

# 1 The Right to Express Oneself and to Seek Information

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Freedom of expression and access to information was one of the most debated rights during the negotiations leading up to the World Summit on the Information Society held at Geneva in December 2003, and at Tunis in November 2005. This right was praised by some as the very core of the information society, and accused by others of being a merely formal standard with little practical reality in a world where the majority of the population does not have access to information technology and in which the “communication sphere” is dominated by Western/American culture and content, media concentration, and the English language.

In this chapter I will examine the spirit and ideas behind the right to freedom of expression, and discuss the potentials, challenges, and effective implementation of the right within the framework of the information society. The focus is biased toward Europe and the legal protection of freedom of expression spelled out in the European Convention on Human Rights. I will, however, try to give a more global perspective as well, and at the end of the chapter I have included a global overview of Internet access, regulation, and restrictions.

## Background and Spirit of Freedom of Expression

Freedom of expression is a fundamental human right that draws on values of personal autonomy and democracy. It is closely connected to freedom of thought and is a precondition for individuals’ self-expression and self-fulfillment. The European Court of Human Rights has described freedom of expression as one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man.<sup>1</sup> Since the ideas put forward during the Enlightenment,

freedom of expression has been one of the fundamental human rights, and it has taken its place in all major international instruments protecting human rights.

Though freedom of expression is not specifically mentioned in the U.N. Charter, its importance was recognized from the very beginning of the United Nations. In its first session in 1946, the U.N. General Assembly stated: "Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated."<sup>2</sup> Further, a conference on freedom of information was convened at Geneva in 1948 with the purpose of laying down an information policy for the United Nations. The conference adopted a draft convention on freedom of information, but the convention never came into place due to an unresolved conflict between the Western countries, arguing for a free flow of information, and the Soviet Union, arguing for a balanced flow of information. The Geneva conference, however, provided the text for Article 19 of the Universal Declaration of Human Rights, which was adopted by the Human Rights Commission at its third session in 1948, by 13 votes to 4.<sup>3</sup>

Freedom of expression is a typical "first generation" human right with individual emphasis, though it also carries strong societal implications. The point of departure is the protection of the individual from outside intervention in order to form and express opinions freely, without outside threats. In the Western world, one can speak of two main traditions for freedom of expression, originating from the French Revolution and its American counterpart. Whereas the European tradition has more emphasis on the protection of the rights of others, the U.S. tradition is more absolute.<sup>4</sup> One of the shortcomings of the classical liberty approach is the lack of emphasis on the structures and conditions that shape the public sphere, in which communication takes place. De facto restrictions on freedom of expression do not necessarily take the form of direct censorship, but can also be structured as self-censorship, institutional and/or social constraints, or merely lack of access to communication technology.<sup>5</sup> One could therefore argue that the regulation of the structures of communication have at least as much impact on communication as do direct measures aimed at specific content, which is an important point not least in light of the information society and the (lack) of access to its communicative sphere by a majority of the world's population.

### The Freedoms Protected

The right to freedom of expression is provided for in the Universal Declaration of Human Rights, Article 19; the International Covenant on Civil and Political Rights, Article 19; the American Convention on Human Rights, Article 13; The African Charter on Human and People's Rights, Article 9; and the European Convention on Human Rights, Article 10. The freedoms included in the right to freedom of expression are the following:

- Freedom to hold opinions which implies that the state must not try to indoctrinate its citizens or make distinctions between those holding various specific opinions. The freedom gives citizens the right to criticize the government and to form opposition.<sup>6</sup>
- Freedom to impart information and ideas which gives citizens the right to distribute information and ideas through all possible lawful sources.
- Freedom to receive information which includes the right to gather information and to seek information through all possible lawful sources.<sup>7</sup>
- Freedom of the press which is not explicitly mentioned, but has been emphasized in several cases in which the European Court of Human Rights has put strong emphasis on the public's right to know.<sup>8</sup>
- Freedom of radio and TV broadcasting to which freedom of expression also applies.<sup>9</sup>

These freedoms are not unlimited, but restrictions must follow international human rights standards: they must be prescribed by law, must serve legitimate aims, and must be considered necessary in a democratic society. If these conditions are not fulfilled, a limitation on freedom of expression will amount to a violation of international human rights standards.

