

Communication and information rights in European media policy

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Abstract

To make informed choices about matters of societal importance citizens must be informed. This requires universal access and availability of information. It also implies participation in information creation – i.e., being competent to participate in public debate in which political will is formed and expressed, and decision-making happens. This is where the media – together with other public institutions such as education and general public services – are of decisive importance. In this article some recent issues in European media and communication policy will be scrutinized against the principles of citizens' information and communication rights (ICRs).

Keywords: communication and information rights, media policy, media access, media competence, privacy

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1 Communication and information rights in European media policy

Communication rights are most often represented in ratified conventions and agreements (Padovani/Calabrese, 2014, pp. 1-13). Among the rights that are most often included in information and communication rights [ICRs] are principles that include freedom of speech, freedom of expression, freedom of information, and right to education. Special emphasis is often given to the rights of minorities and subaltern groups, especially women, ethnic minorities and cultural groups, and people with disabilities. In the digital era, new rights such as the right to be forgotten are also being formalized.

The original understanding of communication rights was based on a range of what has been termed “*negative rights*”, meaning that the focus is on defence rather than a proactive understanding. That is characteristic for the freedom of speech, the press, and expression. The rationale protects rights owners (as citizens) from governmental interference, i.e. the misuse of political power. This understanding is the principle behind Article 19 of the United Nations’ Universal Declaration of Human Rights (1948). The concept of a “*positive right*” to communication developed slowly. This idea implies that citizens should not only be guaranteed access but also have an inherent right to the means for executing these freedoms. This understanding is implicit to the concept of an active, informed citizenship, which has defined the European social contract since the end of World War Two.

To make informed choices about matters of societal importance citizens must be informed. This requires universal access and availability of information. It also implies participation in information creation – i.e., being competent to participate in public debate in which political will is formed and expressed, and decision-making happens. This is where the media – together with other public institutions such as education and general public services – are of decisive importance (for more, see Horowitz Aslama and Nieminen, 2016).

One useful schema for understanding the wider spectrum of communication rights is to study them through five distinct dimensions (see Horowitz Aslama and Nieminen, 2016; Splichal, 2012, 168-69):

1. *Access* is about citizens’ equal access to information, orientation, entertainment and other contents serving their rights.
2. *Availability* indicates that relevant contents (of information, orientation, entertainment and other) should be equally available for citizens.
3. *Competence* is about citizens being educated with the skills and abilities to use the means and information available according to their needs and desires.

4. *Dialogical* rights means availability of public spaces that allow citizens to publicly share information, experiences, views, and opinions on common matters.
5. *Privacy* indicates two things. First, that everyone's private life must be protected from unwanted publicity, unless such exposure is clearly in the public interest or if the person decides to expose it to the public. Second, protection of personal data means that all information gathered by authorities or businesses must be protected as confidential.

2 Information and communication rights

The actors in media policy subscribe to a principal understanding that the central aim of media policy is to enhance citizens' democratic rights. This ideal of an informed citizen means that all members of society should be able to make choices based on the best available knowledge. Perhaps the most important common document on this is the United Nation's Universal Declaration of Human Rights, in which the UN member states pledge to promote freedom of opinion and expression and the right of everyone "*to seek, receive and impart information and ideas through any media and regardless of frontiers*" (UN, 1948).

However, the declaration and the numerous treaties founded on it are not binding on the UN member states: there are major differences how, for example, freedom of speech or openness of information is recognized. In order to make the treaties effective, some researchers and civic movements have launched the concept of citizens' information and communication rights (ICRs) (Padovani/Calabrese, 2014; Braman, 2009; Splichal, 2012). The aim is to have these rights as part of national and international legislation and thus make their full implementation globally compulsory.

In the following, the five dimensions of information and communication rights introduced above will be discussed in more detail. How are they met today in European media and communication policy?

