends impeding on the promotion of new information technologies and Internet access. These are caused by restrictive legislation and law enforcement conditions – in other words, the state reserves the right to determine content accessed via the Internet.

## **LAW**

The last significant amendments to the law on Internet were in 2009. The basic issue at the time was comparing Internet resources with the media.

This was heavily opposed by civil society, however it was not critical innovation (in previous wording these were websites) that was introduced; rather, the government now had the right to limit distribution of any media (including Internet resources) if they were in violation of Kazak laws.

In technical terms, this provides a legal framework for the application of censorship and the creation of infrastructure for compulsory applications of blocking by all Internet providers. In May 2009, the Agency for Information and Communications declared the importance “to limit distribution of information” in “unordinary situations”. Many people assessed this as overestimated attention of public authorities to the role of social networks in political processes of some countries.

The legislation lacks a good conceptual framework – e.g., what is understood as an Internet resource and who is an Internet resource owner, being a formal respondent in court (although his participation in the process is not compulsory). The issue of owner is especially unclear when social media is concerned.

Mechanisms for pre-trial resolution of claims remained beyond the law as well. To commence court proceedings it is sufficient to recognize some information as illegal.

In 2009, some measures were undertaken by civil society and the Agency for Information and Communications whereby official representatives expressed readiness for further discussion on legal matters concerning pre-trial resolution of conflicts and promotion of self-regulation. However, no further steps were made after this. Upon the reorganization of the Agency for Information and Communications, the Ministry did return to this matter.

## **APPLICATION**

The law has not been applied for a long time (however, closing of local websites, deprivation of domain names, as well as restricting access to foreign websites, including through court decisions, were also revealed prior to such amendments). Very often decisions on blocking and unblocking were made in a non-transparent and arbitrary manner (for example, opening access to the ‘Live Journal’ coincided with last year’s OSCE summit in Astana).

The non-transparent activities of the public prosecutor’s office, courts and Internet providers raises a number of questions and discrepancies for the industry and its users – for instance, in Kazakhstan some Google services are blocked (translator, BlogSpot and mail server).

One of the more recent applications of the law was another access ban to Live Journal and 12 other websites in autumn 2011 by decision of the Saryarkinskiy District Court in Astana, for accusations of distributing materials containing signs of terrorism and religious extremist propaganda.

This application of the law revealed yet another shortcoming of the Internet regulation system in Kazakhstan – non-professionalism of persons responsible for making decisions on blocking access to sources – among the 13 blocked websites there was one site that did not exist at the time, there was a search

engine, and two large blogging platforms were also blocked due to only particular account in each of them.

Last year, the same Saryarkinskiy District Court in Astana imposed a ban on the distribution of two blogs on Wordpress due to the accessibility of information that contradicts Kazak legislation.

## **COMPUTER EMERGENCY RESPONSE TEAM (CERT)**

Particular attention will be paid to the Computer Emergency Response Team (CERT), a team created by the Ministry of Communications and Information – the process of establishing such teams differs from country to country, yet the institutional framework affects its transparency and clarity for the public (NGOs, universities, government structures). In March 2010 CERT representatives underlined the main issues within their activities, including the fact that their methodology and substantiations for placing certain resources on to the “black list” were secret information and therefore non-transparent, just like the “black list” itself.

The team said it is trying to fight against malicious programs, network attacks and the like but it also has indicated an interest in fighting so-called “destructive content” and “political extremism” without, it says blocking opposition media.

## **AGENDA**

Today’s agenda of the Kazak public authorities is primarily focused on applying various restrictive measures. In June, at the BBA summit, the President of Kazakhstan offered to introduce “electronic restrictions to prevent violence and hostility through and on the Internet” jointly with “our Russian and Chinese friends”.

The General Prosecutor of Kazakhstan, Ashat Daulbaev, at a meeting with the authorities of CIS countries, expressed his opinion that “the matter of control over social networks and the Internet is a concern for the future, and that States must jointly fight against such evil”.

New laws were adopted imposing restrictions on the distribution of information about the private life of the leader of the nation. Contradictory opinions of experts and other parties of the industry lead to additional developments – e.g., a draft law on copyrights which many people perceive as yet another document with an unclear conceptual framework and mechanisms, including harsh sanctions that may potentially justify its selective and arbitrary application.

A new draft law on national security was prepared within the period of September 1 (when the President declared its necessity in the Parliament) until October 19 (when the document was submitted to the Parliament).

It contains the following provision: “**when conducting antiterrorist operations and preventing mass disorders** by decision of the head of the emergency response center, the network owners and communication operators **may be given a binding order to suspend communication services** to individuals and (or) legal entities and (or) **limit use of the network or communication means**, as well as change the mode of operation of networks and communication means”. Such a provision may prevent journalists from bringing light to events that are of public interest.

## Recommendations

- Need for a competent authority interacting with a wide range of representatives of the Internet community; experts in the area of media law; and observing international best practices in order to prevent arbitrary implementation and interpretations of laws by investigative authorities and the courts.
- Need to promote mechanisms of pre-trial resolutions of information disputes allocating responsibility among Internet providers and those who place unedited material online through the use of users agreements.
- Need for informational and educational work among stakeholders, including content providers, including on matters of adherence to copyright laws, codes of conduct and ethical standards on the Internet, or formula of their actions in case of illegal or infringing content.
- Public Prosecutor’s Office and courts in cases connected with “suspension or termination of distribution” of a foreign Internet resource<sup>2</sup> in the territory

<sup>2</sup> It does not concern antisocial resources of terrorist, pornographic, fascist and other content, or sites containing malicious files/programs illegally collecting personal data, sending spam, etc.

of Kazakhstan shall ensure technical expert examination of statements, transparency of legal proceedings, and transparent implementation of decisions, obliging providers upon request of blocked resource user to reflect page specifying the reason of its unavailability.