Looking at the case law on freedom of expression from the European Court on Human Rights, a few points are worth emphasizing. The first concerns the scope of the content protected. In an important judgment from 1976, the Court stressed the pluralism of expressions protected: "it is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society."<sup>10</sup> The broad content protection is crucial because freedom of expression is by its very nature a protection of

minorities' or dissenters' voicing of their opinions—thus, the legitimate right of the minority to oppose the majority. Another important concept, not least in the light of the Internet's borderless nature, is the term "regardless of frontiers." The phrase indicates that the state shall admit information from beyond the frontiers of the country, to be both imparted and received, subject to the possible restrictions mentioned above.<sup>11</sup>

## **Freedom of Expression Challenges in the Information Society**

### **The Same Level of Protection Applies**

The U.N. special rapporteur on the promotion and protection of the right to freedom of opinion and expression has stressed the Internet's effect on freedom of expression and emphasized its potential for bringing out dissenting voices and shaping the political and cultural debate.<sup>12</sup> According to the special rapporteur, the Internet is inherently democratic, and online expressions should be guided by international standards and be guaranteed the same protection that is given to other forms of expression.<sup>13</sup> Also, the Declaration of Principles from the World Summit on the Information Society at Geneva (2003) reaffirms that freedom of expression in the information age is protected according to the human rights standards already agreed upon. Despite this formal commitment to uphold freedom of expression, there are a number of challenges when transposing rights of expression to the information society.

The Internet's potential for enhancing freedom of expression is linked to the displacement of certain architectures of control.<sup>14</sup> The single-purpose network of telephones and the one-to-many architecture of mass media are supplemented by an architecture in which every individual can participate. Cyberspace therefore holds the potential for a greater diversity of opinions and expressions as they actually exist in society, thus strengthening the public discourse and sphere. This potential is illustrated by a number of cases where individuals and organizations use e-mail, Web sites, newsgroups, and so on to disseminate information, find like-minded, persons, meet in online spaces, mobilize, and search for information despite state censorship, lack of resources, or closure of traditional media.<sup>15</sup>

Since the 1990s there has been a broad variety of attempts to regulate cyberspace. It is important to note that Internet regulation does not arise

from a legal vacuum; most of the legal issues are subject to regulation or can be resolved by deduction from existing rules.

Seen from a human rights perspective, the major areas of Internet regulation so far have been privacy, freedom of expression, and freedom of information. Privacy issues have concentrated on how to ensure the privacy of personal data and of communications in a climate with strong emphasis on counterterrorism and state security measures. The freedom of expression issues have focused on how to secure freedom of information *and* the right of creators, and how to protect the standards of freedom of expression in a context that increasingly calls for control not only of illegal but also of so-called harmful content.

Below I will give an overview of some of the current challenges facing freedom of expression.<sup>16</sup>

### **Access to the Public Sphere**

Since the effective implementation of freedom of expression requires citizen's access to express opinions and to seek information in the public sphere,<sup>17</sup> access to the Internet is crucial. Currently, one of the biggest challenges is to ensure that the exclusive character of the information society is replaced by inclusiveness. The current lack of access for a majority of the world's population, often referred to as the digital divide, is at the same time a cause and a consequence of the unequal distribution of wealth and resources in the world. It is defined along lines of poverty and lack of infrastructure and development at all levels, including health and education, and must be understood and addressed within this more general political context. However, bridging the digital divide and providing infrastructure is only the first step. De facto access in order to communicate and to participate in the public sphere, whether online or offline, requires development at many levels and must include democratic, economic, and social development; literacy; and pricing schemes etc. in order to make access to the global public sphere and to democratic participation a real option for a majority of the world's population.

