OSCE

Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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"The Promises We Keep Online: Internet Freedom in the OSCE Region" at the
Helsinki Commission Hearing on Internet Freedom

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1. Introduction

For centuries, the right to be heard has been seen as the cornerstone of democracy - it enables other rights to exist. In the age of the borderless Internet, the protection of a right to freedom of expression "*regardless of frontiers*" takes on new and more powerful meaning. The argument for freedom of expression on the web is a double-edged sword and is a hotly debated issue. On the one side it is upholding civil rights and on the other allowing governments and censors to question people's own judgment. The Internet, at its best, is a cyber experience on every single topic imaginable from personal pages detailing the life and thoughts of a school child to multinationals promoting their wares online.

Governments, however, have already begun to impose controls on the Internet, threatening the potential of this new medium. As an international community of users and providers of information, we are at a dramatic turning point. The Internet will change the way people live: it offers extraordinary opportunities for enhancing creativity and learning, for trading and relating across borders, for safeguarding human rights, for realizing democratic values and for strengthening pluralism and cultural diversity. The change holds promise and it holds challenges. One of the major challenges is to confront ways in which to spread access to the Internet so that the whole world can benefit, rather than creating gaps between the information rich and information poor.

The individual decides what he/she does not want to see, not the authorities. In a modern democratic and civil society, citizens themselves should make the decision on what they want to access on the Internet; as the right to disseminate and to receive information is a basic human right.

The exploration of cyberspace can be a civilization's truest, most challenging and also very controversial calling and adventure. The opportunity is now before the mankind to empower every person to pursue that opportunity in his or her own way. However, the exploration of cyberspace brings both greater opportunity, and, in some ways, more difficult challenges, than any previous human adventure.

The internationally distributed and interactive nature of the Internet means that any attempt to deal with the Internet in isolation from other countries will be very difficult to accomplish.

National actions must fit into a pattern of international understanding on the best ways in which to deal with Internet content issues.

The Internet is the fastest growing medium ever. While it took the United States, for example, 38 years to reach 50 million radio users and 10 years to reach the same number of television viewers, it only took 5 years in the case of the Internet.[1]

We already live in the digital age, a time in which we can create truly democratic cultures with participation by all members of society; and in only a few years from now this participation will virtually include most of the world's citizens.

It will not be enough to provide citizens, particularly in rural or less-developed parts of this world, with a connection and web-compatible devices. For consumers to become what we now call "netizens" it is indispensible to understand the information, and subsequently know how to critically assess, how to process and how to contextualize it. The technological advancement in order to reach out to all has to go hand-in-hand with education, with programs on media literacy and Internet literacy.

But it remains true, that in our globalized world where education, information, personal development, societal advancement and interaction, and participation in political decision-making are to a great extent realized through the Internet, the right to access the web becomes a cornerstone for the fundamental right to freedom of expression. The right to seek, receive and impart information not only includes the right to access but presupposes it.

So, despite progress, some challenges and preconditions remain. The first one is surely access to the Internet. Without this 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. The second one is restricting free flow of information on the Internet. I would even go so far to say that the free flow of information is oxygen of cyberspace! Without it the Internet becomes a useless tool.

Why do certain Governments try to block, restrict and filter this flow? To protect us from terrorism, extremism, child paedophilia, human trafficking and other forms of threats, and make our societies more secure?

But to protect us from criticism, satire, provocative and shocking comments, differing views, tasteless and controversial content? For that they do not have permission. We as citizens that voted for them never asked or obliged them to shape our minds and opinions.

There is no security without free media and free expression and, no free expression and free media without security. These two terms should come hand in hand and not fight each other like we see in so many parts of the world; and there is no better place to discuss and fight for both than in the OSCE. Security and human rights are both at the heart of the Helsinki Process and the Astana Commemorative Declaration as well as the OSCE principles and commitment that we share. So, why do we still struggle and why are we afraid from words? Where dos this fear from words comes from?

