

Freedom of Expression and the Social Responsibility of the Media in the Information Society

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Abstract

In the information society like in the industrial society, freedom of expression is a right for each and every one. That right includes the right to freedom of doing research, and the right to receive and disseminate information and all sorts of ideas regardless of any boundaries and in any form and any way of his or her choice: oral, written, printed or artistic. That freedom includes in practice special duties and social responsibilities. That right may be then restricted within clearly fixed rules of the law with the aim of securing: a) Respect for rights or reputation of others; and b) Safeguard of national security, public order, health or morality. Along with the other ICTs, the Internet is recognized as a global facilitator of information but its use should not be limited to journalism. Intellectual property, children's rights, cultural diversity, electronic commerce and international security need to be secured with the defined boundaries of the *Universal Declaration of Human Rights* and the other international resolutions adopted for that purpose and cyber criminality just like all other forms of crimes have to be fought. To this end, the right should be combined with ethics and this should be guaranteed by the four partners of the WSIS. It is these principles that should be ceaselessly defended by the southern countries.

Keywords: Information Society; Freedom of Speech; WSIS; ICT; Right to Communicate

Introduction

Information and Communication Technologies (ICTs) have offered, since their advent, unprecedented opportunities for freedom of expression. But with their development new legitimate interests have been identified. These could restrict that freedom but afford the information society a secure judicial foundation. The objective of any regulation is in general to make sure that the mechanism of any complex system works properly. For that reason, the regulation of the digital technologies is especially difficult because it implies a universal framework to regulate freedom of communication. The issue of regulating digital communication was raised with acuteness in the preparatory meetings of the World Summit on the Information Society (WSIS).

The question was to find out if the means of information could be managed by standard regulation that is by article 19 of the *Universal Declaration of Human Rights*. In the information society as well as in the industrialized society, everyone has the right to freedom of expression. This freedom involves in practice special duties and social responsibilities and can then be submitted to some restrictions. In fact, the use of the Internet should not be limited to journalism. Intellectual property, children's rights, cultural diversity and electronic commerce need to be secured within the boundaries of all international resolutions adopted for that purpose.

1. The New Judicial Issue

The issue of the legitimacy of the legislators' involvement of the legislator in the digital communication has been at the center of the debate between two schools in particular: the liberal school and the interventionist school. For the first, the only possible regulation is that of a free market, for the second, freedom should be regulated to allow respect of the national high values of society and secure a minimum of equity between rich and poor people. Those who have defended autocratic choices and who have tried to protect all kinds of monopolizations are excluded from this debate.

a. The Ultra Liberal Approach

Those who believe in the ultraliberal approach think that there is no reason why, in cyberspace, the media should be treated today differently from the past. It is believed that the regulations that were applied to the written press can regulate the free circulation of information on the internet. The international community already had its say on that matter since 1948 and even long before television or live transmission via satellite had started. Today, the international community is entitled to reaffirm that access to new means of information and their use should have the same treatment for freedom of expression as the old means. It is not necessary to have special laws or rules to manage the content of the electronic press. The true international law for communication is secured by article 19. Any other law may restrict the right of individuals.

The protection of security should not, in any circumstances, become an excuse to restrict freedom of the press. Even the motives for violence should not be put forward in this context because there is a clear distinction between the dangers of violence and the results of violence in information processing. According to this approach, violence should be shown with all its horrors. It is not normal that television or digital reports of wars should be censored on pretext that some people are sensitive. A global police of the Cyberspace would lead, inevitably, to the restriction of freedom of speech and freedom of the press and would be a danger to the free circulation of information in the world.

b. The Interventionist Approach

Against the ultra-liberal approach there is the interventionist approach which, while recognizing the secured aspect of freedom of the press believes that the regulation of a free circulation of information on the Internet should not be limited to journalism and leave out the tremendous areas of application of the open networks in the field of culture and the electronic commerce. As a matter of fact, the deep changes that have revolutionized the digital sector have started giving great results which justify a preparation of a new judicial mechanism aiming at developing the different applications.

With the immaterial economy and the development of exchanges across borders, the protection of individuals from a misuse of the new technologies has become necessary. That protection should be used against the new cyber-crimes which consist in obtaining illegally credit cards numbers, stealing industrial secrets and having access to confidential public information. The question is to establish confidence between different actors, by favoring competition, securing a conclusive value of electronic documents, protecting consumers and the rights of intellectual property, ensuring the security of exchanges, anticipating criminal

activities and above all facing any manipulation of information that tends to destabilize society.

