

GLOBAL INFORMATION SOCIETY WATCH 2009

*Focus on access to online information and knowledge
– advancing human rights and democracy*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

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*Dedicated to A.K. Mahan - an activist who valued
intellectual rigour and concrete outcomes.*

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Introduction

The Argentine Constitution includes access to information as one of the most important civil rights – a right that is also reflected in several government initiatives and public policies, as well as legislative debates dealing with intellectual property, freedom of expression, privacy and access to knowledge. However, these policies and debates are frequently fragmented, and lack specialised input. Civil society organisations working in the field have enriched the discussion, and the recently proposed Digital Agenda could be the proper space to accomplish the aim of securing access to online information as a human right.

Policy environment

The rights of freedom of expression and access to information have constitutional status in Argentina. Article 14 of the constitution includes, among the fundamental rights of all Argentine citizens, “the right to petition the authorities and to publish ideas through the press without prior censorship.”

The constitutional reform of 1994 widened this legal basis, with the inclusion of international treaties¹ such as the American Convention on Human Rights, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.

Article 13 of the American Convention on Human Rights states: “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.” In the same Article, the Convention stipulates: “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls.”²

Through Decree 512/09, the Presidency has developed the Digital Agenda,³ a “tool created to take advantage of the possibilities that the information and knowledge society provides. It proposes a work platform integrating government, business, academia and civil society organisations.”⁴ The programme focuses on three pillars: technological sovereignty and independence (i.e., an emphasis on local possibilities and needs), human rights, and citizen

participation. It creates commissions dealing with human capital, content and applications, infrastructure and connectivity, funding and sustainability, and the legislative framework, coordinated by representatives of the public sector.

The area of content – the most relevant for this report – is coordinated by the Ministry of Education. The proposals in this field include:

- Encouraging local content, and in doing so promoting local languages and cultures
- Promoting applications for citizens to exercise their rights
- The digitalisation of archives
- Supporting technological neutrality and interoperability
- Focusing on usability
- The facilitation of access to information and freedom of expression generally.

The following initiatives also reflect government policy on the issue of access to information:

- *Accessing public information:* In relation to public information, the National Office for Information Technologies (ONTI - *Oficina Nacional de Tecnologías de Información*) under the Sub-Secretariat of Public Management, coordinates the use of information technologies in the national public administration. The ONTI is in charge of the National Plan for Electronic Government and Digital Signatures. The office is also responsible for the government’s web portal,⁵ which collects a wide range of information about the country and offers a guide to procedures in public administration.
- *Accessing educational materials:* The Ministry of Education also develops content for its web portal educ.ar, and coordinated the National Campaign for Digital Literacy from 2004 to 2006.⁶ The educ.ar platform offers capacity building and digital resources. However, it does not have the impact it used to. Some analysts point out that the current administration stresses the development of television content, broadcast through Encuentro,⁷ an educational TV channel that falls under the Ministry.

1 National Constitution of Argentina, article 75, paragraph 22. www.argentina.gov.ar/argentina/portal/documentos/constitucion_nacional.pdf

2 www.hrcr.org/docs/American_Convention/oashr4.html

3 www.agendadigital.ar

4 CABASE, CESSI, CICOMRA and RODAR (2008) *Bases y lineamientos para una Agenda Digital Argentina*. www.agendadigital.ar/docs/Bases_Agenda_Digital_Argentina_sector_privado.pdf

5 www.argentina.gob.ar

6 Nodo TAU (2007) Argentina, in Finlay, A. (ed.), *Global Information Society Watch 2007*, APC and ITeM. www.giswatch.org/gisw2007/node/401

