

OSCE: Supplementary Human Dimension Meeting

Promotion of Pluralism in New Media

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Keynote Speech: Pluralism in the New Media: Trends and Threats

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Excellencies, Distinguished Guests, Ladies and Gentlemen:

It is both an honour and a privilege to be asked to deliver a keynote speech at this important event. The new media, and especially the Internet, have become central to all forms of modern communication – both public and private – and the need to ensure pluralism in these new media is great.

I should start by laying my cards on the table. I am not a computer geek, or even a very avid user of technology. I remember when I first signed up to Facebook, in response to an invitation to be someone's friend, mostly for purposes of exploring its advocacy potential. I spent a few hours browsing around and then more-or-less forgot about it. A few weeks later, at a dinner party, a friend approached me, saying: "I see you only have one friend on Facebook". I was mortified to realise that my loneliness was open for all the world to see, and I immediately made as many new friends as I could. I am, however, somewhat of a policy wonk and I suppose it is this expertise which brought me here.

The focus of this meeting is on the 'new media'. I confess that I do not really know what this is. I thought I did but, during the Egyptian revolution, everyone was referring to Facebook, which I had always thought of as a social networking site, as 'new media'. No doubt it is an evolving concept. For purposes of my talk, I will treat the concept broadly and leave precise definition to another day.

When talking about pluralism in the old media, commentators have traditionally identified three main types of pluralism or diversity: of content (i.e. the information that is available through the media), source (i.e. who owns the media), and outlet (i.e. the different types of outlets providing the content). This typology does not fit very neatly into the Internet world, but I think that, with a little adaptation, it will provide a useful framework for analysis. I will talk first about these three types of diversity in the context of the Internet and then move on to talk about regulatory issues.

Content Diversity

I hope you will excuse me for using a Chinese phrase here. Let a thousand flowers bloom has become, on the Internet, almost literally, let a billion flowers bloom. The Internet has radically enhanced the number of people, languages and regions represented in public communications. And the technology appears to be able to adapt to accommodate needs rather flexibly. It has for some time accommodated numerous different scripts. I remember the first time I received an email in a script I did not know. I was worried I would not be able to tell who it was from; I need not have been concerned, as the address in Latin script was available under the other script. Just very recently, it has been announced that the Internet will be moving from a system of approximately 21 generic, and 250 country, top level domains (TLDs) to an unlimited number of such domains.

These Internet developments are not entirely without their negative side effects. For example, the traditional media, and the print media in particular, has suffered serious financial challenges in many countries recently. This is in part due to the increasing availability of information for free, or low-cost, over the Internet (while also partly due to recently financial troubles). However, the traditional media are adapting, while new forms of media, including products emanating from traditional media companies, are emerging. I essentially see this as more of a transitional issue than as a real threat to media pluralism *per se*.

Source or Ownership Diversity

The billion flowers metaphor also applies here, as regards ownership over the 'media' in which content is distributed, which includes websites and so on. In other words, just as the content is coming from different original sources, so is the ownership over the media which distributes that content. On the other hand, new monopoly or dominance threats have emerged, which traditional tools to address ownership concentration cannot address.

For example, there are many competitors for Facebook, in the sense of other options in terms of social networking. Indeed, in formal terms, there are far more of these than you would expect in any traditional media market. However, the networked nature of the system, along with the way it has developed socially, means that you almost have to be on Facebook. And it has a tendency to crowd out other systems. In my case, for example, I often receive invitations to join LinkedIn, but given time pressures, I have not yet joined it. In any case, I would remain on Facebook even if I did join.

Google is quite different, but it also has dominant characteristics. When I bought a new computer recently, I tried to bookmark Google, but was told that it was already my default search engine! Of course I do not have to use it, but I almost always do. There are very important implications of this. For example, Wikipedia and other wiki tools are returned with undue regularity in response to almost any search, even when they have low relevance to the topic. I have no idea whether this is the result of an agreement or simply the way the search system works. Either way, it leads to a vast homogenising impact in terms of the sources of information that we access.