As a solution, the interventionist approach recommends a compromise between freedom of expression on one hand and social responsibility on the other. But at what level: national or international? The protagonists think that the role of the state remains fundamental but governments have to encourage respect of the ethical dimension to give more place to International Organizations and to Non-Governmental Organizations (NGOs) by submitting their policies to a code of a good moral conduct and to a universal morality.

As it had been suggested by the writers of a report on the ethics of information and published by the UNESCO in 2001, law is based on ethics: ethics are the only source of natural law, and natural law is the common law for humanity.

What will be the real content of the new regulation and what place does ethical information have in this process? The lawyers who had attended the different preparatory phases of the WSIS and mainly the Marrakech Symposium in Morocco had given most of their attention to these questions.

2. The Legal Foundations of the Digital Technologies in the W.S.I.S

The recommendations of the UNO, the UNESCO, the ITU and those of the WSIS are not constraining. Those who signed them had pledged, on the other hand, to respect them and take them into consideration. The legal dimension has then been at the very foundation of the resolutions adopted by the WSIS. The Declaration of Principles adopted during the first phase of the WSIS in December 2003 included many issues related to information such as the access to the networks and the Internet governance.

a. The Issue of Human Rights and Freedom of Expression

The issue of human rights and freedom of expression had priority over the discussions of the different preparatory phases of the World Summit on the Information Society (WSIS). The Declaration of Principles has mainly stressed the importance of the right of everyone to freedom of expression and freedom of speech, of the preservation of fundamental values such as freedom, equality, solidarity, tolerance, the sharing of responsibilities and respect for the environment.

The Northern countries believed that these issues represented the main basis of the foundation of the information society. The Southern countries had insisted, on their part, upon the fact that human rights should necessarily include the right to full development and that freedom of expression should be submitted to the reservations mentioned in article 29 of the Universal Declaration in the same manner as in Article 19. After long dealings, a compromise was reached mentioning paragraphs 19 and 29 all together and in such a way that the engagement of States to respect the provisions of both articles at the same time.

b. The Abolition of State Monopoly

Some have tried but in vain to grant the media of all sorts a special importance by imposing them as a full partner in building the information society with the public sector, the private sector and civil society. But a consensus was easily reached when it was found necessary to

favor the abolition of the State monopoly to secure independence of the media and to allow professionals to produce norms and rules of conduct to do with digital information in practice.

c. The Internet Governance

When governments in the South requested to leave Internet governance with the United Nations and the international organizations concerned, the United States suggested discussing this issue in a different way with the participation of the private sector, a suggestion which implies that the status of The Internet Corporation for Assigned Names and Numbers (ICANN) would not change. But the representatives of the European Union who were then divided on the issue put it clearly that they would not let Americans be the only masters of Internet governance. They wanted a new model, one that would be more transparent and not be unilaterally controlled.

For that reason, a political forum has been set up under the sponsorship of the UN Secretary General and the participation of the four partners with representatives of the media sector for further discussion on this issue, which should last at least five more years. These discussions should lead to a more thoroughly consulted action on the Internet. The requirements of security and fight against cyber-crimes including terrorism should not be a threat to the freedom of the press. Internet service-providers should not be taken responsible for the messages content they deliver. The ICANN should take into account the conclusions of this forum in a way that can preserve the reliability of information in its practiced technical mission.

d. The General Recommendations of Marrakech

An important symposium on Democracy and the media was held in Marrakech between the two phases of the WSIS. The participants were strongly motivated by the discussions about the topic at the different preparatory meetings. They have reaffirmed the principles included in the declarations of Windhoek (1991) and Sana'a (1996) and those of the Declarations of Principles that was adopted by the WSIS in Geneva in December 2003 about the promotion of the independence and plurality of the media. They declared that freedom of expression and freedom of the press should be at the heart of building the information society in Africa, in the Arab region and throughout the world. They considered that the Internet and all the other new forms of media should be granted the same considerations as the traditional ones with respect to freedom of expression.

The media that are under state control should be converted into public service institutions with independence of publishing and granting journalists the status of qualified professionals. The information society should facilitate the participation of women and give them an equal access to and use of ICTs.

Public and private organizations such as bilateral and multilateral aid agencies and foundations should put the stress on freedom of expression and freedom of the press when they grant funds to programs and projects that aim at narrowing the digital gap. The disputes between different media or between professionals when on duty should be settled within a civil independent legislature and not according to penal or military laws.