7 www.encuentro.gob.ar

- *Local domain:* The local entity that delegates domains for the country code .ar is NIC.ar (Network Information Centre Argentina), which falls under the Ministry of Foreign Affairs. It recently approved the use of Spanish and Portuguese characters in web addresses, such as ñ or ç, as well as replacing the gov.ar sub-domain with gob.ar (government = *gobierno* in Spanish), to “reinforce the use of our language, strengthen our identity and reduce the homogenising effects of globalisation.”⁸
- *Access to public information:* Argentina does not have a national law that regulates access to public information. Decree 1172, passed by the national government in 2003, relates only to executive information (i.e., from the Presidency and ministries) and states that information requested from public administrations should be provided without the need to specify reasons for the request.
- *Monitoring online content:* The government delegates control of online content to internet service providers (ISPs). Law 25.690¹² establishes that “ISPs are obliged to offer protective software that inhibits access to specific content.” Originally the law was intended to control content harmful to children. In a legislative debate it was changed to “specific content”, which also covers other kinds of content, such as content that is discriminatory. ISPs complained about state intervention, arguing that it is difficult to apply the law, and that the legislation goes against the free spirit of the net, amounting to censorship.¹³

Legislative environment

Information and communication rights are now on the public agenda in Argentina. In March 2008, the national government presented legislation that would regulate audiovisual communication services. This law will replace the current Broadcasting Law, developed during the military dictatorships in Latin America in the 1970s, and only modified to benefit economic groups and increase media concentration.

The proposed legislation, which is soon to be passed, considers communication as a human right and information as a social good. The legislation is based on a document called *21 Basic Points for the Right to Communication*, which was put forward by the Coalition for Democratic Broadcasting, a grouping of more than a hundred social, labour, academic and professional organisations.⁹

Since the passage of Decree 554/97, which declared “access to the global network” to be “in the national interest,” and Decree 1279/97, which included the internet as being subject to “the constitutional guarantees that protect freedom of expression,” national legislation related to access to online information has emerged in several ways. Some of this legislation, however, appears to contradict the above decrees.

- *Intellectual property rights (IPR):* Law 25.036,¹⁰ passed in 1998 to replace Law 11.723 from 1933, includes legislation to protect software copyright, the management of databases, and sanctions for copyright infringement. However, many feel the legislation restricts access to knowledge and promotes cultural monopolies. A case in point is the judgment against a philosophy professor who created online “libraries” for his students on Nietzsche, Heidegger and Derrida, without copyright permissions. The libraries included texts, essays, photos and links, as well as translations of core texts.
- *Personal data protection:* Law 25.326¹¹ deals with the administration of public and private databases that include personal information. The legislation prevents any entity from handing over personal data unless it is justified by legitimate public interest.

The importance of claiming online information rights

One of the challenges in evaluating access to information is the lack of statistical information – a fundamental resource for the evaluation of public policies and for planning. Argentina suffers a serious lack of confidence in official statistics because the organisation in charge, the National Institute of Statistics and Census (INDEC – *Instituto Nacional de Estadísticas y Censo*) is going through an institutional crisis, marked by accusations of corruption and internal political differences.

There are, as a result, no public indices for content. While some private consultants compile reports, they do not investigate content production, but merely provide overviews of commercial use and consumption.

The local media map shows a high concentration of media ownership, the creation of uniform content and a lack of state control. The proposed legislation for audiovisual communication services – discussed in open forums – deals with some of these issues. Although the law is concise in its treatment of new technologies, it assumes that digital media not only facilitate citizens’ access to information but also provide the possibility of spreading information to a wide variety of social actors.

However, this does not appear to be the case. A report written by the blogging site Bitacoras.com¹⁴ about the state of the Hispanic blogosphere, and based on its own internal data, says that 52.2% of bloggers are from Spain and 10.9% from Argentina. Regarding content, 54.5% of the blog postings are from Spain and 10.2% from Argentina. The report also indicates the cities where users are from. In Argentina,

8 www.nic.ar

9 www.coalicion.org.ar

10 www.mincyt.gov.ar/25036.htm

11 infoleg.mecon.gov.ar/infolegInternet/anexos/60000-64999/64790/norma.htm

12 infoleg.mecon.gov.ar/infolegInternet/anexos/80000-84999/81031/norma.htm

13 García Bartelt, M. (2003) Proveedores denuncian censura en Internet, *La Nación*, 12 January. www.lanacion.com.ar/nota.asp?nota_id=465416

14 Bitácoras.com (2009) *Informe sobre el estado de la blogósfera hispana*. bitacoras.com/informe

58,697 bloggers are from Buenos Aires, the capital, 10,193 from Cordoba, its second largest city, and 9,002 from Rosario. This suggests that ICTs are not yet democratised in Argentina, and the digital ecosystem is reproducing the same concentration seen in traditional media, with content produced in the districts with the largest resources.

