

TALKING POINTS FOR INTERVENTION AT
(DRAFT REFERENCE – CHECK AGAINST DELIVERY):

**Government and the Internet: Participation and Control
/ Freedom of Expression and Government Control**

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1) GENERAL INTRODUCTION ON ONLINE FREEDOM OF EXPRESSION

UDHR: Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.



La libertà di espressione è tra i diritti UMANI fondamentali uno dei più difficili da raggiungere e difendere,

sin dai tempi dell'antica Cina quando uno scrivano scrisse di suo padre ucciso dall'imperatore per aver narrato di scrivani condannati a morte dall'imperatore.

O dalle battaglie degli illuministi culminate con il riconoscimento del diritto alla libera comunicazione del pensiero e delle opinioni all'indomani della Rivoluzione francese.



In teoria la libertà di espressione, è garantita dalla maggioranza delle costituzioni nazionali, poi però il principio è costantemente disatteso nella prassi da governanti come dalle forze dell'ordine, dai servizi di intelligence come dai potentati politici.

E questo avviene quotidianamente in tutti i continenti e anche nei paesi democratici.

Il pendolo oscilla da secoli tra libertà e repressione, con alterne vicende.

È stata una battaglia senza esclusione di colpi tra i fautori ed i nemici della LdE e dei suoi corollari forse più importanti: la libertà di stampa ed il diritto universale di accesso alle informazioni.

Poi un bel giorno è scoppiata una rivoluzione tecnologica e culturale che ha mutato le forze in campo: Internet.



I saggi che nel primo dopoguerra redassero la Dichiarazione universale dei diritti umani del 1948 erano stati lungimiranti nel pensare un testo che contemplasse già sviluppi tecnologici futuri.

Infatti, l'articolo 19 della Dichiarazione sancisce che “Ogni individuo ha diritto alla libertà di opinione e di espressione incluso il diritto di non essere molestato per la propria opinione e quello di cercare, ricevere e diffondere informazioni e idee attraverso OGNI mezzo e senza riguardo a frontiere”. La definizione “ogni mezzo” poneva quindi le basi per il riconoscimento della LdE in televisione e poi in Internet.

Sin dalla metà degli anni '90, Internet è apparso come lo strumento ideale per accrescere e massimizzare la LdE. La Rete delle reti è nata come infrastruttura di comunicazione militare a prova di bomba atomica e nelle fasi pionieristiche della sua crescita è apparsa come un'arena libertaria, quasi anarchica, dove chiunque poteva esprimersi liberamente, senza filtri, senza controlli. Quasi un'utopia concreta. Mentre Internet cresceva diventando il più grande spazio pubblico di scambio della storia dell'umanità, vecchie e nuove forze ostili alla LdE si curavano le ferite, arretravano per riorganizzare le file e in alcuni casi partivano al contrattacco, all'estero come in Italia.

What is behind a statement by a dictatorship's ambassador to the UN calling to fight against the spread of xenophobia in the Internet? Or behind a declaration of the Organization of Islamic States to adopt measures against "defamation of religions"? What may be their ultimate goal and ulterior motives, if any? Authoritarian regimes have moved at international levels in diplomatic and multilateral spheres trying to "constrain" online freedom of expression and to boycott Internet development. It is a constant effort submerged by diplomatic jargon.

Governments of closed societies, which are "enemies" of Internet because of the freedom of expression enabled by the Net, systematically have been trying to limit Internet development and penetration among citizens.

These governments have used various means:

- i) those hitting the citizens such as the arrests of "cyberdissidents", or such as Internet censorship, or a stock of laws and regulations to limit the individual fundamental human right to fully access to the Internet;
- ii) those influencing and interfering with the big Internet and high-tech companies to comply with surveillance and censorship such as smartphone businesses in the Gulf or the renowned case involving pressure being put on Google by the Chinese government; iii) those actions at international level through bilateral relations and multilateral relations in International fora such as the UN and other intergovernmental bodies.

