

PROMOTION OF PLURALISM IN NEW MEDIA

7-8 JULY 2011

HOFBURG, VIENNA

FINAL REPORT

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1. SUMMARY OF SHDM

The second OSCE Supplementary Human Dimension Meeting (SHDM) in 2011 on the topic of “*Promotion of Pluralism in the New Media*” took place on 7 and 8 July 2011 in Vienna.¹

The Meeting brought together a total of 191 participants, including 41 representatives from 37 non-governmental organizations (NGOs). 102 delegates from 42 of the 56 OSCE participating States were also present.² Additionally, a distinguished Keynote Speaker and a group of Introducers also participated in the Meeting.³

There have been two previous SHDMs devoted to Freedom of the Media, which took place in March 2001 and July 2006. The Meeting organised in July 2011 reaffirmed the OSCE commitments to freedom of the media. During the Meeting, participants, representatives of civil society and governments examined concrete ways to implement OSCE commitments.

The Supplementary Human Dimension Meeting consisted of three Working Sessions:

1. Challenges and Opportunities for New Media to Foster Pluralism
2. Regulatory Aspects of Digital Switch-Over
3. Internet Regulation in the OSCE Area: Introduction of the First OSCE Internet Matrix

In addition to these working sessions, a side event, organised by the Council of Europe (CoE), took place in the margins of the event.⁴

Introductory remarks for the **Opening Plenary** were delivered by Mr. Andrius Krivas, Lithuania’s Deputy Permanent Representative to the OSCE and the Lithuanian OSCE Chairmanship, followed by Ms. Dunja Mijatović, OSCE Representative on Freedom of the Media (RFOM).

Representing the Chairman-in-Office, Mr. Andrius Krivas stressed that “media freedom and freedom of expression are priority topics for the Lithuanian Chairmanship” and was “pleased to note that the incoming Irish Chairmanship has also indicated that media freedom will continue to be a priority during their Chairmanship next year”. He also pointed out the multitude of OSCE commitments that address the issues of media pluralism that were discussed throughout the Meeting, including the 1991 Moscow Document, the 1994 Budapest Summit Document, the 1996 Lisbon Summit Declaration and the Charter for European Security, adopted at the 1999 Istanbul Summit.

Mr. Krivas also stressed that new media can “offer an unprecedented opportunity for people throughout the world to enjoy freedom of opinion and expression and to exercise their right to impart and receive information”. He urged for such platforms to “remain open to all”. He concluded in hopes that the Meeting would nurture an open and productive discussion leading to constructive recommendations that would help participating States to make concrete progress at the Vilnius Ministerial Council, which will take place on 6 and 7 December 2011.

¹ Please see Annex I for the Agenda and Annex II for the Annotated Agenda of the Meeting.

² Please see Annex IX for Statistics on participation and Annex X for the List of Participants.

³ Please see Annex III for the text of the Keynote Speech, Annex IV for the Introductory Speeches and Annex V for the Biographical Information of the Keynote Speaker, Introducers, and Moderators.

⁴ Please see Annex VIII for the description of the Side Event.

The OSCE Representative on Freedom of the Media, Ms. Dunja Mijatović, noted the important role both NGOs and delegates from governments play in the promotion of pluralism in the new media and in the development of media freedom.

The Representative discussed the significance of media pluralism, having defined it as the expression of a multitude of opinions and a crucial component of and prerequisite for media freedom. She stressed that governments must understand that providing their citizens with a variety of views can only strengthen their democracies. Well-informed people make well-informed decisions, which are the indispensable foundation that democracies can build upon.

The Representative reminded the participants that this is why media freedom and media pluralism are at the heart of the Helsinki Process and the OSCE principles and commitments.

She then identified the current dangers that freedom of expression is facing in the OSCE region. She argued that the lack of pluralism remains a challenge as inventive ways are found to switch from analogue to digital terrestrial broadcasting while preserving the dominance of a few selected broadcasters. The switch-over process, therefore, may be used not to expand but to limit pluralism of voices in broadcasting.

Furthermore, she reiterated the importance of access to the Internet. Attempts to control the Internet are growing, she said, and that we are witnessing more and more countries adopting laws aimed at strict regulation or control of the web.

With new technologies radically reshaping the media landscape, traditional regulatory assumptions have been called into question and, in many cases, old rules have become counterproductive. These new challenges underline the need to discuss how new technologies necessitate modern approaches to safeguarding OSCE commitments regarding media freedom.

The keynote speech was delivered by **Mr. Toby Mendel, the Executive Director of the Centre for Law and Democracy**.⁵ Mr. Mendel started with a brief introduction to the concept of new media; deliberating its evolution, particularly during the Arab springs (and more specifically the Egyptian revolution).

He addressed the three main types of pluralism that are accepted in the context of old media, namely, pluralism of content, pluralism of source, and pluralism of outlet. He argued that although they do not match perfectly to the new media, they can be used as a layout to discuss pluralism in the new media.

In the scope of pluralism of content, the sheer immensity of the Internet was emphasized. The Internet is a vastly enabling tool, with an increasingly growing demand, and it is seemingly unlimited. He raised the issue of some negative side-effects of the Internet as a source of content; the main issue of concern was that traditional media is negatively affected, particularly through indirect financial losses as a result of diverted audiences. However, Mr. Mendel argued that such developments are more of an inevitable transition.