- Competent authorities shall continue cooperation with the Internet community and public organizations when organizing the work of CERT.



# **Developments in the field of media freedom in Central Asia**





# Legislative innovations and law enforcement practice for regulation of the mass media in Kazakhstan

**Tamara Kaleyeva<sup>1</sup>**

I would like to start our discussion about freedom of speech in Kazakhstan with a number of facts.

Let us begin with the pleasant: No new prisoners of freedom of speech appeared in Kazakhstan this year. Chief Editor of the newspaper Adilet, Kuanyshbek Botabekov, recently convicted of libel, was given a one and a half-year suspended sentence and guljan.org website correspondent Valeriy Surganov was sentenced only to one and a half year restriction of freedom on the same charge.

Having served three years in a labor colony on the charge of bribery, this summer the former chief editor of newspaper Law and Justice, Tokbergen Abiev, went free. We may only hope that in January 2012 when, after a 3-years' imprisonment the chief editor of newspaper Alma-Ata Info, Ramazan Yesergepov, gets liberty we will be able to state again, as we stated prior to 2006, that in our country journalists have freedom in their professional activity.

Abiev attempted to publish a new newspaper. For this purpose he submitted relevant documents to the Ministry of Communications and Information. But whichever new media he created, each time it turned out that a newspaper with such title already existed in Kazakhstan and he was refused again and again. In the autumn Abiev submitted documents for registration of two new newspapers titled The Corruptionist Must Be in Prison and The Alliance of Kazakhstan Media "Law and Justice". Abiev received the same response to both applications signed by Deputy Chairman of the Committee for Information and Archives of the Ministry B. Arpabaev. He said that the registrations were refused on the grounds that... newspapers with such titles already exist! It is impossible to check whether it is true or not, since the register of all media is not published anywhere, although it is not a secret document, and the Ministry of Communications and Information does not publish it on its website, despite promises to do so. Referring to

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<sup>1</sup> Kaleyeva is president of the International Foundation Fund for the Protection of Freedom of Speech "Adil Soz" in Kazakhstan.

existence of newspapers with applied titles is recently the most widespread reason of refusal to register new media.

It is a question whether restricted in freedom, but not deprived of it, Valeriy Surganov will be able to continue his work at the Internet newspaper guljan.org. The point is that this Internet resource, opened in May this year, is being sued for damage to honor and dignity, and the claim for moral damage amounts to two and a half million tenge that is \$180 million. I don't know what is the case in other countries, but in our country it became the custom that honor and dignity are appreciated in direct dependence on the position and public status. The wife of the head of the financial police of the republic evaluates her moral anguish in the millions and millions. How they are evaluated by the court we will know quite soon.

As a whole, this year the number of civil claims fell to 80 as compared to the previous year. I don't think that reasons for such reduction are exceptionally positive: that the law became more liberal, journalists – more literal, and officials – more tolerant. One of new reasons is that officials despise to be in litigation with the media considering them just paid instruments of their opponents. In order not to be accused of using vulgar words, let me to cite a passage from the interview of the former chairman of the National Security Committee, and now the counselor of the president, Amangeldy Shabdarbaev, concerning critical material in newspaper Time: “I am not going to be in a lawsuit with these plebes. It is beneath my dignity. I will just tell them to go to hell!” (<http://www.guljan.org/ru/news/interview/2011/November/869>).

Recently, in private conversation, the chief editor of one of the most popular newspapers told me why there are so few claims: “We receive a pre-trial claim and begin to dig. Then I meet with this sensitive guy and say: “My dear, you are not white and fluffy, you have such and such sins. And we may bring them all to light, if you are in a lawsuit with us”. This usually helps. If not, we start publications – first, second, and he surrenders and withdraws the claim. Such mediation, to my mind, flourishes in any country with high level of corruption. A week ago self-absorbed deputies packed their bags and put them in their cars in a hurry, since the president gave them two days to get away. Journalists could not forego the pleasure to capture this process on video that wasn't enjoyed by deputies at all. Those who tried to prohibit photographing and videoing were told by journalists: “You are a public person, in a public place and may not stop us.” I told them: “Guys, our law doesn't contain this, we have an unconditional right

to images.” They laughed: “Deputies don’t know this, they are illiterate.” Such practice is more and more substituting for the law – so is the result of 20-year Kazakhstan democracy.

Although in 2010 the Kazakhstan presidency of the OSCE didn’t result in the increase of freedom of speech in the country, the number of criminal prosecutions of journalists is not decreasing. With a substantial reduction of civil claims, the total amount to be recovered remains the same. After large-scale image events in the international arena, in 2011 public authorities took care of strengthening the regime inside the country. In April early presidential elections took place in which all candidates, except for N. Nazarbaev, had no real chance to win. In November, deputies of the lower chamber of the Parliament became ashamed of the inefficiency of their work and decided to dissolve once again. The President listened to the request of people’s deputies, dissolved the Mazhilis, and set elections for January 15.

Now, in the next two months, our main and sole legislature is the upper chamber of the Parliament – the Senate. The Senate will probably adopt two new, important for the public and media laws – *On National Security* and *On Television and Radio Broadcasting*.

The draft law *On National Security* appeared quite recently in connection with the first extreme groups in the west and terrorist acts in the south of Kazakhstan. Provisions of this draft law give rise not just to concern but surprise about how far from rules of law and legal terminology its authors are. Thus, according to Article 23(1) information security “is ensured by decisions and actions of public authorities, organizations, officials and citizens aimed at... 6) **prevention of negative information impact** on public and individual awareness, reduction and prevention of its consequences.”

In my opinion, it is not worth explaining in this auditorium that any critical, as well as a too positive publication, may have a negative impact. How do authors of future law want to neutralize this negative impact – by publishing alternative information, or by prohibiting critical one? Which consequences may have the realization of clause 6 of the same Article prohibiting “distribution of printed products and foreign media which content undermines national security in the Republic of Kazakhstan”? If these provisions become law, Kazakhstan citizens will be left not only without foreign newspapers and TV, but also without the Internet.