Focusing on the latter kind of attempts by Internet-hostile regimes to limit Internet development moving within international bodies. Such attempts usually apply a similar pattern: an Internet-hostile-governments builds a diplomatic campaign describing the Internet as main responsible of an "evil", thus trying to coagulate a coalition of States around the need to constrain the Internet for the good reasons of tackling such "evil". These "evils" are for instance the fighting to the spread of hate or terrorists messages, pornography,

or messages “defaming” religions, or to fight intellectual property violations etc.

Let’s give some examples from the early days of this battle, in the ‘90s, when Internet was just a growing and promising technology but not yet a media which has revolutionized the way people buy, share, get news, access information, take political decisions, and stay in touch. For instance, in the year 1999, at the 54th United Nations General Assembly in New York, the representative from Uzbekistan made a strong statement at the Third Committee for Social, Humanitarian and Cultural affairs condemning the spread of pornography in the Internet. On the same Committee, that year another discussion took place about alleged “excessive” freedom of the Internet. Pakistan proposed that “a code of conduct should be instituted to regulate the relationship between the Internet and free speech to serve as a curb on rampant racism.” This statement was echoed by the Cuban delegate who, concerned about “Neo-nazi trends” gaining space affirmed that “with the multiplying information highways being improperly used for racial hatred, and instigation through cyberspace racism, a code of conduct for Internet users and servers could no longer be delayed.”

No doubt racism and xenophobia are outrageous to human intelligence. No doubt also that Internet has facilitated the access to pornography, to xenophobic contents as to any other contents. But why a least-developed country like Uzbekistan, with one of the lowest Internet penetration, was worrying so much about it? Why Cuba was so concerned about the neo-nazi phenomenon which was almost absent in the Caribbean island? What is the real goal of these governments to be later classified as “enemy of the Internet” by Reporters Without Border? Their real agenda was to constrain the Internet using as trojan horse the reference to an “evil” that cannot be ignored and dismissed in a multilateral environment. No way that a UN representative could stand up in a multilateral context and say that “racism” was not an issue. But the attempt to load on the Internet the responsibility for the spread of racism was a political and rhetorical twist that clearly had ulterior motives.

Most of the issues and questions around the Internet brought in by closed societies representatives in international fora during the '90s, converged into a major multi-lateral three-year exercise, the World Summit of Information Society (WSIS). From 2003 to 2005, the WSIS met first in Geneva and then in Tunis, with the task of developing "a common vision and understanding of the information society", and of discussing how to bridge the digital divide. Beside the generic jargon, Reporters Without Borders denounced that: "Dictatorships and other repressive regimes intend to use this summit to subject information on the Internet to measures of control and censorship [...and] dependent on each country's legislation."

The first of the two-round of WSIS was held Geneva in 2003, the town hosting the headquarter of the International Telecommunication Union (ITU), also organizer of the Summit. Entering the WSIS, many representatives from authoritarian countries were hoping to initiate a process bringing Internet to be a technology "regulated" by a super-national body complementary to country-based national control bodies, on the model of the ITU regulating the world airwaves allocation. This attempt was nullified by two combined actions. On the one hand the USA, effectively holding the "keys" of the Internet infrastructures, which firmly opposed any request to leave the control of the Internet Corporation for Assigned Names and Numbers (ICANN), promising to let ICANN becoming an NGO with a more internationalized governance. On the other hand, those countries and organizations pro-freedom-of-expression managed to shift the Summit balance from the technological and technocratic focus to the attention on fundamental principles embedded in the Internet issues.

UNESCO, the UN agency with the mandate to promote the free flow of information, proposed the broader concept of knowledge society as opposed to information society. Among the four pillars of the knowledge society there are freedom of expression and the right to universal access to information. While the NGO Association for Progressive Communication (APC) argued that "the Internet is a global public space that should be open and accessible to all on a non-discriminatory basis." As a result, the Summit adopted a

Declaration of principles reaffirming “as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers,” therefore through the Internet!