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[1]   Source: Morgan Stanley: The Internet Retailing Report, at:
      http://www.morganstanley.com/institutional/techresearch/pdfs/inetretail_1997.pdf

The Internet epitomizes the tremendous changes media has undergone in the last few decades. Dramatic technological changes have resulted in an unprecedented increase in the number of outlets and channels, a dramatic reduction of distribution costs and even the emergence of entirely new forms of journalism.

On the other hand, the very same technological changes that are manifest on the Internet seem to undermine the traditional ways print media use to finance themselves, erode the quality of journalism and challenges readers, viewers and listeners to rethink their views on what is quality media.

One requirement however, has not changed, namely the OSCE obligation of governments to guarantee freedom of the media.

It is therefore important to recall the major OSCE Commitments regarding pluralism, the free flow of information and the Internet, including the Budapest Summit 1994[2], the 1999 Charter for European Security[3], and the OSCE Permanent Council Decision No. 633 of 2004[4].

Our common goal of achieving the promises we made should be a free, open and safe Internet.

Very simply, when services are blocked or filtered, users of Internet platforms everywhere cannot be served effectively. While many governments have welcomed this trend, some have recoiled at the new openness — and are doing their best to make sure that the Internet is a restricted space.

Today, many governments disrupt the free flow of online information. Popular tactics include incorporating surveillance tools into Internet infrastructure; blocking online services; imposing new, secretive regulations; and requiring onerous licensing regimes.

And with the development of the Internet, some new features never considered before, such as blogging and citizen journalism have now arisen. With this in mind, let me now give you an overview of the situation regarding Internet freedom in the OSCE region.

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[2] At the Budapest Summit in 1994, the participating States reaffirmed *"...that 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."*

[3] 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."*

[4] In 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".*

2. *Freedom of the Internet in the OSCE Region*

There are an estimated 2 billion Internet users worldwide, 750 million of which live in the OSCE region. In order to bring more light on Internet regulation across the region, my Office commissioned a report by renowned Internet and media lawyer, Professor Yaman Akdeniz of Bilgi University in Istanbul.

This first OSCE-wide study on content regulation was launched on July 8 and it revealed, *inter alia*, the following:

1) A number of participating States introduced policies which could be used to completely "switch off" Internet access during times of war, in a state of emergency and in response to other security threats. Although these countries, Azerbaijan and Bulgaria, for example, have not made use of this legislation, it is, nonetheless, a cause for concern that these "Internet kill switch" laws COULD be used to suspend communication services for parts of or entire populations.

The "Internet kill switch" idea was also considered by the United States, allowing the president to shut down critical computer systems in the event of a national cyber emergency. I welcome the fact that the U.S. Senate DID NOT act on the proposed measure.

2) Some governments already recognize access to the Internet as a human right. This trend should be supported as a crucial element of media freedom in the 21st century. Access to the Internet remains the most important pre-requisite to the right to freedom of expression.

3) That freedom of expression and freedom of the media principles equally apply to Internet-related content is not recognized by most participating States. However, laws criminalizing content are applicable to all media, including the Internet. Therefore, criminal sanctions can be used to regulate online content and conduct. Content regulation developed for traditional media can not and should not simply be applied to the Internet. While rules and boundaries still exist, enforcement of existing laws, rules and regulations to digital content becomes evidently complex, problematic and at times difficult to enforce.

4) In several participating States a legal remedy provided for allegedly illegal content is removal or deletion of the offending material. The new trend in Internet regulation seems to be blocking access to content if state authorities are not in a position to reach the perpetrators for prosecution or if their request for removal is rejected or ignored by foreign law enforcement authorities. In some participating States, such as in Belarus and the Russian Federation, "prohibited information lists" exist, allowing blocking if such information appears on the Internet. Some countries, including the Czech Republic, Moldova, Switzerland and the United Kingdom also have developed state-level domain name blocking or seizure policies. State-level blocking policies undoubtedly have a very strong impact on freedom of expression. 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". Turkey provides the broadest legal measures for blocking access to websites by specifying 11 content-related crimes. Turkish authorities have not revealed the number of websites blocked using this legislation.