Whereas society became familiar with the draft law *On National Security* comparatively recently, we have been puzzling over the draft law *On Television and Radio Broadcasting* during the year. One should say a huge thanks to OSCE Representative on Freedom of the Media, in particular to Mr. Richter who analyzed this document twice and visited Astana to discuss it. Kazakhstan NGOs and TV companies stubbornly insisted on bringing the draft law in compliance with democratic principles of freedom of speech. The draft law underwent government polishing and was submitted to Mazhilis the day before its dissolution. All obvious nonsense and legal cases have been deleted from it. What we have got as the result? No opportunities for creation of public television. Nominal and formal public control.

The draft law establishes state monopoly over the regulation of radio and TV broadcasting activity. Along with other existing regulatory legal acts on the media, it prescribes total government control over all aspects of information distribution via the TV and radio broadcasting system. The draft law *On Television and Radio Broadcasting* restricts the right of citizens to free access to information irrespective of national boundaries and creates prerequisites for the reduction of information sources and domestic media market. With regard to domestic TV and radio channels of digital on-air broadcasting, it may be seen in the absence of full guarantees of inclusion of existing TV and radio channels into the packages of free access and in exaggeration of conditions for registration of new TV channels; with regard to cable television – in exaggeration of conditions of registration of foreign TV companies; with regard to individual satellite reception – in the requirements to certification of receiving equipment solely in compliance with national standards and in administrative restrictions of its installation.

We, the coalition of journalist NGOs, proposed and still propose to revise the draft law conceptually to be in compliance with principles recognized by Kazakhstan and set forth in the Constitution of the country: principles of freedom of speech and art, free access and distribution of information irrespective of national boundaries and political and ideological diversity. However, chances that our proposals will be heard were zero not only during the presence of the Mazhilis, but also when the document was being considered by the Senate.

In 2010 we found that law on the Internet adopted in 2009 and having given rise to great criticism practically doesn't work. This year the situation has changed. We regularly listen to announcements at various briefings that hundreds of websites were blocked during the reporting period. For example, on October 20

at the briefing in Astana the official representative of General Prosecutor's Office, Nurdaulet Suindikov said that the supervisory board, jointly with other structures, revealed there were more than 400 websites containing materials calling for extremism and justifying commitment of terrorist acts.

The Public Prosecutor's Office in Astana and the Ministry of Communications and Information state that district courts of the capital decided to invalidate and suspend distribution in Kazakhstan of 151 Internet resources. Mr. Suindikov underlined that at present the courts are examining 14 applications of Public Prosecutor's Office with regard to 215 websites and one application of the Ministry of Communications and Information with regard to 11 websites. Claims against over 100 websites are being prepared.

We, like all ordinary people, are against propaganda of terrorism, extremism, distribution of pornography and other offences. But we may not be confident that only criminal Internet resources are blocked. They are blocked in accordance with a simplified court procedure and there is almost no information about them. For example, Livejournal was blocked once again in July. We were told that some branches of this huge tree were harmful for Kazakhstan leaves. Russian management of this Internet resource denies that Kazakhstan fighters for legitimacy applied to them with the demand to delete this content. Our management insists on that they applied, but Russians ignored these demands. Whatever the case, rights of thousands of law-abiding Kazakhstan citizens having their pages on this portal to access and distribution of information prejudiced, but neither Public Prosecutor's Office nor the Ministry of Communications and Information consider this as a serious violation.

This year activity of Stan Production Limited Liability Company was suspended in strict compliance with all procedural rules and laws. It is not an oppositional TV company – they have not existed in Kazakhstan for a long time, it is rather a production studio covering various aspects of the country's life and distributing them under the contracts among private foreign companies. Most stories were broadcast on satellite channel + from abroad to Central Asia. Therefore, domestic TV channels prefer not to deal with Stan TV.

Thus, in August the sanitary and epidemiological service conducted unscheduled inspection of the receiving/transmitting equipment and Stan Production office. In medicinal terms, according to current data such unscheduled inspections are allowed by the law on the mass media. The ground were claims filed by tenants

of the building in which the studio leased its office for feeling sick because of receiving satellite plates. Later on, the same applicants, however, informed journalists that policemen visiting their flats offered to write such claims, but this changed nothing – the mechanism started. Inspectors came to conclusion that electromagnetic emission of receiving/transmitting equipment contradicts sanitary standards. But no documents verifying such statements were presented by sanitary and epidemiological station representatives neither to defendants or judges, and the provider owning such equipment showed at court all certificates and measurements testifying to proper operation of its satellite plates.

Health inspectors approached the inspection with good faith, studied the Code of the Republic of Kazakhstan *On Public Health and Health System*, and found that in summer temperature in the office was 27°C rather than 25°C as required, computers are placed five rather than six meters from one another, and studio management has no health certificates of their journalists and no sanitary and epidemiological certificates issued by sanitary and epidemiological supervision authorities. As a result, the court suspended activity of Stan Production LLC.

Journalists, however, made attempts to visit Western Kazakhstan as before and were the only ones among all broadcasters of the country shooting several-month strike of oil workers. But on October 26 Stan's journalists Orken Bisenov and Asan Amilov were attacked by unknown persons in Aktau. The broadcasters were often beaten in our country so they do not cover what is not to be covered, but nobody of yet has shot at them. But now, they were beaten with a baseball bat, sprayed with air gun fire in the blaze of the day, and received serious wounds: Orken in the arm and back and Asan in the head and leg. The police of Mangistau region said that they found guilty persons, however failed to arrest them since they have run away. Stan's journalists will not visit the striking oil workers until management of closed studio decides how to guarantee their safety.

