

The Internet and the right to communicate

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The development of the Internet challenges traditional conceptions of information rights. The discourse surrounding these rights and the Internet typically deals with each right in isolation and attempt to adapt long established understandings of each right to the new technological environment. We contend there is a need to address information rights within a comprehensive human rights framework, specifically, a right to communicate. This paper examines the development of a right to communicate and how it can be defined and implemented.

The development of the Internet challenges traditional conceptions of information rights including freedom of speech, copyright, universal access, cultural, lingual, and minority diversity, and privacy. The discourse surrounding these rights typically deals with each right in isolation. As well, these discussions strive to adapt long established understandings of each right to the new technological environment. It is our contention there is a need to address information freedoms within a comprehensive human rights framework that has evolved along with the universalization of electronic communication, specifically, a right to communicate.

Communication, human rights, and communication technologies are inextricably linked. Communication is a fundamental social process necessary for individual expression and for all social organization. The ability to communicate is the essence of being human. Human rights are inalienable rights one has by the very nature of being human. Communication, then, is a basic human right.

Throughout history, humans have used ever more sophisticated technology to expand their ability to communicate. Therefore, technology joins with communication in a complex inter-relationship with human rights (McIver and Birdsall, 2002). As communication technologies evolve into increasingly sophisticated global networks, communication rights are evolving from specific rights expressed as negative freedoms to a comprehensive and positive right to communicate.

To insure the Internet is a communication space available not only as an economic market but to meet the full range of social, cultural, and political needs of individuals and groups, Internet public policy must be formulated within a right to communicate framework. However, since it was first enunciated in 1969, the implementation into policy of a right to communicate has been hampered by the lack of an agreed upon definition of such a right. This lack of a definition undermines efforts to generate the political support required for a right to communicate movement. And without grassroots political support there is little possibility of translating a right to communicate into public policy.

We propose a strategy for addressing the political and definitional challenges of a right to communicate. To provide the necessary background for our proposals, it is necessary to explore briefly earlier efforts to define a right to communicate and to translate it into public policy.

Basis for a human right to communicate

The original basis for a human right to communicate derives from the Universal Declaration of Human Rights (United Nations, 1993), adopted in 1948. The centrepiece of the declaration with regard to communication is Article 19, which states:

'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' (United Nations, 1997).

Article 19 is buttressed by two other articles. Article 27 section 1 states: 'Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits' (United Nations, 1997). Scientific advancements in modern communication such as telephony, the Internet or other technologies enabling the World-Wide Web, can be seen in the context of Article 27, not as the exclusive domain of those who are able to negotiate the market place to acquire them, but as entitlements of people whose societies support their creation (e.g. through government research grants or a reallocation of resources).

The rights set forth in Articles 19 and 27 imply a society must maintain adequate literacy rates and basic infrastructure for their enforcement. Article 28 addresses this in principle, stating: 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized' (United Nations, 1997). Articles 19 and 28 can be seen as complementary since it is argued communication is a necessary component for maintaining a social and international order in which rights such as those set forth in the Universal Declaration of Human Rights are enforced.

The right to communicate is a basic universal human right. Rights are basic 'only if enjoyment of them is essential to the enjoyment of all other rights' (Shue, 1996: 19). The exercise of other rights is not possible if it compromises a basic right; indeed, other rights may have to be sacrificed to preserve a basic right. The right to communicate '...springs from the very nature of the human person as a communicating being and from the human need for communication, at the level of the individual and of society' (Fisher, 1982: 8). However, recognition of communication as a universal basic right was not grasped until it was triggered by a significant technological innovation.

Satellites and communication rights

The seeds of the confluence of universal human rights and global communications were planted during World War II. Prior to the War, rights were conceived as natural rights. The War changed this conception. In 1941, confronted with a world war, United States President Franklin Roosevelt enunciated his famous four freedoms: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear. He stated: 'Freedom means the supremacy of human rights everywhere' (quoted in Lauren, 1998, p. 141). In the aftermath of the War the accepted conception of rights as human rights was confirmed in the United Nations charter and when the United Nations adopted the Universal Declaration of Human Rights in 1948.