If we acknowledge access to the Internet as an important condition for democratic participation and development—for exercising freedom of expression—it is reasonable to argue for a positive state obligation not only to protect online expressions but also to secure individuals' access to the Internet. The positive state obligation could be to ensure Internet access

in all local communities, as has been the case in Denmark, where the local public libraries, as part of their public service, are obliged to provide free Internet access.<sup>18</sup> Other recent examples of new access models include wireless solutions, which increasingly are being used to provide low-cost access at the community level.<sup>19</sup>

### **Information Access and Ownership of Knowledge**

The system of knowledge ownership, including patents, copyrights, and trademarks, is another topic closely related to the discussion of effective implementation of freedom of expression. Access to information (to use, share, and distribute) is closely related to ownership of information, and is seen by many to be the most crucial regulatory battle at this time.<sup>20</sup> The challenge and balance to be established involve maximizing access and use of knowledge, encouraging creativity as widely as possible, and, at the same time, ensuring protection of authors and creators. Since 2000, the United States and Europe have enacted legislation<sup>21</sup> that gives the industry freedom to undermine traditional fair use limits to copyright—for instance, by prolonging the time that content stays out of the public domain. Copyright protection is also increasingly becoming a censorship issue; content is being removed by Internet service providers through fear of liability or through end user license agreements whereby users must acquire permission to publish criticism or reviews of the software.

Another aspect relates to the disputed practice of patenting software, which at the moment is subject to a heated battle among the European Parliament, civil society groups, and the European Commission. One of the issues at stake is the claim that patenting of software elements will have damaging effects on creativity and the free flow of information. Compared with the physical world, software represents cultural products (such as books), and as such is protected by copyright law. However, if the ownership regime is expanded to allow the patenting of specific software elements—as proposed and supported by a number of EU member states—this could be seen as equivalent to allowing the patenting of the ideas contained in a book, and would pose a radical change to the current ability to use and build on other people's ideas and thoughts, as long as copyright is protected. Since the topic is covered separately in this book, I will not go into greater detail here.

The system of knowledge ownership touches the very core of our information society, and thus how we envision an expanding public domain—as our common reservoir of knowledge—as well as use of the digital age to strengthen our means to access and benefit from this information and knowledge. The Berlin Declaration, produced by a number of civil society groups,<sup>22</sup> is one example of an alternative compensation model that seeks to reestablish the balance between fair use and fair compensation through a system built on collectively managed online rights. Another example is the Creative Commons (CC) project, founded in 2001. Creative Commons is a nonprofit that has developed a set of licenses which creators can use to mark the conditions under which their content can be copied, distributed, and shared, using “human readable,” “lawyer readable,” and “machine readable” code, thereby offering more flexible copyrights for creative work. Currently more than 5 million Web pages are licensed under Creative Commons.<sup>23</sup>

### **Restrictions on Information and Communication Content**

One of the cherished characteristics of the information society is the enhanced possibility of voicing opinions and seeking information globally. In the physical world people encounter only a limited degree of communications because of physical and geographical limits, whereas on the Internet they can express and access a broad array of information irrespective of national boundaries, and be informed and disturbed accordingly. This has led to direct censorship in some countries, in the form of banning or blocking of information, and to more subtle “protective” measures in other countries, often in the form of rating or filtering.

Legal and political attempts to regulate content take many forms, depending on the national context. Measures include regulation of Internet service providers, strict licensing schemes, and national laws regulating speech and publications. One of the threats to online (as well as offline) freedom of expression is the way notions such as “indecent” and “harmful” are transposed into national legal standards that vary according to the local context and political regime, providing space for content restrictions that do not comply with international freedom of expression standards.<sup>24</sup> According to the international human rights standards, governments are allowed to restrict freedom of expression to protect certain interests, such

as national security or public morals, but any restriction must be subjected to strict scrutiny, which includes inquiry into the aim of the restriction, the seriousness of the threat, and whether there are alternative and less restrictive means of protecting that interest. As illustrated by a number of studies and cases, many laws and practices around the world do not comply with these standards.<sup>25</sup>

### **Which Jurisdiction Applies?**

Another challenge relates to the borderless nature of the Internet, and to ensuring that the protection of legal standards in one country does not infringe on the freedoms of citizens in another country or state. In an important judgment from 1996 on the U.S. Communication Decency Act (CDA),<sup>26</sup> the Court stressed the Internet's global character, and the undue infringement on online speakers if they were to comply with the standard of the community most likely to be offended by the expression. Internet speakers cannot be required to speak according to the standards of the community with the lowest common denominator, since they have no means of restricting their expression from entering any community in the global public sphere. On the Internet you potentially speak to a world audience.