Let us end on an optimistic note – we have grounds for this. Last year Kazakhstan decided to adopt recommendations of U.N. Committee for Human Rights in terms of decriminalization of libel and abuse by 2014. Then it started the work on recognition of such actions as administrative violations that is legal nonsense in our opinion. Thus, this spring in an interview in the Washington Post, the President of Kazakhstan expressly supported recognition of libel and abuse as civil disputes. So, in few years we will be able to explain about a serious advance in the area of democratization of media legislation, provided that the law *On National Security* will significantly differ from its current draft.





# Tajik print media-2011: primary trends

## Marat Mamadshoev<sup>1</sup>

Legal proceedings against the media and certain journalists, growth of corporate solidarity – such was the year 2011 for the Tajik press.

### Legal proceedings against the media

The year started quite unfavorably for Tajik press. Claims were filed against several newspapers.

In particular, three judges of the Supreme Court and one judge of the City Court filed claims against three newspapers: Farazh, Ozodagon, and Asia-Plus. The total amount of damages claimed exceeded 5 million somoni (over \$1million).

The proceedings in the action of the Ministry of Agriculture Kasym Kasymov against newspaper Millat were pending.

Also, in the beginning of the year the head of the Department for Combating Organized Crime of the Ministry of Internal Affairs of the Republic of Tajikistan, Anvar Tagoymurodov, filed a claim against newspaper Asia-Plus in the amount of 1 million somoni.

Meanwhile, the press has not yet recovered from pressure exerted on it in autumn 2010 during the operation of government troops in Rasht valley. After several newspapers criticized actions of Tajik security forces, a campaign against the media began. However, I may not definitely state that it is criticism of military forces that was the reason for pressure on the print media.

Several websites were blocked and some newspapers couldn't print due to the refusal of printing houses. The Ministry of Defense even declared that journalists support terrorists.

One of important tendencies of Tajik press during recent years appeared: the growth of solidarity among journalists. The media tried to assist colleagues who got in difficult situations and incurred significant financial losses.

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<sup>1</sup> Mamadshoev is editor of the newspaper Asia-Plus in Tajikistan.

The campaign against the media ended as suddenly as it started. I still may not say exactly who organized it, at which level the decisions were made, and what the purpose was.

On February 8, the Firdavsi District Court satisfied a claim of the Ministry of Agriculture against the weekly newspaper Millat for publication discrediting the honor, dignity and business reputation of Ministry officials. The court resolved that weekly newspaper Millat must reimburse moral damage to the Ministry of Agriculture in the amount of 1.5 thousand somoni and publish a retraction of its material.

Also, in February the chief editor of party newspaper Nadzhot and a member of the political council of Islamic Renaissance Party of Tajikistan, Khikmatullo Sayfullozoda, was assaulted. He was beaten by several persons. Sayfullozoda has a concussion and serious facial injuries.

It should be mentioned that actually all media companies made a collective speech in which they criticized such assault and asked the government to investigate it as soon as possible. But this crime is still not solved.

All said that the events which occurred in summer 2004 – when the day before parliamentary elections several Tajik newspapers ceased to exist as the result of pressure of public authorities – may repeat themselves in Tajikistan. Fortunately, this prediction was not verified.

In May the above-mentioned judges of the Supreme and City Courts decided to withdraw their claims against the three newspapers. Later on, Mr. Tagoymurodov withdrew his claim against newspaper Asia-Plus as well. Thus, we may state that the results of these legal proceedings were positive for the media.

### **Legal proceedings against journalists**

Yet in November 2010 the journalist of the newspaper Nuri zindagi, Muhmadyusuf Ismoilov, was arrested in Asht district of the Sogd region. He was accused of libel, abuse, initiation of national, racial, ethnical or religious enmity and extortion. The grounds for the criminal case was his article “Asht is destroyed. Who is guilty in this?” on 19 August 2010.

In the article the author criticizes the government of Asht district, in particular

district chairman Davron Zohidov and former public prosecutor Hurshed Ulmasov, in exceeding and abusing their powers and committing illegal actions for profit. The media and human rights defenders, however, considered that the ground for the journalist's arrest was his professional activity.

Legal proceedings lasted almost a year. As a result, in October Ismailov was declared not guilty of extortion and released. According to other three articles the court charged a fine amounting to 50 thousand somoni but, taking into account the fact that he was imprisoned for 11 months, the amount of fine was reduced to 35 thousand somoni (about \$7.30).

On June 13 another journalist, Urunboy Usmonov, was arrested and accused of relations with Islamic movement Hizb ut-Tahrir, which is forbidden in the country. He spent a month in a Tajik prison. The journalist has been working for BBC Central Asian Service for the last 10 years, highlighting various social and cultural events, as well as religious problems. According to him, he met with Hizb ut-Tahrir representatives in the course of his work on journalism matters.

In October he was declared guilty of concealment of information about crime and sentenced to three years in prison.

It should be noted that in both cases court decisions were compromises. On the one hand, journalists were found guilty. And on the other hand, the sentences were not severe. This was the result of that huge resonance caused by both these processes in Tajikistan and in the world.

### **Contradictory situation**

The situation in Tajik media is contradictory. On the one hand, there are signs testifying to the increase of their competitiveness. For example, the presence of Tajik media on the Internet has increased. For the time being, almost all Tajik newspapers have their own websites. Also, the first weekly newspaper, Imruznews, appeared. Regardless of pessimistic predictions, the newspaper managed to stay in the market.

The Tajik press, at least its part which we call the public and political one, is still of small circulation. There are many claims against the content of the press. There is no balance, a lot of bias and low professionalism. Tajik journalism remains journalism of opinion rather than of fact.

Many publications are addressed to officials rather than to public. Like in the society, the media has regionalism disease, however, to a lesser extent.

There are still no serious investments in this sphere. The creation of the newspaper Imruznews with significant funds is an exception. The advertising market is very narrow. There are no serious, reliable investigations of media business and advertising. There is no investigative journalism. The media business is not a serious business in our country yet.