1. By *access*, we mean that all citizens should have equal opportunities to enter information sources, regardless of the delivery forms and technology. In the European Union this aim is served primarily by the EU strategy "Digital Agenda for Europe: A Europe 2020 Initiative" (EU, 2016). Today in most, if not all, European countries, most citizens have relatively equal opportunity to have access to and a possibility to use the most important information networks. This is the case with the print media (newspapers and magazines), electronic media (radio and television) and basic telecommunication (fixed and mobile telephony). However, the problem is that communication has shifted increasingly to

the network environment; the Universal Service Obligation (USO)¹ that has been compulsory in traditional telecom services does not concern broadband online services. This is reflected in social and regional inequality in the availability of the broadband connection as well as in differences in the price setting. (see EU Broadband, 2015)

In many countries, telecom operators are today investing heavily in the most advanced 4G and even 5G mobile networks.² This policy has led to the traditional fixed-line telephony network being physically dismantled because of its high maintenance costs. The mobile services offered as replacement do not, however, guarantee the same quality and reliability. Furthermore, the more effective 4G (and even less the forthcoming 5G) networks are concentrated on the more profitable markets around big cities, leaving the rural area dependent on less-developed and slower connections (EU Digital Agenda, 2015).

2. By *availability*, we mean the plurality and diversity of information content. All citizens should have access with equal conditions to the best knowledge and expert opinions available, to culture and works of art and to high quality entertainment. Although this is a general problem concerning all groups of citizens, it touches certain minorities, in particular. Central issues for democratic citizenship are, among others, the availability of *factual information* and *orientative knowledge* as well as content enhancing *social and cultural cohesion*.

Factual information: In the European Union this aim is clearly set in the Lisbon Treaty under the auspices of the Freedom of Information,³ and obliges public authorities to fulfil the basic democratic requirements of openness and transparency in their functions. However, there are two big problems: first, not all European Union member states have followed this principle, neither *de jure* nor *de facto*, as its implementation falls under national sovereignty.⁴ The sec-

1 Universal Service Obligation refers to the principle that basic telecommunication services must be offered to all potential users, independent of their location, with equal conditions and moderate costs (see EurLEX, 2016).

2 4G and 5G (Fourth and fifth generation, respectively) refer to mobile broadband technologies. The aim of each new generation is to package more information on each frequency bandwidth than the previous generation. This means both a higher capacity of information delivery and better quality, e.g. in video streaming. See the mobile industry report 'Understanding 5G' at <https://gsmintelligence.com/research/?file=141208-5g.pdf&download>.

3 "Article 42 (the right of access to documents) of the European Charter of Fundamental Rights [...] recognises the right to freedom of information for EU documents as a fundamental human right. Further, specific rights falling within the scope of freedom of information are also enshrined in Article 41 of the Charter (the right to good administration)". (Index on Censorship, 2015).

4 Two EU member states, Cyprus and Spain, are still without any freedom of information laws. Ibid.

ond problem follows from the fact that any freedom of information legislation can only oblige public authorities – non-governmental and privately owned institutions are excluded.

An additional problem that has emerged with the expansion of the Internet concerns the abundance of information. Today we have access to almost limitless information, which makes it extremely tough even for experts to find and select information that is most relevant for our needs and interests. Both researchers and journalists have experienced that the increasing fragmentation and trivialization in the information supply create problems. In relation to journalism, the danger is that borders between fact and fiction are blurring, which leads to people's diminished trust in news journalism – a trend that is being experienced in many countries.

A recently exacerbated problem is created by the attempts of several network operators to prioritize their own content services by slowing the online traffic of their competitors (the problem of Network Neutrality; see European Union on the issue: EU Net Neutrality, 2015a). Although widely condemned as a major violation against the basic ideals of the Internet as a neutral conduit of information, this policy is actively promoted by many major service providers and network companies.⁵ Until now, the attempts by the European Union to tackle net neutrality have been less convincing (see EU Net Neutrality, 2015b; Save the Internet, 2016; Wired, 2015).

Orientation: Orientation refers in general to the interpretation and contextualization of information. The significance of orientative information is emphasized when the amount of available information increases rapidly. The ability of the private citizen to gather and interpret all information that is relevant for his/her needs is necessarily limited. Here the interpretations offered by the news media, even though often contradictory and competing with each other, are indispensable. In order to foster democratic will formation, orientative information in the forms of plurality of opinions and diversity of interpretations should be available to allow people to weigh contradictory claims and recommendations independently. In the European Union, media pluralism has been a topic of constant debate and concern (Harcourt, 2005; Ward, 2008). In 2012 the EU co-established the Centre for Media Pluralism and Media Freedom (as a part of the European University Institute in Florence; CMPF, 2016), whose tasks include monitoring and reporting on the state and developing pluralism and diversity in European media.