The attempts from authoritarian countries using the WSIS to introduce supranational regulatory mechanisms for the Internet had failed. The status-quo of Internet was apparently preserved. But the battle between enemies and fans of the Internet was far to end. The discussions later continued in the Internet Governance Forum (IGF), the multi-lateral and multi-stakeholder forum emanated from the WSIS process. Since 2006, IGF offered a global platform to discuss issues such as cyber-crime, or multilingualism in the Internet. For instance, during IGF meetings some authoritarian countries threatened to create “parallel Internet” because they found unacceptable that their citizens had to use Latin characters. And as a reaction the ICANN switched on a system allowing full web addresses written in Arabic and Chinese scripts.

Starting from late 2005, a new wave of attempts to diminish Internet freedom was generated by the Danish cartoons controversy, those satiric illustrations depicting Prophet Mohammed and perceived by critics as blasphemous. Following massive protests across the Islamic world, governments from Islamic States filed in international fora proposals to contain “defamation of religions”. And they were particularly successful in the UN Human Rights Council, where a resolution on blasphemy was adopted in 2009. That decision was criticized by RSF because “on the grounds of combating discrimination, it assails the news media for the ‘targeting of religious symbols’ and ‘sacred persons,’ especially those of Islam. In other words, the UN is asking the media to stop criticising Islam in the name of combating incitement to religious hatred. This is unacceptable to all those who feel strongly about the defence of free expression.” Pro-press-freedom observers noted also that defamation has to do with individuals (as for any other human right)

and not an aggregation of individuals-believers. Moreover, blasphemy is a vague concept, which can be misused for political ends to curtail freedom of expression, also online.

The beauty of the Internet is that it is (was?) open, not controlled by any one group and that its governance is bottoms-up preventing vested interests from taking control. But not always in international contexts a government's position is so clearly identifiable in a black-or-white type of game, with representatives of "closed societies" on one side and government of democracies on the other riverbank. In several instances concerning for instance "cyber-crime", net-neutrality, intellectual property (IP), or privacy and personal data protection, unexpected cross-cutting alliances have developed between democracies and dictatorships, voluntarily or involuntarily.

The case of the defence of IP©right old dogma is paradigmatic. The USA is the one country that has the largest Internet companies but it is also the one hosting the largest content producers company. And, as the Law Professor at Harvard Lawrence Lessig effectively summarized, the past is trying to control the future, in place of exploring new economic and hybrid models of copyright where not all rights are reserved and where the IP protection is more in line with the digital age revolution. Two opposed giant corporation-lobbies had major battles on the IP issues and influenced the US administration actions. On the one hand there are symbolic moment such as when the US Secretary of State Hillary Clinton gave the historic speech at the Washington Newseum about Internet Freedom. On the other hand, as it has recently written the computer industry veteran and commentator Simon Phipps, leaked US department of States cables "confirmed that a wing of the US Government - the US Trade representative (USTR) - has been systematically bullying European and other world governments. The goal has been to use threats against their other trade activities to force them to introduce laws that summarily restrict the freedom of their citizens to use the Internet - without judicial involvement, if possible."

As a matter of fact, countries such as France adopted in early 2009 a law like “Hadopi” severely controlling compliance with IP legislation through sanctions for Internet users accused of copyright violations, implemented just with administrative ruling. Hadopi law was therefore allowing to restrict the freedom of their citizens to use the Internet without judicial involvement. But on 10 June 2009, the Constitutional Council of France struck down the controversial portion of HADOPI, ruling that because “the Internet is a component of the freedom of expression” and “in French law the presumption of innocence prevails”, only a judge can impose sanctions. But, meanwhile, several other countries are considering legislation similar to Hadopi, sort of “outsourcing” the control over copyright violations to administrative bodies, if not directly to the private sector through the legitimization of the “notice and takedown” mechanism adopted by major Internet companies. While pro-Internet freedom observers are concerned about the potential consequences on online freedom of the proposed Anti-Counterfeiting Trade Agreement (ACTA), which would establish international standards on intellectual property rights enforcement and copyright infringement on the Internet.