It is possible that there is a transitional nature to this and that younger generations will be more discriminating in the way they use these tools. It is perhaps a source of hope that my 12-year old son has already complained about the lack of priority Google gives in searches for my organisation (or perhaps I am just pleased by this personally). Regardless, these new forms of commercial dominance are unlike those anti-monopoly rules are used to dealing with.

Diversity of Outlet

Last, but certainly not least, we turn to the issue of diversity of outlet. Here the analogy between the Internet and traditional media worlds is most stretched. In traditional terms we allude, for example in reference to broadcasting, to public, community and commercial broadcasters, but there is really no analogy for this on the Internet. In contrast, online there is an almost unlimited potential array of new means of communicating and interacting, all of which could be considered to be different forms of outlet.

Indeed, the impact of new technologies on social interactions is so profound that it is no exaggeration to say that they are fundamentally changing social relations. It is the first thing teachers talk to parents about, at least for older students. These technologies are also completely transforming politics and democratic engagement. At the highest levels, one need only look to the phenomenal role of the Internet in Obama's election campaign, in terms of spreading messages, raising money and getting traditionally marginalised constituencies out to vote. The Egyptian revolution is another clear example of political impact of a most profound nature and at the very highest level. Perhaps slightly more mundane, but certainly no less important, is the impact of the Internet on opportunities and vehicles for consultation and participation at every level.

New technologies have wrought an equally profound change in the ways that we discuss issues socially, and access information and news. The same is true, indeed, of the way that the traditional media operate. Most modern media operate Internet versions in parallel to their traditional published or broadcast formats. In many cases, these are very different spaces, providing interactive opportunities, platforms for discussion and options for uploading user generated content.

Overall, the Internet is an incredibly dynamic social and informational phenomenon, which is constantly evolving. It is, in fact, hard to talk about discreet forms of media outlets on the Internet, as part of a discussion of outlet diversity. Indeed, as I hinted at the beginning of my presentation, perhaps we can no longer even define 'media' sensibly.

Access to the Internet

Access to the media is not something that has traditionally been addressed as a media pluralism issue. However, with the Internet, it should be considered to be part of this notion, because of the radically different nature of pluralism on the

Internet, as described above. If certain sectors of society lack access to the Internet, then they will not be represented online, and pluralism will be adversely affected.

We tend to talk of access as though it were an on-off phenomenon, but in fact the issue is complex and involves issues such as the type and quality of access, especially speed, as well as the cost of that access. In Canada, for example, there is currently an ongoing debate about whether charging systems for Internet access should depend on the amount of data up- and downloaded, as opposed to the flat-rate systems currently in place (which may charge more for faster connections). Providers argue that the investments needed to ensure sufficient capacity is maintained to service very heavy users, such as those who access video material, must be paid for and that it is more appropriate to allocate those costs directly or disproportionately to heavy users, who are responsible for them being incurred. Others argue that charging according to data use would negatively affect the free and open approach to using the Internet that currently pertains.

In Africa, mobile phones are emerging as the primary platform by which people access the Internet. This provides a very cost-effective system for rolling out access. But it also has significant disadvantages, for example in terms of quality of access, essentially based on the small screens that mobile phones use, and sometimes also in terms of cost. In many places, speed of access is a major issue, with slower speeds effectively depriving users of many of the benefits of the Internet.

Regulatory Issues

Let me now move on to discuss some regulatory issues relevant to pluralism on the Internet. On 1 June 2011, the four special international mandates on freedom of expression at the OSCE, UN, OAS and African Commission adopted their 11th annual Joint Declaration, which focuses on freedom of expression and the Internet. At a general level, the Declaration notes that States are constantly trying to find ways to restrict content on the Internet, sometimes in good faith but often with a view to control this powerfully democratising medium. The Declaration also notes that the application of rules designed for different mediums, such as print or broadcasting, needs to be tailored to take into account the special nature of the Internet. In other words, it is not appropriate simply to apply traditional rules to the Internet, without taking into account its special characteristics.

The Joint Declaration looks at a number of key regulatory issues for the Internet, such as who is liable for illegal content, standards regarding filtering and blocking, and the application of civil and criminal rules to the Internet. At the same time, it was not possible for the Declaration to address all of the problems facing freedom of expression on the Internet, given the inventiveness of governments in this area. For example, Turkey is currently putting in place a scheme which it is presenting as a self-regulatory system, but which in fact is subject to extensive government control.