3. The Conclusions of Tunis Phase (2005)

All the recommendations were welcomed favorably at the second phase of the WSIS and were noted with the commitments taken during the preparatory meetings of the summit. In Tunis, all the outcomes and commitments reached in the different regional meetings and the preparatory conferences concluded with the adoption of two official documents called “Engagement and Agenda of Tunis”. In the text, all representatives affirmed that the peoples of the world met in Tunis on November 16 to 18, 2005 for the second phase of the WSIS with the aim of reaffirming their will and determination to build an information society with a human dimension.

They insisted on the right for each and every one to create access, utilize, and share information and knowledge to achieve their full potential. They also recognized an individual’s right and capability to create information, knowledge and all sorts of ideas, the right to freedom of doing research, to receive and disseminate such information, knowledge with no of any boundaries. They were engaged in the context of the information society to promote and secure freedom of expression and the media with an independent editing content.

They reaffirmed the dispositions of paragraph 3 of article 19 in the international pact relating to civil and political rights, stressing that the right to freedom of expression includes special duties and social responsibilities and may be then restricted to some extent to secure respect for rights, reputation of others and safeguard of national security, public order, health or public morality. They eventually requested national legislations that can guarantee independence and plurality of the media.

Conclusion

We can then conclude that in the information society like in the industrial society, freedom of expression is a right for each and every one. That right includes the right to freedom of doing research, and the right to receive and disseminate information and all sorts of ideas regardless of any boundaries and in any form and any way of his or her choice: oral, written, printed or artistic. That freedom includes in practice special duties and social responsibilities. That right may be then restricted within clearly fixed rules of the law with the aim of securing:

- a) Respect for rights or reputation of others; and
- b) Safeguard of national security, public order, health or morality.

The media are generally meant to contribute to the strengthening of peace, international understanding and fighting racism, apartheid, and incitement to war. With the ICTs the Internet is recognized as a global facilitator of information, but its use should not be limited to journalism. Intellectual property, children’s rights, cultural diversity, electronic commerce and international security need to be secured within the defined boundaries of the *Universal Declaration of Human Rights* and the other international resolutions adopted for that purpose and cyber criminality just like all other forms of crimes has to be fought.

To this end, the right should be combined with ethics and this should be guaranteed by the four partners of the WSIS. It is these principles that should be ceaselessly defended by the southern countries.

About the Author

Dr. Mostafa Masmoudi is a professor of Communication policies at Law University El Manar Tunis, a legal expert in communication issues with Tunisian law courts and the Chairman of Tunisian Communication Association and space sciences (ATUCOM) since 1985. He is the manager of the ICT Association for Arabic Civil Society since 2002, a Permanent member of International Astronautical Academy IAA since 1995, and the founding and the first chairman of the Tunisian Space Commission (1984). Dr. Masmoudi holds a doctorate degree in political sciences (1985); a doctorate of graduate studies in information sciences; a B.A in law studies all from the University of Paris II, France. He has also a specialty degree in tele-education and e-training from the University of Quebec, Canada.

Among his expertise in the field of the information society and right to communicate activism, is his tenure as Ambassador of Tunisia to UNESCO between 1978-1982, as the Secretary of State for Information and the Tunisian government spokesman between 1974-1978, and the Chairman of the intergovernmental conference on communication development (DEVCOM), UNESCO in Paris (1980). He was the President of the parliamentary committee for information in Tunis from 1986-1994 and the general director of Tunisia News Agency (TAP) 1969 – 1974. From 1977 to 1980, Dr. Masmoudi was the member of the International Commission for Communication issues (the MacBride Commission). Following that, he was the Secretary of the “Group of 77” in Paris as the president of the information committee (1979-1982). In 1980, he served as the Chairman of the intergovernmental conference for cooperation on the needs, programs and action plans related with communication development (DEVCOM) in Paris and he was the co-founder of the mechanism adopted in this conference (PIDC). He is also the co-founder of the mechanism adopted in this conference (PIDC) in 1980, and the chairman of *conseil des ministères de l’information des pays non alignés* (1976-1978) and continues to be a member of the African Steering Committee NGO for the preparation of WSIS (Since 2002).

Dr. Masmoudi is the author of numerous books, articles, and reports in the information society field, among them *L’économie de l’information en Tunisie* (1975) ; *Le Nouvel Ordre de l’Information* (1985) ; *Voie libre pour monde multiple* (1986) ; *L’Afrique face aux défis de l’Autoroute de l’Information* (1995) ; *Les Arabes dans la société de l’Information* (1997); *La Télémondialisation* (2000) ; and notably the co-author of *Un seul monde, voix multiples*, UNESCO, among others.