### **Where we are?**

Expert evaluations of the state of Tajik media are quite positive. For example, in the interview with newspaper Asia-Plus, Director of the Strategic Research Center Suhrob Sharipov declared that Tajik media are the advanced media in the region.

But at the same time, according to Mr. Sharipov, today only 8% of population reads newspapers, and therefore “one may not state that they have any form of influence”. However, in his opinion, it is good that media publications are not ignored by public authorities.

In this context, Mr. Sharipov thinks that work of the media must be aimed at this “in order the public authorities may react, correct something, etc.”.

Politician Rashid Gani Abdullo considers the media to be an institution which people hope for in solving any problems. To his mind, today’s media, in particular independent newspapers, are the mechanism ensuring national dialogue on the most urgent problems of the country’s development.

Mr. Abdullo believes that independent press “took on its shoulders a burden of public defense of common, fundamental and private interests of citizens when they encounter that or another difficulties”. The politician underlined that when people encounter problems they turn to newspapers first of all.

He believes that this circumstance, as well as permanent feedback between newspapers and readers, and also highlighting the position of official structures by independent newspapers make this dialogue quite important and helps keep the republic stable.

These viewpoints may be agreed to some extent. However, I disagree with those who determined that the media's role is an intermediary between civil society and the government. Yes, the media have such function irrespective of whether we want this or not. But the media must actually discharge more large-scale tasks.

I think that present situation in Tajik media is unique and differs from Kyrgyz and Kazakh realities. Whereas in Kazakhstan the media are significantly linked with financial and industrial groups, and in Kyrgyzstan with political ones, in Tajikistan the press is comparatively independent.

The degree of such independence must not be overstated. But at the same time, it is real. It is possible that due to this independence the media in Tajikistan will be able to set common requirements.

On the other hand, however, this testifies to that Tajik media do not play a great role in the country's life yet. Yes, the printed media have freedom and publicity, but they have quite limited impact on formation of public opinion of the country. As for electronic media, primarily TV and radio, we may not speak of freedom of speech yet.

# Appendix





# Agenda

## Day 1, Tuesday, 29 November 2011

**09.30 – 10.00**                      **Registration**

**10.00 – 10.30**                      **Opening Session**

Moderator:                      Andrey Rikhter, Director, Office of the OSCE  
Representative  
on Freedom of the Media

**Welcoming remarks**              Ambassador Ivar Vikki, Head of the OSCE Office in  
Tajikistan

**Opening remarks**                      Mahmudjon Sobirov, First Deputy Minister of Foreign  
Affairs of the Republic of Tajikistan

**Keynote address**                      Dunja Mijatović, OSCE Representative on Freedom of  
the Media

10.30 - 13.00                      **SESSION I. Role of the Internet in promoting  
pluralism. International standards and practices**

Moderator:                      Andrey Rikhter, Director, Office of the OSCE  
Representative on Freedom of the Media

**Keynote speaker:**                      Roland Bless, Principal Adviser, Office of the OSCE  
Representative on Freedom of the Media

### **Internet governance in the OSCE region: Challenges and best practices**

The presentation will provide an overview of:

- The OSCE RFOM report on freedom of expression on the Internet in the OSCE region (2011).
- Important aspects that constitute freedom of expression on the Internet.
- Key indicators of pluralism on the Internet.

- New trends in Internet regulation related to access, content regulation, licensing and liability.
- Comparison of established international practices (legal provisions, restrictive state policies, lack of infrastructure and other) of Internet governance in the OSCE region.
- How new or revised laws aimed at regulating Internet affect freedom of expression and the free flow of information on the Internet.
- Possible actions and policies that could be taken by the relevant players, including governments, international organizations, NGOs, journalists' associations and media to support a free Internet.

**Keynote speaker:** David Goldberg, Associate Research Fellow, Centre for Socio-Legal Studies, University of Oxford

### **The Internet: evolving policy, principles, law and self-regulation at the international and national levels**

The presentation will provide an overview of:

- General developments in Internet law and policy.
- How the Internet fits into the international media law framework.
- International legal provisions related to Internet regulation.
- Internet legal regulations - possible benefits and likely pitfalls.

11.30 - 12.00                      Coffee break

**Keynote speaker:** Erik Albrecht, Central Asia Project Co-ordinator, Deutsche Welle AKADEMIE

### **Offline or off track? The effect of the rise of online media on traditional media**

The presentation will provide an overview of:

- How online media affects journalism in print media, radio and television.
- How pluralism may be affected if a few online media dominate the media landscape.
- Traditional media outlets and their reaction to online competitors.
- Breaking news vs. in-depth reporting – the media's role in society.

**Keynote speaker:** Dainius Radzevičius, Chairman of Lithuanian Journalists Union

### **The Internet – not just technology: Opportunities for all**

The presentation will provide an overview of:

- Public sector and e-services: convenient for people and the state.
- Online journalism and online media – an unlimited range of opportunities.
- Technology vs. content of the web. Maybe a win-win situation.

13.00                                      Group photo

13.30 – 14.30                              Lunch

14.30 – 17.00                              **SESSION II. Internet governance in Central Asia**

Experts from Central Asia will make presentations on Internet regulation in their respective countries. Presentations will describe the situation regarding access to and free expression on the Internet. They will discuss opportunities for and threats to the Internet, as well as problems and obstacles in achieving a balanced regulatory environment. An overview of the existing laws and regulatory practices used to regulate online content will be presented.

15.30 - 16.00                              Coffee break

**Moderator:**                              Andrey Rikhter, Director, Office of the OSCE Representative on Freedom of the Media

### **Internet Misregulation threat to the Silk Road 2.0.**

Asomuddin Atoev, Director, ICT4D Academy of Tajikistan

### **Internet regulation in Kazakhstan**

Makazhan Shaiken, Head of Division, Department on State Policy on Media, Ministry of Communication and Information

Adilzhan Nurmakov, Director of the Centre for Competitiveness Research

### **The situation with legal regulation of Internet in Kyrgyzstan**

Begaim Usenova, Director, Media Policy Institute in Bishkek.