When a democracy takes draconian measures for instance to combat IP violations or to protect privacy, it endorses the principles that Internet can be legitimately filtered and citizens forbidden to access just by an administrative or police body. And this set a precedent for an authoritarian States which will have new arguments to say: we are legitimately implementing Internet filtering as you guys, but in place to fight copyright violations we are doing so to protect our national security, or national interests, or socialism, or the values of the Iranian revolution, etc. These precedents of course work against the fulfilment of the fundamental human right to freedom of expression. Talking about setting precedents, let’s recall the battle of authoritarian States against the spread of pornography over the Internet in the ‘90s; and observe that recently a top-level British government official and MP Ed Vaizey proposed a plan to consider blocking all pornography on the Internet in the UK with filtering mechanisms at the ISP-level.

Such a “schizophrenic” behaviour by democratic governments had already been observed for instance during the time of the Patriot Act restrictions on press-freedom in the country of the First Amendment. While most recently the Wikileaks case created new circumstances to generate vicious circles reducing online freedom at international level. As highlighted in a letter to President Obama by the J-School professors of the Columbia University, the "government overreaction to publication of leaked material in the press has always been more damaging to American democracy than the leaks themselves [...] Prosecution in the Wikileaks case would greatly damage American standing in free-press debates worldwide and would dishearten those journalists looking to this nation for inspiration."

The pendulum of Internet freedom at international level is going back and forth. Closed societies are trying to pull it on the side of legitimizing Internet censorship, while pro-online-freedom forces are pushing on the other side. On December 2010, Google's Chief Internet Evangelist Vint Cerf denounced the umpteenth attempt of authoritarian forces to control the Internet: “the UN Committee on Science and Technology announced that only governments would be able to sit on a working group set up to examine improvements to the IGF—one of the Internet's most important discussion forums. This move has been condemned by the Internet Governance Caucus, the Internet Society (ISOC), the International Chamber of Commerce and numerous other organizations...we don't believe governments should be allowed to grant themselves a monopoly on Internet governance.” The dispute continues.

2) ECOLOGY OF FREEDOM OF EXPRESSION AND MEDIA PLURALISM IN GENERAL / IPDC Media development indicators (5 MIN)

Media Development Indicator (by Andrea Puddenphat/IPDC)
Category 1: A system of regulation conducive to freedom of expression, pluralism and diversity of the media

- Legal and policy framework
- Regulatory system for broadcasting
- Defamation laws and other legal restrictions on journalists
- Censorship

Category 2: Plurality and diversity of media, a level economic playing field and transparency of ownership

- Media concentration
- A diverse mix of public, private and community media
- Licensing and spectrum allocation
- Taxation and business regulation
- Advertising

Category 3: Media as a platform for democratic discourse

- Media reflects diversity of society
- Public service broadcasting model
- Media self-regulation
- Requirements for fairness and impartiality
- Levels of public trust and confidence in the media
- Safety of journalists

Category 4: Professional capacity building and supporting institutions that underpins freedom of expression, pluralism and diversity