At the same time the conception of rights was going through this transformation from natural to human rights, there were important developments in the thinking about global communication. As the victors in the War gathered in San Francisco to form the United Nations, the possibility of satellite communication was first envisioned by Arthur C. Clarke in a now famous article on 'Extra-terrestrial Relays' published in *Wireless World*, in 1945 (Clarke, 1945). In that article he proposed the launching of space stations into orbit to be used for broadcasting. Clarke, who was just beginning his career as visionary of space exploration and internationally recognized writer of science fiction, had gained technical experience during the World War II with radar.

Out of World War II, then, there emerged a new conception of individual rights as human rights and a vision of satellite communication. It would be a dozen years after Clarke's article before the first satellite was shot into space.

The Soviet Union launched its Sputnik satellite in 1957. This triggered a race to space. The United States and Canada soon followed with their own satellites. Aboard these satellites into space was politics. They created a new political space having national and international implications, including human rights. Initially these satellites were used for scientific purposes but by the end of the 1960s the economic, social, and political implications of satellites for communicating and broadcasting were recognized.

Also as a result of the space exploration people of the world began to see images of the planet earth in space as captured by lunar exploration. Changing conceptions of person-to-person communication were seen in a short time. For example, McLuhan's phrase 'global village,' which captured the public imagination around this time, was due in part to the images capturing the entire orb of planet earth in space.

Not surprisingly, the United Nations (UN) gave increasing attention to the international political, economic, and cultural policy issues surrounding the use of satellites, especially with regard to direct broadcast satellites (DBS). As early as the mid-1950s global communication issues were raised within the UN, driven by the many new members from the newly independent developing nations. At the Bandung conference in 1955, signalling the advent of the non-aligned movement, issues of post-colonial communication and North-South communication imbalances were raised (Hamelink 1994). These countries were concerned about the unequal distribution among nations of communication resources and about maintaining cultural diversity. The launching of satellites

intensified these concerns within the UN.

In 1961, the General Assembly passed a resolution that 'Communication by means of satellite should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis' (quoted in Hamelink 1994: 67). In 1964, as more countries became involved in satellite communication, the International Telecommunications Satellite Organization (INTELSAT) was created. UNESCO held a conference of experts in 1965 to advise it on a long term program to promote the use of space communications 'as a medium for the free flow of information, the spread of education and wider international cultural exchanges' (UNESCO, 1968, n.p.). The keynote speaker at this conference was Arthur C. Clarke. Clarke elaborated on the possibility of long-distance personal contacts where people dispersed all over the world could be intimate friends who would rarely meet but who could communicate every day. As communication services multiplied more and more people would be able to communicate person-to-person (Clarke, 1968: 35).

One of those attending the 1968 conference was Jean d'Arcy, a pioneer in the development of TV in France and, at the time of the conference, Director of the UN Radio and Visual Services Division, Office of Public Information. He was also a close friend of Arthur C. Clarke. It was d'Arcy who forged the link between these new developments in global communication and universal human rights in an article on 'Direct broadcast satellites and the right to communicate' (d'Arcy, 1969). It was d'Arcy's insight to see that Article 19 was too narrow to encompass the implications of recent technological developments. In the opening sentence of his essay he asserted:

'The time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than man's right to information, first laid down twenty-one years ago in Article 19. This is the right of man to communicate' (p. 1).

Article 19 was formulated in a post-war environment concerned about the free flow of information or content rather than about the process of communication. D'Arcy asserted that this conceptualization of communication is inadequate in an era when any individual could potentially participate in horizontal, interactive communication with other individuals or groups through a global electronic network. Electronic communication would no longer be confined to the media elite. With the advent of individual universal communication, d'Arcy called for a new universal human right, a right to communicate (d'Arcy, 1983). Why did d'Arcy believe such a radical break with traditional freedoms was necessary?

Mass media mentality

Traditional statements of freedom of information were conceived in the context of a print and broadcasting environment, a situation d'Arcy described as the 'mass media mentality.' In his view the conventional wisdom of the mass media mentality resulted in a superficial analysis of the communications revolution, an analysis that looked to the past rather than the future. According to

d'Arcy '[f]or almost a century, people in this age of mass societies have become conditioned by their 'mass media mentality' to accept as normal and ineluctable a unilateral, vertical flow of non-diversified information.' (d'Arcy, 1983)

As d'Arcy asserted, this conceptualization of communication is inadequate in an era of global telecommunications where the individual can participate in horizontal, interactive communication. He claimed that people had been so immersed in the mass media mentality for over a hundred years that they accepted as normal the 'unilateral, vertical flow of non-diversified information' (1983: xxi). National and international communications regulatory regimes reinforced this structure of communication.