Following the argument of the CDA judgment, online speakers or service providers can reasonably be expected to comply only with the laws of the jurisdiction where they are physically located. However, recent court decisions have considered content from Web sites located on servers in other countries to be subject to their national jurisdiction, thereby placing individuals and service providers in a situation where they have to comply with laws of other countries in addition to their own national laws—for instance, if the content is targeting a specific national audience<sup>27</sup> or following the principle of the application of the law where damage occurs. One example of the latter is the European Commission's draft proposal for a Council regulation on the law applicable to noncontractual obligations (known as Rome II). Rome II includes treatment of claims involving defamation, advertising, intellectual property rights, and product liability, and promotes the principle of the application of the law where damage occurs. The draft has been criticized by a number of organizations that have asked for a reexamination and clarification of aims and consequences.<sup>28</sup> The tendency to subject content to restrictions under other

national jurisdictions might pose de facto restrictions on online freedom of expression, and proposed regulations have to be assessed carefully for compliance with human rights standards.

### **Self-Regulation and the Role of Internet Service Providers**

Another crucial point with regard to Internet communication is the role and responsibility of Internet service providers. Discussions on censorship are usually focused on governments as the main actors. However, in cyberspace the control of access and the protection of freedom of expression are—contrary to the physical world—somewhat in the hands of commercial parties, the Internet service providers (ISPs). This gives Internet service providers a “statelike” power over public sphere communication and challenges the freedoms that human rights are meant to protect. It also raises the question of how far the state’s positive obligation goes toward protecting individuals from interference by third parties. The discussion on the role and regulation of Internet service providers has evolved since the 1990s and is closely related to whether the Internet is perceived as a broadcast medium, a library, or a public space (plus additional variations of the three models).

The first conception results in a legal situation where Internet service providers must take responsibility for all content hosted on their servers, as in a traditional broadcast medium, a direction followed in some North African countries. The library analogy gives Internet service providers the role of secondary publishers with a certain responsibility for monitoring the content within their area. Finally, perceiving the Internet as a content-neutral public space shifts responsibility to the content provider, and in this case the Internet service provider is perceived as a common carrier, which is the case in the United States and a number of European countries.<sup>29</sup> The examples illustrate how the analogies consciously or unconsciously transposed from the physical world influence the way we seek to regulate the Internet.

Seen from a freedom of expression perspective, it is important to uphold that Internet communication is protected by international human rights standards; hence the ability to communicate in this public space should not be restricted by commercial parties without a judiciary or democratic mandate, but should be protected by the state. A related tendency concerns the state encouragement of Internet service providers

to self-regulate. Private parties' self-regulation potentially involves privatized censorship, in which Internet service providers restrict individuals' freedom of expression by removing content through fear of liability, or by demanding a certain "decency" standard of their customers (for instance, through customer contracts). In Europe the discussions have evolved around "notice and take-down procedures," which are attempts to standardize procedures for when and how Internet service providers must notify users and take down content as a follow-up to the E-commerce Directive. So far the attempts to develop standardized procedures have failed, since citizens, service providers, and copyright holders have not been able to agree on the exact meaning of terms such as "expeditiously" and "apparently illegal," and since there is a growing awareness that ISPs should not play the role of the judiciary.<sup>30</sup>

### **Media Concentration**

A different but related development concerns the growing concentration of media ownership and the merger of media and telecommunication companies. Traditional players in media—publishers and broadcasters—are increasingly being joined by partners from the telecommunication sector and from the ICT industry. Some of these new alliances bring together information carriers and content providers (media industry), which gives private parties increasing power to combine control of access with control of content. Since access to express oneself is crucial for freedom of expression to have practical effect, it is important to ensure that the current tendency does not lead to a situation where media and telecommunication monopolies determine individuals' access to communicate and to express opinions in the public sphere of the Internet.<sup>31</sup> The issue of media concentration is politically sensitive and involves strong commercial interests, which is probably one main reason why it was barely touched upon within the WSIS context. However, it was raised by civil society groups, not least the CRIS (Communication Rights in the Information Society) Campaign, initiated by a number of media and social justice organizations.<sup>32</sup>

### **Restrictions on Freedom of Information**

Freedom of expression covers not only protection of the right to express opinions but also freedom of information.<sup>33</sup> Freedom of information is the

right to search freely among all publicly available information and to receive all information that others are willing to communicate.<sup>34</sup> The freedom should ensure that there are no restrictions imposed on a person who wishes to receive information from someone who wishes to communicate that actual information.<sup>35</sup> Further, it should ensure that the individual can use any technical means in the search for information.<sup>36</sup> The freedom to seek and receive information from any public source must not be hindered, unless legitimate and proportionate restrictions can be raised in accordance with international human rights standards.

