



# Challenges and opportunities for Freedom of Expression: how communications changes are affecting us all

Report of seminar held in Buenos Aires, Argentina, 9 -10 May 2007

## ***About the seminar***

The seminar was hosted by Global Partners & Associates, and Asociación por los Derechos Civiles (ADC).

This was part of a series of discussions held on behalf of the Ford Foundation. The programme's overall aim is to explore the implications of the development of digital communications for the human right to freedom of expression. An important goal is to help shape the Ford Foundation's future funding priorities in this field globally.

The seminar programme was designed to enable debate about specific policy challenges and opportunities in Latin America as well as to explore global issues. Participants brought a range of professional specialisms from eight countries including the US and Kenya, which gave participants the opportunity to compare experiences and develop international links.

Discussions were given context through:

- a pre-seminar orientation for US participants
- presentations from Latin American contributors to give political, economic and cultural information
- background to the Freedom of Expression Project and its objectives
- briefings based on the Project's own research into the global networked communications environment, including its 'layer model' analysis.

## ***Key themes***

The main areas of discussion and agreement over the two days were as follows.

### **Tackling media monopolies**

- Media ownership in Latin American countries is highly concentrated and in close alignment with centres of political and economic power. The impacts on freedom of expression are significant and well-documented, including:
  - direct censorship of journalists by governments or media owners
  - in some countries intimidation, violence towards and even murder of investigative reporters, with an accompanying climate of impunity
  - psychological pressure that creates an environment of self-censorship
  - use of defamation ('desacato') laws
  - preferential allocation of public advertising budgets
  - preferential allocation of television and radio broadcast licences

(Venezuela; Mexico's 'Televisa' law)

- a lack of transparency or publicly available information with which to challenge unfair processes.

- There's a need for a combination of approaches to tackle media monopolies and their restrictive effects. Discussions included:
  - the need for further rigorous analysis and robust evidence (e.g. on self censorship)
  - potential of domestic legislation to secure access to public information, e.g. about media ownership structures and individuals
  - using international human rights legislation to challenge e.g. restrictions on social protest, defamation laws
  - closer involvement in international regulation mechanisms for digital communications (e.g. WTO)
  - a proactive approach from civil society groups, e.g. campaigning for affordable access to digital broadcasting, vigilance about the impact of deregulation on digital communications.
- Experiences in community radio have demonstrated that ownership of the media is important in securing freedom of expression for diverse communities. Delegates shared experiences of community activism from Brazil and native American tribes. There's a need to consider ownership both of content and of the means of broadcast/production; it's not too late to develop strategies about community ownership of digital media.

### **Improving access to communications**

- Radio is a crucially important medium in the region, particularly for indigenous communities. Community radio stations face obstacles that combine to exclude many communities. Discussions highlighted: the high cost of licences; lack of available spectrum for community groups; lack of transparency in allocating licences; geographical restrictions on broadcasting (e.g. 1 km radius in Brazil); restrictions on content; access to advertising revenue.
- The majority of citizens in Latin America do not have access to the networked communications environment. Factors include: lack of digital infrastructure; private ownership of existing digital 'backbone'; existing infrastructure not optimally used; high cost of access and connection rates; lack of basic skills, e.g. PC use; illiteracy in some areas; low levels of media literacy.

### **Defining the role of the state**

- This issue has particular tensions in relation to freedom of expression in Latin America and debates returned to this issue frequently. Many discussions recognised the potential of a new and positive role for the state, by: establishing appropriate and transparent regulatory frameworks; investing in infrastructure; ensuring fair and affordable access to media; actively promoting diversity in media content; education to promote social inclusion; legislative control to protect international freedom of expression norms.

- But the state has for years been seen as the enemy of free expression, and both direct and indirect repression continue. Given states' records, some constituencies are cautious about strengthening the role of the state or seeing regulation as a positive force.

### **Defining the role of the media**

- The role of the media, so long aligned with political interests, is also problematic. What best advances freedom of expression: neutral and reflective media, or media who are themselves actors and promote political agendas?
- For example: community radio can be a valuable tool for economic development, building community self-esteem and voices (Brazil, Mexico). Yet politically active media are not necessarily benign; e.g. community radio is used by minority, anti-progressive groups (evangelical conservatives in some African countries).

### **Is 'freedom of expression' the right framework?**

- The concept of 'freedom of expression' has some tensions as a framework for action in the Latin American context. Issues raised included:
  - freedom of expression may appear to be of secondary importance in comparison with pressing issues of poverty, development and social inequality
  - powerful media corporations have used the term 'freedom of expression' to argue for their own interests, effectively hi-jacking the concept
  - some civil society activists in Latin America therefore use the concepts of 'a right to communicate', and 'communication rights'. Advocates have found these helpful because: they separate the concept of a right to expression from problematic media/state behaviour; and they are interpreted as embracing positive choices about what, where and how to communicate.
- The 'right to communicate' is not defined or enforceable in domestic or international law. The sense at this seminar was that the concepts of communication rights and a right to communicate offered an amplification of the right to freedom of expression, rather than an alternative.
- Human rights jurisprudence has interpreted the right to freedom of expression (as defined in the Universal Declaration of Human Rights) with clear rulings against 'desacato' laws and in support of access to information. Positive state roles, such as building capacity, regulation and ensuring affordable access are seen as compatible with promoting and enforcing freedom of expression.
- International strategies are needed to promote freedom of expression in the networked communications environment: it operates globally. The challenge is to link the human rights framework and tools, with 60 years' experience in developing and enforcing international agreements, effectively to the new communications environment.

## **Building bridges and alliances**

- There are similarities in marginalised communities' access to the digital communications environment across North and South America, and between South America and Africa; there is potential for mutual learning and exchange e.g. on tools and strategies.
- Latin American countries need to take the opportunity to participate in the international regulatory arenas (WTO, ICANN) that have traditionally been dominated by the North.
- There's also an urgent need to open out technical and regulatory discussions so that civil society and media activists can participate, at national and international level. Decisions about technical standards are not purely technical; they have an impact on social development, the spectrum available for non-commercial interests, and future business models (e.g. digital TV in Chile).
- The growth and enforcement of intellectual property rights has led to a concentration of wealth in the global north. There's a need for collaboration on ways of using the digital environment to create and preserve non-commercial spaces: e.g. Creative Commons licensing; routes to bypass control e.g. of music distributors; open source software, and creative use of political levers to promote that in Latin America.
- To advocate for freedom of expression, different 'tribes' need to combine their skills and experience: human rights lawyers, IP activists, regulators, technology and media analysts.

## ***Next steps***

By the end of the seminar, delegates expressed that there had been opportunities to exchange information, build links, and identify spaces for co-operation. There was broad consensus that international and cross-disciplinary alliances were essential in moving forward to promote and protect freedom of expression. The Project will continue to provide opportunities for mutual learning and development by:

- sharing learning and debate from this and future events through the website
- developing the layer model of the networked communications environment. Specifically we will explore its potential as a tool for analysing actors, power relations and strategies for action in different contexts
- starting to create a map for a digital commons or public space that preserves freedom of expression values.