The Joint Declaration does not address content diversity directly, but I believe that the Internet is having a profound impact on our very notions of privacy and

reputation, which require us to adjust the regulatory framework for protecting these interests. I recently gave a series of workshops in Indonesia on the right to information. To distinguish between the wider category of personal information and then private information which should be kept confidential, I used the example of my email. Since it is available on the website of my organisation, it is not private, even though it might be considered to be personal. The participants had a lot of difficulty accepting this, but I think that many young people today would find that idea quite natural.

In lots of ways, the space for privacy is shrinking in the Internet era. A lot of effort is going into looking at ways of combating this 'problem', which is important, especially in terms of maintaining privacy vis-à-vis the government. There are, however, limits to what can be done and I believe that part of the solution needs to be a reconsideration of traditional rules and standards vis-à-vis privacy. This is socially appropriate, as well as legally necessary, as values around privacy are changing.

In terms of diversity of source, the Declaration calls for respect for network neutrality, in the sense of ensuring there is no discrimination in the treatment of traffic travelling across the Internet. This clearly needs to be promoted, but perhaps also extended to companies providing certain types of Internet services. For example, consideration should be given to whether or not it would be useful to require companies like Facebook to allow other tools to be loaded onto their main operating systems, much as you might load software onto a computer. This might further increase the variety of ways in which people can interact through these social networking tools.

It is, however, in terms of outlet diversity that the Internet is bringing about the most profound changes. The ability to disseminate information widely and yet anonymously, through intermediaries who simply provide technical services (such as access to the Internet), for example, means that it is often far more difficult to apply traditional legal remedies, for example regarding such issues as attacks on reputation, than it was in the offline world (where every major disseminator of information, at least, could be identified reasonably easily).

But there is another, I believe more profound, point here. Traditionally, rules on defamation have focused primarily on the content of the statement in question, with little regard being given to the forum in which it was made, except perhaps as to the question of damages (i.e. with larger circulation statements attracting greater damages). There have been some concessions to forum – for example in the form of rules protecting newspaper delivery agents or live broadcasters – but these have been limited in nature.

In the Internet era, however, we are increasingly seeing forums hosting user generated content playing an important public interest role as platforms for public debate and the articulation of new ideas. If we are to impose liability on those who

host such forums, they will be faced with few options. Monitoring content on these forums closely so as to remove potentially defamatory content would be very costly and also difficult, since the host may not be familiar with the underlying facts. It would also be disruptive to the free flow of ideas on the forum, since much material that is not actually defamatory would probably be removed. In these circumstances, many such virtual 'public squares' would probably simply be closed down (or not developed in the first place).

If liability is not to be imposed on those who host these forums, however, it may well be impossible to impose liability on anyone for defamatory posts. This is because it would be extremely difficult and disruptive to prevent anonymous posting,

We therefore need to consider the idea of introducing rules which are based not only on the specific content of the communication, but also the public interest in maintaining the forum in which it has been expressed. Supporting this view, paragraph 4(b) of the Joint Declaration by the special mandates states:

Standards of liability, including defences in civil cases, should take into account the overall public interest in protecting both the expression and the forum in which it is made (i.e. the need to preserve the 'public square' aspect of the Internet).

In essence, this may mean putting in place rules that effectively render certain types of forums immune from defamation suit, on the basis that they are important public interest spaces, which imposing liability would disrupt. This may be less radical an idea than it seems, as it is doubtful that many defamation cases are brought based on this sort of user generated content anyway.

Conclusion

The Internet has radically transformed modern communications. Its impact on media pluralism has been profound. In many ways, the Internet is the perfect technology for pluralism, enabling a billion flowers to bloom in terms not only of content but also control. But it has not been entirely without risks, particularly from some companies which, while providing exciting new services, have also become extremely dominant, albeit not in the traditional sense of this term. In terms of regulatory responses, many governments have approached the Internet in an excessively heavy handed or even control-oriented manner. There is a need to revisit existing regulatory rules as they apply to the Internet and perhaps to design completely new approaches in some cases.