However, there are de facto a number of ways that governments around the world restrict citizens' access to information. Some of the more well-known cases include state-enforced filtering software that blocks access to unauthorized content, so that only state-approved content is available, or blocking of access to certain categories of information through blacklisting of Web sites. Other examples include extensive state surveillance, which often leads to self-censorship.<sup>37</sup> The censorship debate is typically targeting countries such as Cuba, China, Singapore, and Saudi Arabia for state censorship and imprisonment of Internet publishers. However, countries such as the United States and Denmark are using filtering software at public access points, and thus are also restricting means to seek information freely on the Internet. In the United States, filters at public libraries are now a condition for receiving state funding,<sup>38</sup> and in Denmark a number of public libraries have installed filters to protect users from harmful but legal content.<sup>39</sup>

In Europe, a filter-related discussion has concentrated on rating schemes, whereby Web content would be required to be rated (i.e., categorized in terms of metastandards on decency) in order to facilitate and effectuate filtering. As a consequence, only rated content would be searchable for users of the Internet. However, given the premise that the Internet is a public sphere, the demand that users categorize their content/expressions according to a metastandard of decency would be a very radical demand. "Is this expression very harmful, partly harmful, or not harmful at all?" "Does this discussion involve indecent language to a small, medium, or large degree?" Rating goods and services is natural within a commercial sphere, but when viewed from a public sphere perspective, it would be asking people to declare their "speak" as a precondition for speaking. Since an important

element of freedom of expression is the individual's right to express herself without arbitrary restrictions, having to declare your "speak" as a requirement for speaking would mark a significant restriction on this freedom. The discussion on the use of rating and filtering schemes is ongoing, and its results and consequences for online freedom of expression remain to be seen.<sup>40</sup>

### **The Potential and the Principles for Effective Implementation**

Since the 1990s many have praised the Internet's potential for strengthening freedom of expression by giving practical reality to the vision of a world where people can freely speak their minds and access information. And no doubt access to information and to communication technology is empowering. The ability to communicate or to access a needed piece of information can be the decisive factor in taking action. As such it is a premise for development both at a personal level and at the level of society. Access to information is also important to democratic participation and control, for people to take active part in local, regional, or global society.

As I have tried to outline above, the challenges facing freedom of expression at this particular point in time are many. Often the discussions stop at the digital divide, and however important this problem is, there is a whole range of other problems and politics involved as well. Problems that are difficult because they require political will to readdress established systems of power, ownership, and money (for instance, related to copyright, trade, or media regimes), and because it's easier to speak of rolling out infrastructure than to speak of censorship or surveillance, or to address discrimination against regions, languages, and vulnerable groups.

In the context of the information society, freedoms—freedom to access information, freedom from surveillance, or freedom to express opinions—are tied to both local and global structures. It is therefore crucial that national, regional, and international regulations respect and enforce human rights standards, which are by their very nature universal standards. We must not forget that for freedom of expression to be more than a principle, people must have real and de facto means of expressing themselves, communicating, and seeking information. This requires effective protection of freedom of expression in a number of areas. Below I have listed some of the principles and actions that might help enforce freedom of expression in the information society.

**Principles and Possible Actions for Effective Implementation of Freedom of Expression in the Information Society**

- Establish low-cost and nonfiltered Internet access, not least in marginalized regions
- Include education in the use of technology, information search, and communication and collaboration in an online environment in the curricula of primary and secondary schools
- Mainstream information society priorities, such as strengthening of information access and building of communicative capacity, in development programs and priorities
- Establish agreements and actions to ensure the continuous development of a diverse and strong public domain of information
- Develop indicators to measure the compliance of national regulations with human rights standards
- Conduct international review of national regulations to ensure that relevant legislation and policies are in compliance with human rights standards
- Mainstream information society issues in existing monitoring mechanisms, such as the monitoring committees of U.N. treaty bodies, the special rapporteurs, and other relevant mechanisms, within the office of the U.N. high commissioner for human rights