The distribution of information and the mass media mentality that arose out of the structures for its distribution were the result of the economic and technological developments of mass media. In the past each new media created its own mass industry and concentration of ownership. The invention of the rotary press in the mid-nineteenth century led to a concentration of publishing and printing along with mass distribution of newspapers and other publications. The same process of concentration and mass distribution evolved in the radio, film, and television industries.

These systems, dominated by a few major producers and distributors, were designed for the vertical, unilateral, mass distribution of information, not for communication; communication is interactivity. The convergence of satellite communication and computing breaks free from the controls embedded in traditional communication economic and regulatory structures. As new political and social structures are always created around new modes of communication, d'Arcy claimed there was a need '...to rethink the patterns in terms of the era of the direct broadcast satellite, the computer and the domestic high-capacity cable rather than to attempt to force tomorrow's tools into today's structures' (d'Arcy, 1969: 3).

Ahead of his time in anticipating the political implications of the emerging global communications networks, d'Arcy envisioned the emergence of new technological and social structures that would replace the outmoded models of the past that reside in each sector of mass communications. The old structures of separate sectors of mass distribution would be destabilized and driven towards one unified system. The new structure will allow for horizontal, multi-channel, interactive communication between individuals and groups.

Thus, traditional rights based on individual communication structures are outmoded. Because the older communication structures were concerned about the distribution of content, the rights associated with them were focused on content as well. The new, interactive, unified system is about the process of communication, hence, the need for a new right that does not exclude considerations of content, but whose starting point is the process of communication. It is because of this new technological structure a new right encompassing and going beyond earlier freedoms is necessary.

As d’Arcy explains, the development of earlier communication technologies into separate sectors gave rise to separate concepts of freedoms including freedoms of assembly, thought, expression, and the press. What d’Arcy called for was not the replacement of these traditional information freedoms but their encompassing by a broader human right, the right to communicate. This represents a shift from freedoms associated with separate spheres of communication—assembly speech, press—to a positive human right encompassing all these freedoms and more. The right to communicate would serve as the crown of what d’Arcy called an ‘ascending progression’ of rights and freedoms (d’Arcy, 1983).

UNESCO and the right to communicate

Unfortunately, d’Arcy never provided a definition of a right to communicate. However, others saw the import of his insight. Discussions on the right began within the International Institute of Communication (IIC). The theme of the 1973 IIC annual meeting was ‘Man and the Right to Communicate’ with d’Arcy presenting the keynote speech. Efforts to define a right to communicate continued at subsequent IIC annual meetings. The hope was to get the right incorporated into the United Nations Universal Declaration of Human Rights. Interest in the right to communicate spread among academics, legal experts, and government officials in numerous countries (Richstad and Harms, 1977; Fisher, 2002).

In 1974, the UNESCO General Conference directed the Director-General to propose initiatives to be taken to formulate a definition. The UNESCO Division of Free Flow of Information and Communication sponsored a series of meetings of experts to explore the development of a right to communicate. Meetings were held in Stockholm, (1978), Manila (1979), London and Ottawa (1980), Strasbourg (1981), and Bucharest (1982) (Fisher, 1982).

When the effort to formulate a right to communicate moved under the auspices of UNESCO from the IIC, it foundered on the east/west and north/south ideological differences prevailing in the 1970s and 1980s. Three irreconcilable points of view emerged: the western, the non-aligned, and the Soviet (Richstad and Harms, 1977; Anwalt, 1985). These differences clashed over UNESCO’s efforts to promote a New World Information and Communication Order (NWICO). The process to formulate a right to communicate became unfortunately linked in the mind of many at the time to the NWICO movement and thus subject to the political tensions of the time.

In response to these ideological differences UNESCO established an International Commission for the Study of Communication Problems. This Commission, usually referred to as the McBride Commission after its chair, the Irish statesman Seán MacBride, issued its report, *Many Voices, One World*, in 1980. The Commission identified communication as a human right and made specific reference to the right to communicate. But it did not endorse a specific definition of a right to communicate (International Commission, 1980). Because of unresolved ideological differences the United States and Great Britain withdrew from UNESCO. As one participant in the UNESCO initiative concluded: ‘The right to communicate debate became victim of Cold War politics’ (Fisher, 2002. n.p.). Efforts to define a right disappeared from UNESCO’s agenda. With the death of d’Arcy in 1983 discussions within the IIC also came to a close.