From the viewpoint of pluralism, the present state of democracy in Europe invites critical analysis.⁶ Too often the media – both the newspapers and the electronic media – offer interpretations that are excessively uniform, exclu-

5 For the case of India, one of the biggest telecom markets globally, see Soni, 2015.

6 On the measures by the European Union to foster media pluralism, see EU Media Freedom, 2016.

ding alternative explanations. This is facilitated by the intense centralization of media ownership, diminishing external pluralism, and a narrowing down of internal pluralism in the media, as the well-known cases of the Berlusconi's and Murdoch's media imperia have shown us (see Day, 2015; Davies, 2015). Even when competition occurs – for example, between the evening papers in many countries – it is often based only on scandals and celebrity gossip (Esser, 1999; Uribe, 2004).

Previously media pluralism in many European countries was promoted by means of public subsidies or state aid policies. It facilitated, among other things, that the political party press to continue publishing for a time. However, the European Union decreed that state aid to the media distorts the market and violates European competition law (see EU State aid, 2009). Public subsidies have been drastically reduced since the 1990s (Murschetz, 2014). However, recently the topic has re-emerged as the economic basis of the news media, in particular, has become threatened by the global economic crisis involving a rapid decrease in advertising and consumer demand for news journalism. This is felt, in particular, to threaten the diversity and pluralism of news journalism.

Social cohesion: The media have historically played a major role in supporting and enforcing social and cultural cohesion. This is promoted in equal measures by the media's news and current affairs provision, as well as entertainment and arts and culture programmes. The High Level Group on Media Freedom and Pluralism, invited by the European Commission, stated in its final report that from the viewpoint of democracy it is essential that media contents serve the social and cultural needs of all the different social groups and strata in a balanced way (HLGMFP, 2013). However, there are still major imbalances between different social groups in their public representation. This concerns the differences in, e.g. gender, culture, language, ethnic origin and social class (Cottle, 2000; Dines/Humez, 2003; Gill, 2007; Conversi, 2014).

3. By *competence*, we mean citizens' skills and abilities to use the media and their contents critically according to their needs and expectations. Although it has been on the European Commission's agenda as *digital competence*, its practical promotion has necessarily been left with national authorities (Ala-Mutka, 2011). Often media competence is understood merely as a concern for schools and educators; special subjects of criticism have been the Internet, its uncontrolled use as well as the lack of control concerning its content. Too often the problems concerning media competence are brought into public debate only as a reaction to some scandal or online-related crime, in the form of moral panic (such as after the massacre in Oslo 2011 or as a reaction to the online recruiting campaign by Isis 2015). Recently, this problem was raised in connection to the role of journalism in reporting the European financial crisis of 2010-2012 (Picard, 2015).

Serious discussion on media competence not only needs the engagement of users and educators but also all stakeholders of the media system. The topic needs the expertise of those responsible for developing new media technologies and their applications as well as content creators and distributors. From the viewpoint of technology, the need is very practical: how to make and keep technology user friendly. For service operators, the challenge is to make the service conditions and pricing bases less ambiguous. A major obstacle is that many of the most used media applications are owned and controlled by US-based companies (e.g. Microsoft, Apple, Facebook, Youtube, Google). With a lack of effective international jurisdiction, European consumers have very little protection against these companies in cases of conflicts of interests.⁷

4. By *dialogue* we mean the very core of democracy. The media system should promote democratic public debate, allowing decision makers and citizens to exercise frank and open dialogue. It is based on a belief that democracy is best realized when citizens can actively participate in discussions and negotiations concerning their needs and interests, and in planning alternative ways of action. In particular, in the early days of the Internet there were great expectations for direct democracy; in other words, that online communication, purely by its seemingly direct and “*unmediated*” character, would democratize communication and create a wholly new and open public sphere. This optimism has somewhat waned today (Dahlberg/Siapera, 2007; Curran/Fenton/Freedman, 2012.)