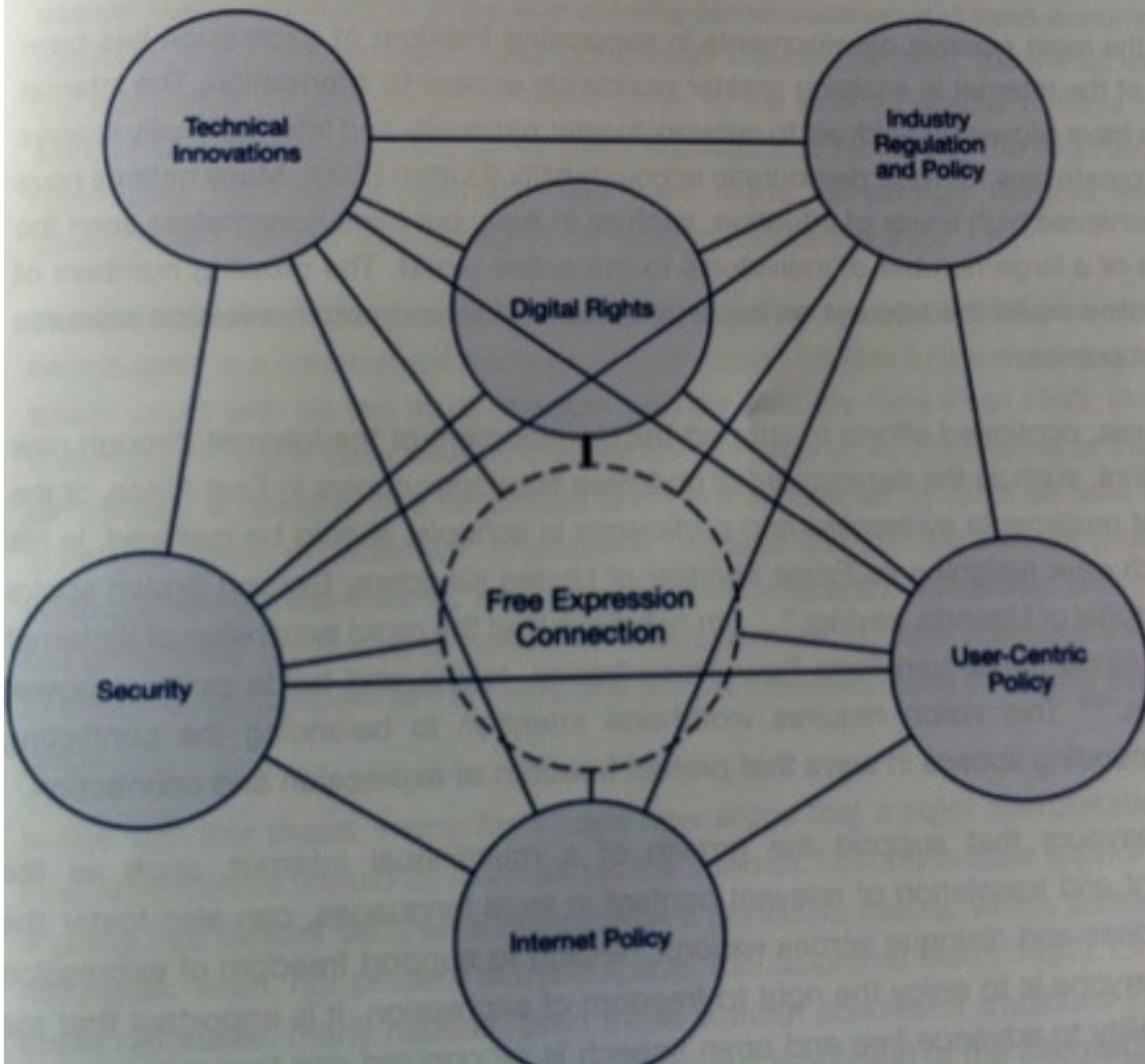
- Availability of professional media training
- Availability of academic courses in media practice
- Presence of trade unions and professional organisations
- Presence of civil society organisations

Category 5: Infrastructural capacity is sufficient to support independent and pluralistic media

- Availability and use of technical resources by the media
- Press, broadcasting and ICT penetration

3) 'ECOLOGY' OF FREEDOM OF EXPRESSION AND CONNECTION (10 MIN)

Figure 9. The Ecology of Freedom of Connection and Expression



By Oxford Internet Center

3) NEXA RESEARCH: ONLINE FREEDOM OF EXPRESSION IN ITALY (15 MIN)

Specialized observers rank Italy as a country “partly free” in terms of media freedom in general. But what is in Italy the specific situation related to Internet and freedom of expression? Is Italy an environment enabling a development of freedom of expression in the Internet? Are there legal, economic and commercial constraints and barriers to Internet

pluralism, to maintaining net-neutrality, to the spread of access with all devices and at various speeds? And what is the “weight” of Internet, vis-à-vis in the other media, in the decision-making process and in the definition of citizens’ behavioral patterns?

Introduction

In Italy, 96,1% of households has a television, but only 47,3% has an Internet connection (ISTAT 2009). Those data shows in a glance how Italy is behind in ICT development and information literacy.