19.00 Reception hosted by the OSCE Representative on Freedom of the Media

**Day 2, Wednesday, 30 November 2011**

10.30 – 12.30 **SESSION III. Developments in the field of media freedom in Central Asia**

Key experts from Central Asia will present reports on media developments since last conference, including current cases, legislative initiatives, issues and challenges.

11.30 – 12.00 Coffee break

Moderator: Ana Karlsreiter, Senior Adviser, Office of the OSCE Representative on Freedom of the Media

**New media legislation and its practical implementation in media regulation in Kazakhstan**

Tamara Kaleyeva President of the International Foundation for protection of freedom of speech “Adil Soz”

**Mass media of Kyrgyzstan: unbridled word as a precursor of censorship**

Aleksandr Kulinsky, independent media expert

**Tajik press in 2011: main tendencies**

Marat Mamadmashoev, Chief Editor, independent weekly Asia Plus

12.30 – 13.30 **CLOSING SESSION. Discussion and adoption of the Conference Declaration**

Moderator: Roland Bless, Principal Adviser, Office of the OSCE Representative on Freedom of the Media

Closing remarks Dunja Mijatović, OSCE Representative on Freedom of the Media

The session will provide an opportunity to:

- Discuss the draft of the Conference Declaration.
- Provide feedback and additional recommendations to be included in the Declaration.
- Highlight the main messages of the Conference.
- Adopt Conference Declaration.
- Discuss potential follow-up activities.

13.30 – 15.00                      Lunch

15.00 – 17.00                      **SIDE EVENT. Digitalization of broadcasting and its implications for media freedom**

**Keynote speaker:**                Andrey Rikhter, Director, Office of the OSCE Representative on Freedom of the Media

The side-event will provide an opportunity to:

- Discuss the switch-over process in Europe and Central Asia.
- Provide information on legislation, licensing, infrastructure, spectrum use and other issues related to digitalization.
- Discuss benefits and pitfalls of digitalization for content pluralism.

19.00                                      Dinner



## Invited participants

### KAZAKHSTAN

Zhuldyz Abdilda	Editor, “TOO Izdatelstvo Olke”
Galym Ageleuov	Blogger and Director, Public Foundation “Liberty”
Igor Brattsev	Director, International Centre of Journalism “MediaNet”
Olga Didenko	Lawyer, Internews Network Kazakhstan
Galiya Ibrayeva	Head, PR Council, al-Farabi Kazakh National University, Journalism Department
Tamara Kaleyeva	President, International foundation for Protection of Freedom of Speech “AdilSoz”
Esengul Kap	President, Public Foundation “Minber”
Adil Kaukenov	Director, “Quorum.kz”, analytical web site
Irina Mednikova	Director, Public Foundation “Youth Information Network of Kazakhstan”
Adilzhan Nurmakov	Director, Centre for Competitiveness Research
Makazhan Shaiken	Head of Division, Department on State Policy on Media, Ministry of communication and Information

### KYRGYZSTAN

Gulzhan Azhimatova	Press Secretary, Osh City mayor’s office
Alexander Kulinsky	Media Expert

Nurjan Musaeva	Lawyer, NGO “Centre for Information Law”
Iliia Savokhin	Director General, Stan TV Ltd
Kanybek Osmonoliev	Member of Parliament, Deputy Head of Committee on Education, Culture, Science, Religion and Information Policy
Alina Saginbaeva	Director, Central Asia News, Private News Agency
Shohruh Saipov	Journalist, Student Life newspaper and <a href="http://www.uzpress.kg">www.uzpress.kg</a> , Osh
Marat Tokoev	Director, NGO Public Union Journalists
Begaim Usenova	Executive Director, NGO Media Policy Institute

### **TAJIKISTAN**

Hamrokhon Zarifi	Minister of Foreign Affairs of the Republic of Tajikistan
Saymurod Fattoev	State Adviser of the President of Tajikistan on Social Development and Public Relation
Olim Salimzoda	Chairman of Parliament Committee on International Affairs, Public Associations and Information
Akramsho Felaliev	Member of Parliament Committee on International Affairs, Public Associations and Information
Asadullo Rahmonov	Chairperson, Committee on TV and Radio Broadcasting under the Government of Tajikistan
Dilafroz Amirkulova	Deputy of Chairperson, Committee on TV and Radio Broadcasting under the Government of Tajikistan
Samad Hikmatov	Deputy of Chairperson, Committee on TV and Radio Broadcasting under the Government of Tajikistan

Suhrob Aliev	General Director, Teleradikom
Beg Zuhurov	Chief of the Communication Service at the Government of Tajikistan
Mansur Sayfiddinov	Adviser of the President of Tajikistan on Social Development and Public Relation
Said Siddiqov	Chief, Analytical and Information Department of Presidential Apparatus
Davlatali Nazriev	Chief, Information Department, MFA
Umrillo Melikov	Head of Department of Legislation on Civil, Family, and Entrepreneurship Relation at National Center of the Legislation under the President of the Republic of Tajikistan
Abdumajid Usmonov	Director, State TV channel Jahonnamo
Lutfullo Davlatov	Director, State TV Channel Safina
Akbarali Sattorov	Chairperson, Tajik Union of Journalists
Nuriddin Qarshiboev	Chairperson, NANSMIT
Khurshed Niyozov	General Secretary, MAT
Muso Asozoda	Chairperson, TAJANESMI
Qironsho Sharifzoda	Director, “Journalist” Public Organization
Shahlo Akobirova	Executive Director, “Khoma” Public Organization
Saymuddin Dustov	Chairperson, “Indem” Foundation
Sharif Hamdampur	General Director, “Oila” Co Ltd.
Zinatullo Ismoilov	Director, SMT