The internet is a powerful tool for the social reintegration of people deprived of their freedom, due to its potential for interactivity-based learning opportunities.¹⁵ Argentina has no legislation that forbids internet access from jails. However, the right to internet access is only afforded to those who organise themselves and claim it. Some prison groups even manage to develop websites or blogs where they denounce the infringement of human rights in prison conditions, a severe institutional problem in Argentina because prisons are overcrowded and the majority of those imprisoned are still awaiting trial.¹⁶

Free Way Foundation (Fundación Vía Libre), a local organisation that promotes free software, has made a detailed analysis of the proposals for the Digital Agenda.¹⁷ It emphasises the importance of integrating the experiences of civil society groups and organisations in the proposals. At the same time, Free Software Argentina (SOLAR - *Software Libre Argentina*), together with the National Institute of Industrial Technologies (INTI - *Instituto Nacional de Tecnologías Industriales*) have made suggestions about increasing the use of free and open source software through the Agenda.¹⁸

New trends

Legislation proposing digital taxes on all technological media that store, record or reproduce music and images is currently under discussion. The tax is proposed by associations that defend the rights of authors and by the business sector whose activities are affected by technology evolution. The tax, a bad solution already tested in Spain, has been criticised because it would add an additional cost to CDs and DVDs, CD, DVD and MP3 players and recorders, computers, digital video and photo cameras and mobile phones.

The “No Tax in Argentina” movement¹⁹ is a group of civil society organisations trying to raise the debate from the point of view of users and free software and culture advocates. They argue that the tax not only widens the digital divide, but also punishes consumers, raising the price of technological goods. It also legalises piracy and the taxes collected would not go directly to cultural creators.

Action steps

- All current legislation needs to be reviewed to ensure that it encourages digital inclusion and respects and promotes communication rights and human rights generally.
- The national government needs to provide access to online information, developing its electronic government policy, promoting the publication of content held by public administrations, increasing transparency and protecting citizens’ rights to access this information. Although there is some work in this area, more work needs to be done given the complexity of state institutions. What does not exist is a policy that coordinates different levels of state.
- Access to government information is confined to those with ICT access, including the skills to use ICTs. Electronic government policies should include capacity building for citizens. Some local governments do, but only in a fragmentary way.
- Because there is no entity properly coordinating the online content arena in Argentina, it is difficult to develop strategies to prevent things like child pornography and discrimination, as well as to create a voice for marginalised communities and circulate information useful to these communities. The Digital Agenda could probably provide a space for meeting this need.
- The educational policy on online content could be broadened, allowing for more content creation and teacher training in digital inclusion strategies for schools.
- Prison policies should be revised to encourage the integration of the internet and e-learning in prisons. ■

15 Roman, A. (2005) *Redes y ventanas: tecnologías de la información como factor reinsertivo en los penales argentinos*, Universidad Nacional de Córdoba. www.biblioteca.jus.gov.ar/Roman3.pdf

16 CELS (2008) *Derechos Humanos en Argentina: Informe 2008*, CELS and Siglo Veintiuno Editores. www.cels.org.ar/common/documentos/ia_2008.pdf

17 Fundación Vía Libre (2009) *Aportes para la Agenda Digital Argentina*. www.vialibre.org.ar/wp-content/uploads/2009/05/posicionfvl.pdf

18 Xhardez, V. and Olivera, M. (2009) *Agenda Digital, Software Libre y Solidaridad Tecnológica*. www.solar.org.ar/spip.php?article574

19 www.noalcanon.org

GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels
- **Encouraging** critical debate
- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy*. It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

GLOBAL INFORMATION SOCIETY WATCH

2009 Report

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