Digital divide affects concrete possibilities to access the Internet. For instance, according to OECD, Italy shows the minimum broadband penetration among G7 countries (20,5% in December 2009). The development of Internet infrastructures suffers from the lack of investments in technological improvement: according to Employers’Association “Confindustria”, ICT investments represent less than 2% of Italian GDP, while recently an important public investment to overcome the digital divide (800 ml euros) was first announced and then stopped.

At the end of 2008, broadband access covered almost 95,7% of Italian territory (source: OECD), but statistics do not consider technical difficulties and interferences which affect traditional copper phone lines. FTTH and FTTB connections remain a limited experience, while the majority of Internet users currently uses household connections with an average download speed of 3-4 Mbit/s (source: SOS Tariffe).

On top of the scarce Internet infrastructure development, information and media literacy in Italy is limited. In 2009, according to Confindustria, 38% of Italian households have no computer literacy, and more than half of the IT users are not able to make basics operation such as using spread-sheets or zipping a file. However, the

recent success of mobile internet is opening new scenarios for the online world: if most of 3G devices are still purchased by those who are already ICT literate, but the booming industry of smartphones in a country with 90% of mobile-phone users are also bringing into the online world a new wave of users.

Legislative and policy environment

The Italian Constitution recognizes freedom of expression in Art. 21: “(1) Everyone has the right to freely express thoughts in speech, writing, and by other communication. (2) The press may not be controlled by authorization or submitted to censorship. (3) Seizure is permitted only by judicial order stating the reason and only for offences expressly determined by the press law or for violation of the obligation to identify the persons responsible for such offences. (4) In cases of absolute urgency where immediate judicial intervention is impossible, periodicals may be seized by the judicial police, who must immediately and in no case later than 24 hours report the matter to the judiciary. If the measure is not validated by the judiciary within another 24 hours, it is considered revoked and has no effect. (5) The law may, by general provision, order the disclosure of financial sources of periodical publications. (6) Publications, performances, and other exhibits offensive to public morality are prohibited. Measures of prevention and repression against violations are provided by law”. The remarkable length of this article is due to the historical and political context in which the Republican Constitution was drafted, after the Fascist dictatorship.

Nowadays, the mainstream media landscape is characterized by the almost monopoly of the free-to-air national commercial TV market by Mediaset, the company founded and controlled by the Italian prime minister Silvio Berlusconi. Such a TV oligopolistic situation, with Mediaset controlling more than 80% of the free-to-air advertising market, unusual in a Western democracy, was made possible by the lack of an antitrust laws, and by TV regulations institutionalizing *ex post* a position of prevalence already conquered in the market. The conflict of interest between media-ownership and political leadership

is aggravated by the fact that Berlusconi's political power-chain is controlling the public service broadcaster RAI, while Berlusconi himself (or his relatives) owns two newspapers, several news and tabloid magazines and the main Italian publishing company. Such a scarcely pluralist media environment is complemented by a leadership on pay-TV by Murdoch's Sky platform which in terms of turn-over is catching in with Mediaset, and by other leading newspapers controlled by main industrial groups and not by independent publishers.

As for the Internet sector, the e-content world is now characterized by two kinds of players, those linked to mainstream media companies prolonging their business online, and those few new players that successfully developed just online. The "past attempting to control the future" is embodied by a number of legislative tools trying to establish a legal notion of "prodotto editoriale", a broad definition of "publishing good" which may encompass also websites and blogs. Such an equation between Internet-media and traditional media would extend many of the regulative mechanisms implemented for the broadcast and printing press sectors to the online world.

Open discussion

Italy represents an interesting case study for online freedom of expression in a European democracy living since 16 years with the anomaly of a media-tycoon in power. In fact, Berlusconi's massive conflict of interest propagated to the online world and is arguably at the heart of the Italian lack of Internet infrastructure development. It is likelihood that as an oligopolistic media-owner he has no interest to make the life easy to new online competitors. As a politician basing his consensus on the influence on the public opinion exerted by his control on traditional media, he is fearing the spreading of dissenting voices on the Internet.