Rustami Joni	General Director, “Oriyono-Media”
Marat Mamadshoev	Editor, “Asia-plus” newspaper
Adolat Umarova	Chairperson, “Afruz” Association
Zafari Sufi	Editor-in-Chief, “Ozodagon” newspaper
Ibrohim Usmonov	Professor, member of the Tajik Media Council
Nargis Zokirova	Director, Bureau on Human Rights
Sergey Romanov	Director, NGO “Independent Center on Human Rights”
Sayofi Mizrob	Editor-in-Chief, “SSSR” newspaper
Gulnora Amirshoeva	Editor-in-Chief, Vecherka newspaper
Asomuddin Atoev	Director, ICT4D Academy of Tajikistan
Muhammadi Ibodulloev	Director, Public Fund “CIP1”
Rustam Kosimov	Director, Public Foundation “Internet”
Parvina Ibodova	Chairman, Association of Internet Service Providers of Tajikistan
Safo Safarov	Director, Independent Media School – “Tajikistan 21 <sup>st</sup> century”
Mirzo Rajabi	Head, Sociological Research Centre “Boztob”
Jovid Muqim	Professor, Department of International Journalism, Tajik National University
Mukhtor Boqizoda	Chairperson, Foundation of Memory and Defense of journalists

Nabi Yusufov	Director, NGO “Media Consulting”
Rustem Takhirov	Director, NGO “Youth of new century”
Ghafur Irkaev	Chairperson, Association of Mobile Phone Providers of Tajikistan
Abdufattoh Vohidov	Deputy Director, NANSMIT
Nigina Bahrieva	Director, NGO “Nota Bene”
Vera Kulakova-Brannerud	Director, Radio “Vatan”
Muhayo Orifova	Programme Manager, Academy of Mass Media Communication
Zafar Abdullaev	Director, Analytical Centre “Content”
Abdufattoh Shafiev	Media Consultant
Abdusattor Nuraliev	Professor, Chief of Department of Journalism of Russian-Tajik (Slavonic) University
Azamkhon Akbarov	Director, TV “Asia”
Nematullo Mirsaidov	Editor-in-Chief, “Varorud” newspaper
Bahromi Yusufzod	Director, TV “Usrushana”
Numon Umarov	Director, TV-5
Sahbon Qurbonov	Director, TV “Isfara”,
Qurbon Alamshoev	Chairperson, “Pamirmassmediacentre”
Rustam Buriev	Director, TV “Mavji Ozod”
Orzu Hamidov	Founder, “Pazhvok” newspaper

Umar Kamolov	Director, TV “Qurghonteppa”
Urunboy Usmonov	Reporter, BBC, Tajikistan
Akram Urunov	Director, TV ”SM-1”
Iskandar Hamidov	Director, TV “Simo”
Habib Maqbulov	Director, TV “Regar”
Muhammadyusuf Ismoilov	Journalist, “Nuri Zindagi” newspaper

### **OSCE CENTRE IN ASTANA**

Aidar Botagarov	National Political and Media Officer
Assel Karatayeva	Project Assistant

### **OSCE CENTRE IN BISHKEK**

Amir Ishmatov	Programme Assistant, Osh Office
Azat Ishmuhamedov	Programme Assistant
Burul Usmanalieva	National Media Officer

### **OSCE OFFICE IN TAJIKISTAN**

Ambassador Ivar Vikki	Head of Office
Barbara Davis	Head, Human Dimension Department
Michael Unland	Media Officer
Lutfiya Odinaeva	Programme Assistant

Farrukhsho Dzhunaydov      National Media Development Officer

## **INTERNATIONAL EXPERTS**

Erik Albrecht      Project Co-ordinator for Central Asia, Deutsche Welle  
AKADEMIE, Berlin, Germany

David Goldberg      Associate Research Fellow, Centre for Socio-Legal  
Studies, University of Oxford

Dainius Radzevičius      Chairman, Union of Journalists of Lithuania

## **INTERNATIONAL ORGANIZATIONS**

Zuhro Halimova      Executive Director, OSI AF – Tajikistan

Izzatmand Salomov      Director, Internews Network Inc. in Tajikistan

Ravshan Abdullaev      Country Director, EFCA Tajikistan

Abdumalik Kadirov      Country Director, IWPR

Rukhshona Olimova      Media development programme coordinator OSI-AF  
Tajikistan

Nigina Alieva      USAID

Mavzuna Abdurakhmonova      Information programme coordinator OSI-AF  
Tajikistan

Lilia Zaharieva      UNOCHR

Elisabeta Plebani      Free Press Unlimited

Grégoire Chilovsky      Chief adviser – French Embassy

Gulnora Khasanova      Media and Communication Officer, SIDA

Ilisher Karimov	Programme Manager, UNDP
Rustam Haydarov Nodira Safarova	Representative of Friedrich Ebert Stiftung Project Assistant - Delegation of the European Commission to Tajikistan
Jarrett Basedow	Country Director, IREX
Shoira Yusufova	Programme Coordinator, Internews Network Inc.
Akvile Normantiene	Political Officer Delegation of the European Union to Tajikistan

### **EMBASSIES**

Embassy of Belarus	Mr. Oleg Vonsyak
Embassy of France	Ambassador Henry Zipper de Fabiani
Embassy of Germany	Ambassador Doris Hertrampf
Embassy of Great Britain	Ambassador Trevor Moore
Embassy of Turkey	Ambassador Mehmet Munis Dirik
Embassy of the Russian Federation	Ambassador Yury Popov
Embassy of Uzbekistan	Mr. Shokasim Shoislamov
Embassy of Turkmenistan	Ambassador Nokerguli Ataguliev
Embassy of Kyrgyzstan	Ambassador Urmat Saralaev
Embassy of Kazakhstan	Ambassador Agibay Smagulov
Embassy of USA	Ambassador Kenneth Gross

Embassy of Azerbaijan	Ambassador Maharram Abish agli Aliev
Consulate Switzerland	Mr. Piter Mikula
Embassy of Afghanistan	Ambassador Abdulgafoor Orzu

### **OFFICE OF THE OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA**

Dunja Mijatović	Representative on Freedom of the Media
Andrey Rikhter	Director
Roland Bless	Principal Adviser
Ana Karlsreiter	Senior Adviser
Joanna Jinks	Executive Assistant
Anja Schwabedal	Senior Project Assistant



## Press Release

### Internet freedom under threat in Central Asia, says OSCE media freedom representative

DUSHANBE, 29 November 2011 – The OSCE Representative on Freedom of the Media, Dunja Mijatović, warned today that Internet freedom is increasingly under threat in Central Asia and called for governments in the region to promote, not block, access.