Nevertheless, through the UNESCO program a substantial body of literature had been generated exploring the nature and implications of a right to communicate: various formulations were debated, extensive lists of the elements of such a right were generated, and an effort was made to develop a hierarchy of rights, freedoms, and entitlements (Fisher 1982; <http://www.righttocommunicate.org>). However, no agreement was reached on a definition although at the Ottawa UNESCO meeting participants agreed to the following definition in the hope that it would achieve general acceptance:

'Everyone has a right to communicate. Communication is a fundamental social process which enables individuals and communities to exchange information and opinions. It is a basic human need and the foundation of all social organization. The right to communicate belongs to individuals and the communities which they compose' (quoted in Fisher, 1982: 38).

Others also perceived the important implications of a right to communicate even if they also could not provide a precise definition. At the time d'Arcy was articulating a right to communicate, the Organization of American States (OAS) adopted the American Convention on Human Rights at San José, Costa Rica. The Convention did not make specific reference to a right to communicate but did address the issue of communication with more specificity with respect to political economy and new technology than probably any previous human rights document. Article 13 (iii) of the treaty states:

'The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or implements of equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions' (Organization of American States, 1969).

An early attempt to define a right to communicate for public policy purposes appeared not long after the publication of d'Arcy's article. The Canadian government formed a Telecommission consisting of senior public servants to recommend a communications policy for the government. The Telecommission issued its report, *Instant World*, in 1971. Impressed by d'Arcy's 1969 paper, the Telecommission came close to a definition when it stated, 'The rights to hear and be heard, to inform and to be informed, together may be regarded as the essential components of a "right to communicate"' (Canada 1971: 4).

The Dag Hammarskjöld Foundation proposed that such a right should support the following principles:

_ pluralism: the right to communicate should be available to all.

- _ direct communication flows: all entities in all sectors of a society should be able to communicate directly with each other without external control.
- _ social function: information has a social function. It should not be viewed as propaganda nor a commodity, nor should it be controlled by the power structures of the market or the state. Information should contribute to reducing ignorance and preconceptions.
- _ media analysis: It is important to analyze and report on the processes and meta-information which are transported across a medium.
- _ communication versus information: communication should occur through horizontal mutually beneficial exchange of information, not through vertical transfer from those who have control of a medium to passive receivers.
- _ appropriate use of technology: technologies should be reviewed as to their potential impact on a society and power structures within them (1981: 2-3).

Those involved in these efforts to formulate a right to communicate during the 1970s and 1980s were neither able to achieve a consensus on a precise definition of such a right nor get it embodied in any national or international instrument. However, out of their extensive discussions and research on the many facets of a right to communicate we can discern the evolution of a conceptual framework of such a right. A right to communicate, in contrast to traditional freedoms of one-way communication, would embody a conception of participatory, interactive, horizontal, and multi-way communication (Richstad, forthcoming).

The debate of what constitutes a right to communicate is yet to be resolved (see www.righttocommunicate.org). At a minimum the right to communicate includes 'the right to inform and be informed, the right to active participation in the communication process, the right of equitable access to information resources and information, and the right of cultural and individual privacy from communication' (Richstad and Anderson, 1981: 26-27). In contrast to traditional statements of freedom of information in mass communications, the right to communicate is participatory, interactive, and applies to groups as well as individuals. Finally, as a positive right, it is the responsibility of the state to provide the resources that allow citizens to exercise their right to communicate.

The right to communicate is a conceptual framework within which to address issues of access, intellectual freedom, property rights, cultural and linguistic rights, and privacy in the digital environment. It provides a way of framing appropriate questions around these issues, the most fundamental question being: how can communicative opportunities be assured and enhanced for everyone? The right to communicate envisions a communicative citizen whose rights are the baseline for the consideration of any questions regarding new media and communication rights.

Politics and policy

There are two inter-related lessons we can learn from the early efforts to define and promote a right to communicate. The first lesson relates to the problem of the politics of the right to communicate and its implementation. The second lesson relates to the problem of defining a right to communicate. Let's now look at these two issues in turn.