5) There are definitional problems when it comes to terms such as "extremism", "terrorist propaganda," "harmful content" and "hate speech". These terms are vaguely defined and may be widely interpreted to ban speech that Internet users may not deem illegal. Clarifications are needed to define these terms.

6) The development of so-called "three-strikes" measures to combat Internet piracy in a number of participating States is worrisome. While the participating States have a legitimate interest in combating piracy, restricting or cutting off users' access to the Internet is a disproportionate response which is incompatible with OSCE commitments on freedom to seek, receive and impart information. Participating States should steadfastly refrain from developing or adopting measures which could result restricting citizens' access to the Internet. Also, an international discussion on whether or not the current standards on copyright are up to date in our information society might be necessitated.

7) 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.

8) A considerable number of participating States have yet to decriminalize defamation. Harsh prison sentences and severe financial penalties continue to exist in defamation suits. In the Internet age, decriminalization of defamation becomes a prerequisite for free media to report without fear of criminal prosecution about issues of public importance – beyond national borders and jurisdictions. In countries where a free media scene is yet to be established, it is often foreign correspondents who assume the watchdog function. If, however, journalists face criminal charges for online publications where their stories have been read or downloaded, the ability to report freely and unhindered will be severely hampered.

9) Some participating States had problems submitting information because applicable regulatory provisions or relevant statistics were not easily retrievable. This lack of clarity makes it difficult for users and legislators to understand Internet regulation regimes. Often information, particularly pertaining to questions on blocking statistics, was not available. Sometimes different governmental institutions and ministries are responsible for the different aspects of the Internet, hence internal co-ordination becomes complicated. Almost no participating State had an institutional focal point on Internet matters to fall back on. For the purpose of streamlined national co-ordination, the avoiding of duplicated or contradicting legislation, my Office proposes the introduction of governmentally independent national Internet focal points. This might also facilitate the maintenance of reliable information and statistics about laws and regulations, their implementation and consequences related to freedom of the media and the free flow of information.

3. Conclusions

Blocking access to the Internet or banning certain content has proven to be ineffective. Even by trying to establish "regionalized" networks it will not be possible to gain full control over the communication exchanged and information shared on the web. Any attempt to hinder the free flow of information, to disproportionally restrict the right to free expression, to block dissenting opinions or to prevent critical voices from being heard will prove to be short-sighted because a free Internet and independent media are a means and not an end in itself.

I hope that the OSCE report on freedom of expression on the Internet will serve the OSCE participating States as a valuable reference tool in advancing free speech, media freedom, and media pluralism online.

Internet as a source of pluralism:

The level of pluralism in the media is one of the major indicators of what the OSCE stands for, namely promoting pluralistic societies with democratic decision making processes, which by definition need pluralistic views and opinions to be presented freely, especially, but not exclusively, during election cycles. In this respect the Internet is an achievement and a utility which needs protection, as traditional media do. The relevant provisions and international standards, such as Article 19 of the UN covenant on Civil and Political Rights, Article 10 of the European Convention on Human rights and the OSCE Commitments regarding freedom of the media are applicable to content on the Internet. Often however, we see a trend in the opposite direction, which includes targeted and specialized legislation to address and restrict content on the Internet.

Access to Internet as a constitutional right:

Finland and Estonia introduced pioneering legislation which established the access to Internet as a constitutional right. In France, the constitutional court ruled in a similar way. 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 a constitutional rank. Perhaps the time is ripe to turn a new page in the history of rights and establish access to Internet as a human right.

It would be promising indeed to see the number grow of OSCE participating States which recognize this principle on a constitutional level.

The Internet is a fantastic resource that has fundamentally changed our societies for the better. It will continue to have a positive impact – if we allow it. The lesson is simple: The Internet must remain free.