Mijatović spoke at the opening of the thirteenth Central Asia Media Conference, organized by her Office and the OSCE Office in Tajikistan. This year's event focuses on media pluralism and Internet governance.

“Blocking websites, filtering information, persecuting online journalists, newly adopted restrictive regulations and deficient technical infrastructures are like a plague to the Internet. Although governments have a legitimate role to play when it comes to protecting society from cybercrimes, they also have an obligation to foster Internet access, and any regulation must be free speech-friendly,” she said. “Governments must understand that providing citizens with a variety of views can only strengthen their democracies.”

“The role of governments is to support and invest resources in Internet literacy instead of blocking. Educated Internet users can make educated choices about what to surf, read or learn on the Internet,” Mijatović added.

First Deputy Foreign Minister of Tajikistan Mahmudjon Sobirov also addressed the more than 150 media professionals, government officials, academics and civil society representatives attending the two-day conference, which is being held in Dushanbe for the second consecutive year.

Alongside the conference, Andrey Rikhter, the Director of the Office of the OSCE Representative on Freedom of the Media will conduct an event on the digitalization of broadcasting and its implications for media freedom.

Conference participants are expected adopt a declaration on pluralism and Internet governance, which will be available at [www.osce.org/fom](http://www.osce.org/fom) following the

event's conclusion. Mijatović thanked the authorities of Tajikistan for hosting the Central Asia Media Conference which was financially supported by governments of Germany, the Netherlands, Norway, and the US.

During her visit to Dushanbe, Mijatović will also meet the Head of the Supreme Court of Tajikistan, Nusratullo Abdulloev.





## Media Advisory

### **OSCE regional media conference on Internet governance and media pluralism in Dushanbe**

DUSHANBE, 25 November 2011 – OSCE Representative on Freedom of the Media Dunja Mijatović will organize the 13th Central Asia Media Conference in Dushanbe on 29 November.

More than 100 journalists, representatives of non-governmental media organizations, parliamentarians, government officials and academics from Central Asia as well as international experts will discuss issues related to media pluralism and Internet governance.

Discussions will focus on the role of the Internet in promoting pluralism in the OSCE region and Central Asia in particular, new trends in Internet regulation related to access, content regulation, licensing and liability, findings of the OSCE media freedom representative's report on freedom of expression on the Internet in the OSCE region, and the latest media freedom-related developments in Central Asia.

During the conference, a side event on the digitalization of broadcasting and its implications for media freedom will be facilitated by the Director of the Office of the OSCE Representative on Freedom of the Media, Andrey Rikhter.

The participants are expected to draft and adopt recommendations in a concluding conference declaration, which will be shared with the authorities of the Central Asian states as a guide and reference.

Journalists are invited to cover the conference, which starts at 10:00 on 29 November at Hyatt Regency Dushanbe, Prospekt Ismoili Somoni 26/1, Dushanbe, Tajikistan.





Aleksandr Kulinsky discusses the media environment in Kyrgyzstan.  
Александр Кулинский рассказывает о ситуации со СМИ в Кыргызстане.



Tamara Kaleeva, president of Adil Soz, explains new media legislation in Kazakhstan.  
Тамара Калеева, президент фонда «Адилъ Созъ», разъясняет новое законодательство Казахстана о СМИ.



Marat Mamadshoev, chief editor of the newspaper Asia Plus, meets Roland Bless, principal adviser to Representative Mijatović.

Марат Мамадшоев, главный редактор «Азия Плюс», знакомится с Роландом Блессом, главным советником Представителя Миятович.



Mahmadyusuf Ismoilov engages with participants at the conference.

Махмадюсуф Исмоилов общается с участниками конференции



Ambassador Ivar Vikki, head of the OSCE Office in Tajikistan, explains his views to participants.  
Посол Ивар Вики, Глава Офиса ОБСЕ в Таджикистане, объясняет участникам свою точку зрения.



Representative Mijatović addresses participants to kick off the conference.  
Представитель Миятович обращается к участникам на открытии конференции.



Dainius Radzevičius, chairman of the Lithuanian Journalists Union, lectures on the Internet's value to deliver government services to the public.  
Дайнюс Радзевичюс, председатель Союза журналистов Литвы, выступает с докладом о значении Интернета в работе государственных служб по оказанию услуг гражданам.



Conference participants are fully wired for the occasion.  
Участники конференции оживлены происходящим.



Conference participants take advantage of a wide range of publications provided by the Representative's Office.  
Участники знакомятся с широким спектром публикаций, подготовленных Бюро Представителя.



Journalists, government officials and academics gather for a group photo at the conference.  
Журналисты, официальные лица и эксперты собрались для групповой фотосъемки.



Burul Usmanalieva, National Media Officer for the OSCE Centre in Bishkek, follows the proceedings.  
Бурул Усманалиева, национальный специалист по СМИ Центра ОБСЕ в Бишкеке, следит за работой конференции.



Journalists engage experts with questions throughout the conference.  
Журналисты задают экспертам вопросы на протяжении всей конференции.