We noted various effort to formulate and promote a right to communicate at the national, regional, and international level. However, these initiatives did not lead to the formulation of a right to communicate in any policy instruments. Is there anything in these early initiatives that can be instructive? We believe at least one flaw was in each case the policy formulating processes were carried out in a narrow world of academic and policy experts and government officials. The policy processes were undertaken at an abstract, enclosed, and rarefied level of discussion. Consequently there was no widespread political support for a right to communicate to carry it forward.

The lack of political support suggests to us that in developing a right to communicate policy strategy there is the need to pursue an inclusive policy-making process that generates widespread political support. Towards that end, we believe priority must be given to generating such support at the national level. However, before addressing the issue of national movements for a right to communicate, we need to explore the issue of definition.

Definition

We saw in the case of UNESCO it was not possible to arrive at a definition of a right to communicate because of the irreconcilable perspectives brought to the issue. L.S. Harms, intimately involved with the UNESCO initiative, wrote at the time, '[t]o transcend the limitation inherent in any single cultural perspective, it becomes necessary to re-conceptualize the problem of Communication Rights from the perspective of a multicultural worldview' (quoted in Richstad and Harms 1977: 4).

In our view it is because of such inevitable diversity statements of rights are typically stated at the most general level and as concisely as possible. Early efforts to define a right to communicate, while extremely valuable in exploring the facets and implications of such a right, were probably doomed by the attempt to arrive at a definition attempting to incorporate all the elements of a very complex right. In contrast, the drafters of the UDHR made every effort to keep their statements of rights as concise as possible (Morsink 1999). Article 19 is an example of a relatively concise statement.

Other statements of free speech rights are similarly concise. The Canadian Charter of Rights and Freedoms states that everyone has the fundamental 'freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.' The US Bill of Rights states that 'Congress shall make no law ...abridging freedom of speech.' The French Declaration of the Rights of Man and of the Citizen states, 'The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.'

Such conciseness is necessary if the right is to be applied universally. Conciseness is also at a

sufficiently high level of generality to provide the flexibility so a right is open to reinterpretation over time from many perspectives. Consequently, it is adaptable to changing times and situations. A right cannot speak explicitly to every circumstance that may arise and to which it might apply. Thus, there is a constant discussion and debate about whether and how a constitution will apply to those circumstances. The actors involved in this debate over a constitution bring their own meanings to its interpretation. That is, meaning is not found in or revealed by a text, it is constructed from the text and is affected by the prior knowledge and understanding that readers bring with them to the text. In this view of interpretation as construction, the text itself serves as the boundaries around possible meanings.

As well, the right as embodied in a text does not exist in a vacuum. Steven H. Shiffrin speaks of the role of 'constitutional stories' different actors bring to the interpretation of a right. (Shiffrin 1999: 64-67). For example, while freedom of speech is declared as a fundamental freedom, contentious debate continues over issues such as pornography, hate literature, and so forth. These issues are often resolved incrementally over time through judgments made by judges who themselves can be influenced by academic studies, political values, and social and political movements (Birdsall and Rasmussen, 2000).

We contend a right to communicate, in order to achieve both universality and adaptability to multi-state political cultures, should be stated as concisely as possible as 'Everyone has the right to communicate.' However, this sparseness is proposed recognizing that the interpretation of a right to communicate in specific countries and over time will unfold in the context of political and legal cultures rich in constitutional stories.

These constitutional stories arise out of current communication rights related to freedom of speech, intellectual property, privacy, and so forth; public policy related to communication, such as universal access; the substantial body of research and writing already generated about the right to communicate (see <http://www.righttocommunicate.org>; <http://article19.net/>); national and international communications regulations and treaties; the body of UN instruments relating to communication; charters, declarations, and other instruments generated by governmental and non-governmental bodies; the movement for expansion of human rights in general; and so on. This brings us to the issue of right to communicate movements at the national level.

National initiatives

Human rights scholar Jack Donnelly correctly states, 'Human rights are ultimately a profoundly national, not international, issue (his emphasis, Donnelly, 1989: 266). We have proposed that the right to communicate should be defined at the most general level thereby opening up the possibility for individual countries in the context of their own constitutional stories to formulate and adopt such a right to meet their specific cultural, political, and communicative needs.

The identification of human rights in a global context has historically been complicated by the existence of many different jurisdictions in the world, some based on very different norms (Dane, 1996: 209). The corresponding existence of many different processes of adjudication complicates the identification of enforcement procedures and remedies for such rights. The international legal community has, nevertheless, made critical strides in the past century toward the identification of universally accepted rights. The defining moment for this was the unanimous adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations on 10 December 1948.

