

Why are communication rights so controversial?

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The communication rights issue, the right to communicate (r2c), is among the most controversial in the negotiation process leading up to the World Summit on the Information Society (WSIS). Looking at the discussions during the preparatory committees (Prepcoms), it is very likely that the r2c will be neglected altogether or will only survive as a vague compromise.

?We recognize the right to communicate and the right to access information and knowledge as fundamental human rights. Everyone, everywhere should have the opportunity to participate in the information society and no one should be excluded from the benefits it offers. In a world based on knowledge and information, the right to communicate and the right to access information and knowledge are essential requirements to the attainment of others internationally recognized human rights, including the right to freedom of expression, universal access to the information and communications infrastructure and to the internet is essential to the information society.? (Submission by Brazil on the Declaration of Principles at the Paris intersessional meeting.)

Why is this so? From a common sense point of view it seems absurd to deny the right to communicate. People cannot avoid to communicate and to exchange their views with others. Often enough, though, the most natural thing in the world is the most problematic.

?Millions of people in the poorest countries are still excluded from the right to communicate, increasingly seen as a fundamental human right.? (Kofi Annan, UN Secretary General, 17 May 2003.)

About 25 years ago this was the case with the r2c. The struggle over the r2c was a shock, and the shock was so lasting that even today the mention of the r2c leads to an almost automatic, categorical refusal to include phrases to do with ?communication? or ?communicate? in official political documents such as declarations or action plans for WSIS.

Only a resurrection of the old ?New World Information and Communication Order? debate?

History does not repeat itself, yet structures sometimes prevail. The old controversy about the New World Information and Communication Order (NWICO) was resurrected on the occasion of WSIS. At the time, the controversy went on for about ten years, from 1975 to 1985, and it ended with the US?s withdrawal from UNESCO. Only in late 2003 did the USA rejoin UNESCO. During the Cold War, members from the non-aligned or developing countries, which were supported by the communist states, dominated UNESCO. These members did not accept a Western understanding of the freedom of expression as the basis for democracy and open societies; they criticized Western information and media monopolies as a new form of information colonialism. Instead they considered information and communication, the right to communicate, as a means for development and independence, a rationale for their national identity.

Right to communicate ? a debate about human rights or about dominance of the information markets?

What were the opponents of an r2c afraid of? A codified r2c, so runs the main argument from media organisations such as the ?World Press Freedom Committee? (WPFC) then and today, weakens the universal claim of Article 10 of the Universal Declaration of Human Rights (UDHR). With an r2c they claim, the individual human right to freedom of expression, also in general interpreted as a guarantee for a free, independent press, would be very likely to become a collective substitutive right. Parties other than free individuals, possibly the state, would then decide who is allowed to communicate, with whom, and about what. Freedom of expression

should not be restricted, not even to defend a cultural identity against an influx of foreign information. A so-called 'prior consent', the right of governments to control the content of the media and other information resources, would be unacceptable.

'Communication is a fundamental social process, a basic human need and the foundation of all social organisation. It is central to the information society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits the information society offers. Freedom of expression and freedom of opinion, the right to seek, receive and impart information and ideas regardless of frontiers as enshrined in Article 19 of the Universal Declaration of Human Rights are the necessary premises of the information society.' (Draft non-paper of the president of the WSIS prepcom on the Declaration of Principles, 24 October 2003.)

Governments in the WSIS process are still debating about the universality and the binding force of human rights in the context of information societies. In reality it is a debate about who owns and controls the information and media markets, who has the right and the power to manage the structure of the internet, and about the main players in internet governance and modern communication infrastructure in general. But let us look for a moment at the human rights discussion. The debate about the r2c is mainly a controversial interpretation of Article 19 of the UDHR:

'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.' (Art. 19, Universal Declaration of Human Rights.)

The reinterpretation of human rights in the light of contemporary technology is not sufficient

We are mainly interested in the consequences of 'to impart information'. Is the right to impart information the right to communicate? Does it imply the freedom of communication? We doubt it? although mainstream legal literature considers the various aspects codified in Article 19 of the UDHR, and in many other grand texts of humanity, to be the right to freedom of communication.