**Appendix 5.1**

**Global Overview of Internet Access, Regulation, and Restrictions**

Region	Access	Regulations/Legislation	Restrictions /Censorship
Africa	Less than 0.01 percent of the population has access to the Internet Slow reform and liberalization of the telecommunication sector	ICT policies that stress the importance of online freedom of expression for economic development Antiterror legislation has provided increased state power to monitor communication Laws holding ISPs liable for content in some of the countries	Extreme poverty and lack of access Culture of self-censorship/hostile environment

## Appendix 5.1

(continued)

Region	Access	Regulations/Legislation	Restrictions /Censorship
Asia	Growth of access, particularly in urban centers	Political recognition of the importance of the Internet for economic, political, and social progress Post-9/11 legislation increasingly restricts online content considered unacceptable or harmful	Still lack of access, in especially rural areas State censorship in many legal and technical forms
Europe	High level of access, especially in northern Europe Increasing consolidation and cross-ownership in the privatized telecom sector	EU and Council of Europe regulation/ protection in place for freedom of expression (and privacy); however, since 9/11 increased pressure on freedom of expression ISPs in principle not held liable for content	Lack of access, especially in southern and eastern Europe Some self-regulation by ISPs and some filters on public computers
Latin America	High level of access in (urban) areas of Brazil, Mexico, and Argentina; lower in other (rural) areas and countries Telecommunication sector mostly privatized, with universal access obligation	Constitutional protections for freedom of expression (and privacy) in place in most countries Special rapporteur for freedom of expression No law on ISP liability	Lack of access, especially in rural areas No specific restrictions on use of the Internet Mandatory filters at public access points in some countries
Middle East	Still relatively limited access in many countries; 2.2 percent of the population has access to the Internet Relatively weak telecommunication infrastructure	State ownership or strict laws on media in general A few states have permitted a more liberal approach to Internet regulation than is permitted other media	Media controlled and closely monitored by government Direct censorship by state; culture of self-censorship

**Appendix 5.1**

(continued)

Region	Access	Regulations/Legislation	Restrictions /Censorship
North America	Highest level of access after Scandinavia Cheap and liberalized telecommunication infrastructure	Long tradition of strong constitutional protection of civil rights Since 9/11, strong pressure on freedom of expression and privacy. Several more restrictive laws introduced Increase in exceptions to freedom of information	Use of filters at public schools and libraries is mandatory in the United States in order to receive state funding No state filtering or blocking in Canada

Source: Regional reports presented in Privacy International and GreenNet Educational Trust (2003).

**Notes**

1. *Handyside* judgment (1976), para. 23.
2. U.N. Resolution A/RES/59(1), para. 1.
3. See U.N. document E/800, appendix.
4. See Juhani Kortteinen, Kristian Myntti, and Lauri Hannikainen, "Article 19," in Alfredsson and Eide (1999) for an elaboration on the freedom of expression traditions.
5. *Ibid.*, 395.
6. Certain positions have inherent limitations on the right to express opinions (e.g., civil servants and prisoners).
7. The Universal Declaration of Human Rights, Art. 19, and the International Covenant on Civil and Political Rights, Art. 19, specifically refer to the right to *seek* information.
8. The European Court of Human Rights has often stressed the public interest or public debate factor: for instance, in the *Sunday Times* case (1979), the *Lingens* case (1986), and the *Jersild* case (1994).
9. In Europe, for a long time the Commission (the instrument prior to the European Court of Human Rights) saw no incompatibility between state monopolies of radio and TV and the European Convention on Human Rights. However, in 1993

the European Court on Human Rights ruled on the Austrian radio monopoly case (*Informationsverein Lentia and others*), and concluded that a violation of Art. 10 existed. The issue is also mentioned in the International Covenant on Civil and Political Rights, General Comment 10: "Effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to Freedom of Expression" (UNHCHR 1983:1).

10. Handyside judgment (1976), para. 23.

11. For judgments concerning the imparting and receiving of information from abroad, see *Groppera Radio AG and others* (1990) or *Autronic AG* (1990), both from the European Court on Human Rights.