The Italian establishment's hostility towards the Internet translated into two main behaviors by Berlusconi's power/political/media-chain: either not taking any active policy to foster the online word and

Internet infrastructure with public resources, or proactively trying to “regulate” the e-content sector and to undermine Internet’s public perception. Mainstream media and political leaders portray Internet more often as a threat to avoid than as an opportunity to grasp. Therefore, negative aspects are constantly stressed, while positive impact of a free speech environment is generally underestimated. This is particularly striking when dealing with libel and privacy concerns. Internet is often accused of spreading anxiety together with defamatory e-contents, which need to be blocked in some way in order to respect human dignity and the right to privacy.

However, Berlusconi’s and the Italian establishment have (so far) not succeeded in having a real influence in the online freedom of expression, and the Web is now enjoying a comparatively wider pluralism and freedom. This is probably because a European democracy could not afford to adopt draconian laws against Internet freedom. And the indirect and “soft” strategies trying to undermine online freedom of expression have so far being by-passed or ignored by users and e-content producers. But recently this has brought to newer more aggressive strategies put forward by the anti-Internet establishment, as denounced by observers such as the OSCE’s Representative of Freedom of the Media and by Reporters Without Borders.

New trends

In the last five years, Internet has been the subject of different legislative measures (and attempted measures), aiming to introduce new sets of regulation containing also restrictions to Internet users’ rights in the online information environment.

For instance the “Pisanu Decree”, justified as an anti-terrorism measure after the attacks to the London underground in 2005, introduced the obligation for connectivity providers to obtain an administrative authorization and to identify with an ID the Internet users of wi-fi spots and of Internet-café’s. The measure by the decree has subsequently being regularly prolonged with the end result of pre-

empting the development of free wi-fi in Italy, an anomaly considering that country with high risk of terrorists attacks such as Israel and the US have no such laws and wi-fi hotspots are widespread.

Furthermore the “Gentiloni Decree”, adopted in 2006, identified two main ways to block access to child pornographic sites through DNS and IP blocking, without paying due attention to the common practice of IP address sharing, which results in a potential risk for innocent websites, which share the same IP address with the illicit ones, to be blacked out.

Recently, two new legislative initiatives raised concerns among online freedom observers. At first, the draft of the decree implementing the European AVMS Directive 2007/65/CE (so called “Decreto Romani”) extended part of television broadcasting regulation to the audiovisual on the Internet, imposing unusual rules such as the obligation to obtain administrative authorization for audiovisual streaming and the respect of stricter copyright regime. Audiovisual producers and platforms, together with ISP, expressed worries about the repercussions of such a measure on the possibility to be held liable for e-content hosted. The same concern had been expressed in the aftermath of the case “Google/Vividown”, in which the Milan Court of First Instance found three Google executives criminally liable for data protection violation under the Italian Privacy Code because of a video temporarily hosted on Google Video.

Secondly, a very controversial draft law regarding wiretaps has attracted press and media attention: the Justice minister Angelino Alfano justified this project as a mean to reaffirm the right to privacy, while limiting the use of wiretaps. Actually, the project adds Internet sites in the list of media obliged to provide, in case of defamation comments, a right to reply within 48 hours. But critics say that such a provision seems inappropriate for Internet blogs, which have no professional or legal support and risk a huge fine if they don't comply within the strict time limit. If implemented, such a measure may probably induce most of bloggers to self-censorship.

Action steps

The low rate of Internet penetration, together with the legislative attempts to limit online freedom of expression will continue to threaten online pluralism. Being hard to foresee further developments, action steps in the fields of enabling online freedom of expression and online access to information should be focused on the tackling those attitude hindering Internet development:

- Infrastructure:
 - Policy-makers should overcome Italian digital divide, by stimulating the use of different technology standards in order to amplify broadband and wireless coverage.
- Legislation:
 - Internet actors need a legal framework conceived for Internet and not an extension of traditional Press regulations squeezed to the online world.
 - Freedom of expression should be considered a fundamental value embodied in the open and transparent infrastructure of the Net.
- Education:
 - ICT&Media literacy initiatives should be encouraged, in order to improve e-knowledge among Italian population.