The UDHR is non-binding. Its adoption was followed by the creation of corresponding instruments that were meant to be binding and enforceable in international law by the states that ratify them: the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights and Optional Protocols, adopted by the UN in 1966 and 1976 respectively. These three documents constitute the International Bill of Human Rights (United Nations, 1993).

The passage and ratification of international human rights declarations and covenants is obviously no guarantee they will be observed. It is also not certain citizens of a country know the rights to which they are entitled under these agreements. This is not a reason to abandon human rights. They are critical because they provide, in the words of Hamelink, '[a] universally available set of standards for the dignity and integrity of all human beings' (1994: 58). These standards offer a common, well-established lexicon and framework -- much like software standards -- in which debate, identification, implementation and enforcement of solutions to human problems can be conducted, hopefully in a more efficient and effective way.

However, we would argue achieving a right to communicate must be pursued through political processes at the national level. We are not advocating abandoning international efforts to promote a right to communicate. Such efforts can enrich the constitutional stories brought to the formulation and interpretation of a right to communicate at both the international and national level. Our point is that ultimately any human right only becomes real when it is entrenched in enforceable national legislation. And, furthermore, international initiatives can only be sustained when there is political support at the national level.

How can such a new right be entrenched into national public policy? We advocate a soft law strategy.

Soft law

There is no agreed upon definition of what constitutes soft law in contrast to hard law. Hard law is legal principles entrenched in formal laws and treaties embodying legal security. In contrast, soft law typically includes agreements on principles and norms achieved through consensus but do not have binding legal force. Soft law encompasses a wide range of instruments including charters, declarations, guiding principles, regulations, codes, and so forth.

Soft law has a number of advantages over hard law. It can be an effective means of dealing with relatively new legal norms, such as the right to communicate, where there is a diversity of positions, or a variety of legal or political systems. Soft law is also considered an effective means of dealing with the turbulent times generated by globalization when norms, values, and systems are in flux. Compared to hard law it can be more flexible and adaptable to a fast changing technical and political environment. It can be open to interested parties only thereby avoiding the in-or-out mechanisms of more binding agreements. It can more easily accommodate the inclusion of non-state participants. Its implementation and administration costs are often lower than hard law instruments. Finally, it can serve as a transition to hard law (Reinicke and Witte, 2000: 94-95). All of these qualities recommend soft law as an appropriate legal and political strategy for achieving a right to communicate.

Because of these factors, the import and use of soft law is growing. In terms of human rights '... it is now common to pass through a soft law, declarative stage' (Shelton 2000, 461). In the sphere of human rights probably the most prominent soft law instrument is the Universal Declaration of Human Rights, although some argue that it has almost achieved the status of hard law. In any event, it did lead to hard law counterparts as embodied in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As well, it has served as a source for national human rights hard laws throughout the world.

Communicative law

In adopting a strategy of soft law, we propose as especially appropriate for a right to communicate the communicative approach enunciated by the Dutch legal scholars Willem Witteveen and Bart van Klink (Witteveen and van Klink, 1999). They make a distinction between instrumental and communicative law. Instrumental law, the most common form of law, '...is based on a hierarchical and one-way model of communication: a superior (the state) gives a clear-cut command (the law) to its subordinates (the people), who are expected to obey and who are punished if they do not.' In contrast, communicative law '...takes law as an invitation to dialogue between more or less equal parties: state officials..., intermediary organizations, and citizens' (p. 126). Persuasion rather than punishment is relied upon and the participation of all interested parties is embraced. If we recall the pioneers of the right to communicate emphasized that such a right embodies the concepts of participatory, interactive, horizontal, and multi-way communication we cannot help but be struck by the congruence of these communication concepts and those of communicative law.

A communicative legal strategy 'lays down in the law a fundamental value, for example, equality, in order to promote a gradual change in attitude and behaviour....' (Witteveen and van Klink, 1999: 126) This approach recalls our earlier observation on the need to formulate a concise statement of a right to communicate as a fundamental value. Such a statement adopted in soft law can establish the foundation for moving people away from the 'mass media mentality' identified by d'Arcy to one focusing on creating communicative opportunities. As Witteveen and van Klink state, 'Communicative legislation influences the vocabulary people use, it wishes to influence their mental processes, their attitudes. It attempts to achieve this by allowing two-way communication and it typically projects all participants as active collaborators in a constructive effort rather than as passive 'receivers' of legal commands' (p. 129-130). To us, this legislative approach embodies the essential ethos of a right to communicate; it shares the concepts of

interactive, participatory, horizontal and multi-way communicative processes.