In its order to increase interactive communication the European Commission has adopted the use of the new ICT in the form of online consultation (EC, 2016). Although consultation, being a non-symmetric form of communication, does not fulfil the criteria of dialogue, it certainly is one way of giving voice to citizens and stakeholders. The problem is, though, that consultation is by nature reactive: the participants can only react to the alternatives or proposals that are available to them.

If dialogue is difficult for public authorities to construct, it is no less easy for the media – for several reasons. Embedded in the professional culture of media business, especially journalism, there is a certain understanding of professionalism; journalists are experts in collecting, filtering and interpreting information, and by these means serve their audiences. The construction of dialogue with their audience has not traditionally been part of how the media work and how journalistic professionalism is understood (Eide, 2014). With the proliferation of media forms, multiplying channels and the fragmentation of audiences, the media industry has been forced to re-think how to engage readers, listeners and watchers to a certain platform (be it a newspaper or a

7 On the planned new EU legislation on data protection, see EC, 2015.

radio channel). In many countries different forms of interactive journalism (in the form of citizen and public journalism) have been experienced with varying results (Ahva/Heikkilä/Kunelius, 2015).

5. By *privacy* and individual autonomy, we mean that citizens should have a guaranteed right to decide for themselves on how they use their private information and on its public display. Privacy refers to two interlinked directions: protection of private life and protection of private information. The protection of private life concerns a person's private affairs, such as family life, hobbies, habits and tastes, health, sexual orientation and religion. This information is not meant for the public domain unless the person decides otherwise. In the European Union the topic has been discussed in the terms of new Data Protection Directive (EU Data Protection, 2016) which aims to create a comprehensive European framework. The directive has been much motivated by the practices of big US-based media companies like Google and Facebook that have been judged unethical and as violating the principles of the Lisbon Treaty and the Charter of Fundamental Rights of the European Union (see e.g. New Scientist, 2015; Europe versus Facebook, 2016).

The digitalization of communication and the increasing use of the Internet and social media have changed the conditions for the traditional understanding of privacy and its protection. We, as ordinary media users, regularly hand over our personal information voluntarily to a multiplicity of service providers without proper consideration. In Facebook and other social media platforms, we share information about our private preferences, free-time activities and our family members. This information we offer to service providers to be commercially exploited and sold further to third parties, advertisers and marketers. As we know today, several governments have achieved access to all this information to exercise global control of the communication networks and regularly monitor "suspicious" behaviour and people. A prime example of this is the case of Edward Snowden, who in 2013 exposed the massive global surveillance programme of the US National Security Agency (Greenwald, 2014; Lyon, 2015).

3 Conclusions

The major question for the European media policy today is how to answer the challenges created by the digitalization and globalization of communication. Traditional media and communication policies were based on two assumptions, neither of which matches the present situation. The first is linked with the sector-based division of media industries, separating print media, electronic media, telecommunication and recorded media into their regulatory "si-

los". Each sector has been applied with a sector-based regulation, leading to a fragmented legal framework. Accordingly, regulatory responsibilities are separated between several public authorities. The EU's framework for electronic communications services (EU Framework, 2015) is an attempt to answer this challenge by bringing together different EU regulations of both television and radio broadcasting and telecommunication.

Another assumption involves the competence of national media and communications policy. Traditionally, it has been assumed that media markets are constrained by state borders because of the restrictions set by technology, delivery network and linguistic-cultural factors. Due to digitalization and the ascendancy of the Internet, the ability of national actors and national legislation to effectively control the media within national borders has radically weakened. An increasing amount of the use of the media concerns content produced in and distributed from countries (especially from the United States) outside the jurisdiction of the user's country.

From the viewpoint of European democracy, it is difficult to see any consistent strategic planning in the media and communication policies either on EU or on national levels. As the media have increasingly withdrawn from the national regulatory regime, no cohesive international regime has developed to fill the gap. The possibilities of the EU are limited by the same challenges of globalization facing the national level. This is why the results of the EU's media and communications policy have mostly been limited to partial reforms and updating previous norms.

In these conditions, European national media and communications policies seem to be left as market-led, and global multinational media companies are allowed to dictate their further development. A central task for media policy research is to assess how to change this development in order to ensure citizens' information and communication rights and to democratize the EU's media and communication policy.

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Biography

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