12. UN Report E/CN.4/2000/63.

13. Ibid.

14. The link between code and law of cyberspace is described in Lessig (1999).

15. See, e.g., Privacy International and GreenNet Educational Trust (2003); Reporters Sans Frontières (2004); Electronic Privacy Information Center (2003); Human Rights Watch (1996).

16. See appendix 5.1 for a global overview of Internet access, regulation, and restrictions.

17. "The public sphere of civil society stood or fell with the principle of universal access. A public sphere from which specific groups would be eo ipso excluded was less than merely incomplete; it was no public sphere at all" (Habermas 1989, 85).

18. The duty to provide free Internet access in public libraries was appended to the Danish Library Act in 2000.

19. A project such as the Wireless Road Show is an example of on-the-ground training in how to build low-cost connectivity. The wireless networks are constructed using a license-exempt spectrum and are based on open technology and free software. See <http://thewirelessroadshow.org/>.

20. In his opening address at the WSIS Prepcom2 on Feb. 17, 2003 in Geneva, Lawrence Lessig, professor of law at Stanford University, urged governments to fight the current U.S. and European tendency to expand intellectual property right regimes.

21. The 1998 U.S. Digital Millennium Copyright Act (DMCA) and the 2002 European Union Copyright Directive (EUCD).

22. The Berlin Declaration on Collectively Managed Online Rights, June 2004.

23. For more information, see <http://creativecommons.org>.

24. A country-based survey on national legislation is in Privacy International and GreenNet Educational Trust (2003). Examples from the report include the following: Morocco bans criticism of the monarch and of “offensive reporting” by journalists; China bans “subversive speech”; Australia regulates speech that is “unsuitable” for minors; Egypt regulates, among other things, speech that discusses “taboo issues” and “human rights violations,” whereas the European Convention on Human Rights speaks for the “protection of public morals.”

25. See, for instance Privacy International (2003); Reporters Sans Frontiers (2004); Electronic Privacy Information Center (2004); Human Rights Watch (1996); Global Internet Liberty Campaign (1998).

26. The CDA sought to impose criminal penalties on anyone who used the Internet to communicate material that, under contemporary community standards, would be deemed patently offensive to minors under eighteen years of age. The law was passed by the U.S. Congress in Jan. 1996, but was ruled unconstitutional by the District Court for the Eastern District of Pennsylvania in June 1996 and by the U.S. Supreme Court in June 1997.

27. Examples of this are the 2000 French Yahoo case (Tribunal de Grande Instance de Paris) and the 2002 Australian *Gutnick* case. Within the European Union there is a tendency toward mutual recognition in Web cases, implying that the lowest legal standards in any EU country become EU practice, as is currently the case with the Intellectual Property Enforcement Directive adopted in Mar. 2003.

28. See, e.g., <http://www.iccwbo.org/law/jurisdiction/rome2/>.

29. The 2000 European Commission E-commerce Directive operates with limited liability, stating that ISPs are not to be held liable unless they become aware of illegal content and fail to take action. There is, however, a legal gray zone surrounding the notification procedure that is currently being transposed to the national level as EU member states implement the E-commerce Directive.

30. The most comprehensive European initiative has been the research program (Rightswatch) carried out by the European Commission. See Sjoera Nas, “The Future of Freedom of Expression Online: Why ISP Self-regulation Is a Bad Idea,” in OSCE (2003), 165–172.

31. See Hamelink (2000), chap. 6.

32. For more information see <http://www.crisinfo.org/>.

33. An important aspect of freedom of information concerns the right to gain access to public information. Since this is covered in the chapter on the right to information, it will not be covered here.

34. Eggen (1994), 63.

35. Ibid. The principle was affirmed in the *Gaskin* case (1989), para. 52; and the *Leander* case (1987), para. 74.
36. *Autronic AG* case (1990), para. 47.
37. See Privacy International/GreenNet (2003), 12–19, for an elaboration on the various means and mechanisms for restricting access to information.
38. This was enforced through the Children Internet Protection Act (CHIPA), which was passed by the U.S. Congress in December 2000.
39. According to a survey published in Sep. 2003, 14 out of 224 public libraries in Denmark have installed filters. See Pors (2003).
40. For a more elaborate discussion on this, see Jørgensen (2001).

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