Thus far we have argued that in order to advance the cause of a right to communicate it is necessary to: formulate a concise definition of a right to communicate; develop at the national level inclusive right to communicate political movements; aim at the entrenchment of a right to communicate through a soft law communicative legislative strategy. Before concluding, it is necessary to acknowledge and respond to opposing views to the right to communicate.

Opposition to a right to communicate

Opposition to a right to communicate has been varied. Western countries have generally opposed it on the grounds that it was part of the establishment of some information order. Other countries have opposed it because they saw it as justifying the importation of western values (Hamelink, 1994: 300). The business sector in some countries has shown resistance to such a right on grounds that it would result in undesirable government interventions in the market (Birdsall and Rasmussen, 2000).

This opposition to a right to communicate is not supported by the realities facing civil society. Bagdikian (1997) and others have chronicled the increasing corporate dominance and concentration of ownership in the media and telecommunications industries with the complicity of governments over the past few decades. This trend has demonstrably reduced the ability of citizens to seek, receive, and impart information. In addition, this trend has arguably reinforced the ability of predominantly Western producers of content to continue the one-way information flows raised within the non-aligned movement in 1955. These realities provide added weight to claims for a right to communicate. If the importation of Western or, more generally, outside values is of concern, citizens would be empowered to respond through the implementation of their own rights to communicate.

Non-governmental organizations (NGOs) representing the press community such as the World Press Freedom Committee and the Coordinating Committee of Press Freedom Organizations have viewed certain articulations of a right to communicate that go beyond Article 19 as allowing the subordination of press freedoms. For example, Article 10 of the People's Communication Charter, which states in part 'All people have the right to participate in public decision-making about the provision of information; ... and the structure and policies of media industries,' is seen as enabling scenarios where governments or citizens are able to make legally-binding demands on editors and media organizations to provide a means of communication or to censor content (Bullen 2001).

Other NGOs such as Article 19 Global Campaign for Free Expression believe that a right to communicate is already embodied in established human rights frameworks and that such a right should be viewed as an 'umbrella term' that covers relevant existing rights. Further, efforts to

establish a new right to communicate are seen as potentially '[undermining] or directly [breaching] established rights' (Article 19, 2003). Many, particularly the press freedom community, simply call for the enforcement of Article 19 as being sufficient to bring about a right to communicate.

The concerns raised by Article 19 Global Campaign for Free Expression are legitimate and, in fact, many scholars and advocates of a right to communicate share them. The intent of a right to communicate is decidedly not to undermine existing human rights. A right to communicate has been defined by a number of scholars in relation to a collection of existing human rights (Le Duc, 1977; Harms, n.d.; McIver & Birdsall, 2002). Articles of the Universal Declaration of Human Rights commonly cited as being under the 'umbrella' that constitutes a right to communicate include:

Article 12 -- Privacy;

Article 18 -- Freedom of thought, conscience, and religion;

Article 19 -- Freedom of expression and the right to seek, receive, and impart information through any media;

Article 20 -- Freedom of peaceful assembly;

Article 26 -- The right to education; and,

Article 27 -- The right to participate in the cultural life of the community as well as intellectual property rights.

The 'potential for censorship' argument against a right to communicate is legitimate to the extent that articulations of a right to communicate depart from or undermine accepted human rights, whether they are actually enforced or not. This type of opposition reinforces the need for a right to communicate to be defined within an umbrella of existing rights. In addition, it should be pointed out that other provisions within existing human rights frameworks – if enforced – would provide protections against the scenario described above by the World Press Freedom Committee. These include rights to own property in Article 17; the very right to freedom against censorship implied by Article 19; and Article 30, which prohibits the abridgment of any rights in the declaration.