We also doubt that a so-called hermeneutic approach towards existing and codified human rights is sufficient. Rather than demand new rights, advocates of this approach believe it to be more realistic to reinterpret existing rights in the light of modern media and technological development and to make sure that old rights, and particularly the right to freedom of expression, will become a universal reality. To demand a new right, or even to question the relevance of, for instance, Article 19 may, it is feared, weaken the universality of the principle of human rights.

A new dimension of communication in network environments

We do not wish to reject these approaches out of hand, yet we believe them to be insufficient, mainly because the concept of communication has gained a new dimension in the electronic environments of the internet? a dimension different from the traditional understanding of communication. This new dimension cannot have been foreseen by the authors of the grand texts written around the middle of the last century. With the new media and with new electronic services a shift is taking place? gradually, slowly, but inexorably? from the distribution paradigm to an interaction paradigm and finally to a communication paradigm. Despite a few hesitant steps towards digital interactive TV, the media are still overwhelmingly dealing in one-way communication.

Within this paradigm it is professional journalists, privileged by a straightforward interpretation of, for instance, Article 19, and the globally operating owners of the media system who decide what will become the subject of public awareness and political interest (the power of agenda setting). These privileges and monopolies are being challenged by the potential of contemporary interactive and end-user oriented technologies, which are paving the way for new forms of media and political participation. Electronic environments will produce (in addition to spontaneous and creative ways of communicating and knowledge sharing) new ways of establishing public opinion,

new transfer mechanisms for the use of information, and new means for generating political decisions.

Right to communicate ? no war but strong criticism of undesirable trends

It is no wonder, then, that the established media system, the official political system, the dominant information industry, and also mainstream human rights advocates like to play down the demands for a new and universal r2c. It is not only the memory of the old NWICO debate, it is the concern that existing power structures and property rights are likely to be put into question by direct democratic, participative, and knowledge-sharing behaviours within the communicative paradigm.

The demand for an inclusive r2c is not necessarily a ?declaration of war? on the existing media, political and economic systems, but it is a strong criticism of undesirable trends in the media system such as monopolisation and extreme commercialisation and the manipulation of information content ? a strong criticism of equally undesirable trends in politics such as the curtailment of free communication (by legal and technical mechanisms of control and surveillance) and of the increasing control over knowledge and information that tends to make it more scarce.

The r2c is, consequently, the right to experiment with alternative, not necessarily substitutive, forms of building new democratic forms of media publicity, forms that transfer onto every individual the right to participate and to have one?s opinion heard and taken into serious consideration.

Right to communicate ? of high economic relevance

The r2c is not just an ethical, moral issue. It is of highly economic relevance. The r2c paves the way for new business models concerning the organisation of knowledge and information, models appropriate to electronic environments and based on principles of knowledge sharing, peer-to-peer-exchange, transparent, open, and free forms of production. More and more economists are convinced that the future of an innovative and successful economy depends on the extent to which free communication, free exchange, and collaborative forms of producing knowledge are made possible.

The r2c is universal and fundamental. It is a basic human right, a personal individual right, but also the foundation on which to organise knowledge and information anew, a starting point for a reform of the media and of democracy. It is thus clearly a candidate for a new human right that requires codification in the grand texts. WSIS does not have the mandate to establish new rights, yet it does have the legitimacy to open the door for a new understanding of communication in the information society that, in reality, is nothing other than a communication society. Rather than to merely reinterpret existing rights, we do need constructive new developments and an extension of human rights.

What needs to be done?

General acceptance of the r2c will, of course, not solve all problems. There are still many things that need to be clarified:

Human rights, and also the r2c, must not be allowed to be stripped of their individual and universal (inclusive) claim as this might lead to an authoritarian state.

The r2c must not be used as a justification for human rights violations by misusing national and cultural peculiarities as an excuse.

On the other hand, the r2c must not be used as a rationalisation of the Western individualistic, or rather atomistic, understanding of media and information freedom. This, many believe, in principle, is not a guarantee for the development of a just, inclusive and sustainable world society,

where knowledge and information are fairly shared and where communication can flow freely and unrestrictedly.

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