Other motives must therefore be called into question concerning the press freedom community's opposition to a right to communicate. It arguably mirrors the type of opposition from the business community cited previously. A newsletter published by the World Press Freedom Committee (6 March 1997), for example, chose to cite the following statement, among others, from a document issued by several countries that wanted to renew a discussion of NWICO: '...developed countries (are) employing their media to disseminate false and distorted information of events taking place in developing countries' (quoted from World Press Freedom Committee, 1997). The implication of this citation in the context of their newsletter is that the claim of media bias of this sort was false and that it along with the other concerns they cited does not constitute a legitimate claim to communication rights by any entity other than the press. Convincing evidence supporting these governments' concerns can be found, as cited above, from many sources, including Chomsky and Herman (1988). In this context, a right to communicate, if properly enforced, would ensure democratic possibilities for communication for the press, nations, and citizens alike.

Finally, scholars of communication rights beginning with d'Arcy have stressed that Article 19 is not by itself sufficient to support a right to communicate. Satellite, data communications, and other technologies continue to create possibilities for communication not anticipated by Article 19, including the potential for interactive transmission of content with global reach by nations, communities, and citizens. Article 19 was developed in the context of the mass communication medium of radio that was dominant in 1948. Its authors could not have anticipated the need for provisions addressing participation, interactivity, collectivity, and other principles that have come to be recognized by many advocates of a right to communicate.

A human rights approach will likely be criticized for being inflexible and, therefore, incapable of accounting for the very real priorities that face communities attempting to provision service. Human rights (or originally natural rights) have been criticized at least since the late 18th century as being absolutist. Some might argue that to claim communication as a human right implies the requirement to carry out implementations of the right that are not in the best interest of some societies. It would be unreasonable, for example, to implement individual Internet access in societies where literacy rates are low and public health and other basic services are lacking.

A human rights approach to communication is also not likely to be seen as compelling by those who criticize it on grounds that they are absolute and do not 'trade off.' The cost and complexity of the various technical solutions to a right to communicate as well as the levels of technical competence to use them might be used as evidence against a human rights claim. Following this logic, evidence for a human rights claim to communication takes the form of the preconditions for the technical implementation of that communication: basic infrastructure, financial resources and technical competence. The Universal Declaration of Human Rights recognizes this dilemma in its preamble by stating that it is:

'...a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...' (United Nations, 1997).

What makes a right to communicate compelling is not the preconditions for its implementation, but the very fact that communication is a basic human need because it is a fundamental social process necessary for expression and all social organization. This need does not vary with respect to the level of economic development of a society. All humans need to receive and impart information to live. The urgency with which a right to communicate should be addressed varies by the level of development of a society. Lack of access to communication, for example, has been identified as a critical factor in public health crises around the world (see Garrett 2000).

Advanced technologies such as the Internet must be considered only a part of a potential technical implementation of a right to communicate. The overriding concern should be in selecting

technologies that are suitable and appropriate to a community. In this context, it is necessary to be open to the full range of communication modalities and technologies, including analog broadcast technologies, inter-personal communication methods, and institutional mechanisms such as libraries.

It must also be realized that most telecommunications technologies can be deployed at granularities appropriate to a community's needs and resources, from community-level points of presence to individual access points. Garrett suggests that providing citizens of underdeveloped countries with community level points of access to health information would be a critical starting point for addressing health care crises such as AIDS epidemics in many of these underdeveloped countries. However, such access points should support more than one-way information flows from expert to patient, allowing people to both select and create communication flows they find useful and necessary to address life critical problems (e.g. between local health professionals and between patients).

Conclusion

To summarize, we contend that the forces of world-wide expansion of human rights and the development of global communications systems present an opportunity to advance communication rights, specifically the right to communicate. We reviewed earlier efforts to formulate and promote a right to communicate and concluded to achieve a right to communicate there must be inclusive, grassroots national movements. We address a number of counter arguments to the right to communicate and argue a definition of a right to communicate must be at a level of generality to have universal application along with adaptability to national political cultures. Towards that end we argue for a legislative soft law strategy based on communicative law that draws upon the resources of the right-behind-the-right.

As many have claimed, the Internet represents a dramatic new development in global communication. However, dramatic it is, it is nonetheless part of the evolving universalization of communication technology accompanied by the universalization of human rights. It is our contention this conjoining of global human rights and communication technology has reached a stage demanding the dramatic change in the conceptualization of communication human rights called for by d'Arcy almost forty years ago. The emergence of the Internet challenges traditional conceptions of information freedoms. To insure their preservation, we advocate they must be re-conceptualized within the human rights framework of a right to communicate.

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