When discussing pluralism of source, he emphasised the importance of having no concentration of ownership. The Internet makes such assortment more viable, because in practice, everyone can publish on the Internet. He reminded, however, that there are

⁵ Please see Annex III for the text of the Keynote Speech by Mr. Mendel

monopolizing tendencies even on the Internet, heavy concentration exists for instance in social media, giving Facebook as an example of such progressions. Google was set out as another example; it is currently the primary research system online, which has important implications that may threaten diversity.

Pluralism of outlet was the third category discussed. Mr. Mendel contended that there has been a transformation with the rise of the new media. The Internet has progressively changed social relations and particularly transformed politics; for instance the means of political campaigning. President Obama's campaign in the United States was used as an example of such progress. Also the role of the Internet during the Egyptian revolution was portrayed as an illustration of political transformation. Mr. Mendel argued that on the whole, the Internet has changed the way we interact politically.

Outside the three-part framework, Mr. Mendel discussed the importance of diversity of outlet, and contrasted what this would mean in the context of old media and in the new media. Traditionally, as in the old media, diversity of outlet would consist of different types of broadcasting; for instance community or regional broadcasting among many others. The Internet on the other hand, has millions of outlets and communication tools. As such, he portrayed not only the importance of diversity of outlet, but also the expansion of it with the new media.

Consequently, Mr. Mendel emphasised that access is imperative. He explained that access is not simply a question of being on or off the Internet, but also about the type of access that prevails. In other words, one must take into account factors such as quality and the cost of the Internet. The question that should be considered in this circumstance, he argued, is: *Where are you on the digital divide?*

The second point addressed by Mr. Mendel was that of regulatory issues. Initially, he reminded all participants of the Budapest Joint Declaration signed on 1 June, 2011 by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. The Joint Declaration on Freedom of Expression on the Internet particularly emphasised, inter alia, the significance of the Internet as a means of communication, the effectiveness of self-regulation and network neutrality, as well as the dangers of restrictions such as content-filtering systems imposed by governments.

In this light, Mr. Mendel asserted that States are always finding new ways to control content, whether for legitimate reasons (such as, *inter alia*, hate speech and child pornography) or for illegitimate reasons (as was the case in Egypt during the revolution).

The most recent example of attempted content regulation on the Internet by authorities was the proposed Internet filtering package in Turkey. A decision by the Turkish Information and Communication Technologies Authority that would impose a compulsory filtering system with a choice of four profiles within the system was to be enacted in the country as of 22 August 2011. This would have been a first, on such a scale, in the entire OSCE region. Mr. Mendel argued that such developments are of great concern, and that there is a dire need for more self-regulation approaches across the spectrum of old and new media.

Mr. Mendel, furthermore, discussed the merits of network neutrality, and the need to start thinking about it. In this sense, he argued that, maintaining access is imperative, as well as a need for acceptance of a shrinking space of our privacy. He contended that in contemporary societies, with the development of new media technologies, it is almost impossible to keep data, for instance emails, private. Such restrictions on our privacy are increasingly becoming inevitable and should therefore also become more acknowledged.

In conclusion, he discussed the eminently prevailing issue of defamation. He argued the need to adopt new standards about liability, emphasising the necessity of a space on the Internet where defamation laws do not, should not, and cannot apply.

The OSCE Representative on Freedom of the Media, Ms. Dunja Mijatović, concluded the Opening Plenary by paving the way for the upcoming debate that was to take place in the three following working sessions. Ms. Mijatović reminded the participants ardently of the recently signed Joint Declaration that had been mentioned earlier by the Keynote speaker, Mr. Mendel. She urged, in particular, the heads of all participating States to read it carefully, through which they ought to recall and reiterate the commitments that they agreed upon when founding her Office and its mandate.

Her final remarks were to stress the importance of access to the Internet. Ms. Mijatović argued that access to the Internet should become a human right, like it already is in Estonia and Finland, for instance. Such embodiment of freedom of expression should be pursued across the OSCE region. She said that governments should redirect their funds and focus from restricting the Internet toward Internet literacy.

The Opening Plenary was followed by three working sessions.

Session one on *Challenges and Opportunities for New Media to Foster Pluralism* was moderated by Mr. Roland Bless, Principle Adviser to the OSCE Representative on Freedom of the Media. The introductory speeches were delivered by **Mr. Thomas Hammarberg, the Council of Europe Commissioner for Human Rights; Dr. Sejal Parmar, Senior Legal Officer for Article 19; and André Lange, Head of Department for Information on Markets and Financing for the European Audiovisual Observatory.**

The session focused on the importance of pluralism, and in particular, how this can and should be achieved with the help of new media. It was repeatedly argued, however, that new media does not inevitably facilitate pluralism; it is therefore necessary to nurture such an environment. This was debated by balancing the challenges and opportunities the new media embraces.

Commissioner Hammarberg drew the participants' attention to the practices of and his experiences within the Council of Europe, with regard to the subject matter. He elaborated on the importance of public service broadcasting (PSB), and the need to ensure its independence and impartiality. He further discussed the significance of self-regulation.

He then gave an overview of new media and its developments. The contrast between the phenomena of online media with its ability to reach a wide audience very quickly was weighed against the increasingly worrying trend of governments attempting to control such new forms of media.

Ms. Parmar noted the need to formulate specific and positive policies and approaches to promote pluralism through the new media; she perceived these as monitoring initiatives for pluralism. Throughout her introductory remarks, she particularly stressed the need for promoting Internet literacy.

Mr. Lange introduced the European Audiovisual Observatory, describing its role as a pan-European public service body operating within the legal framework of the Council of Europe. He then elaborated on observable trends in new media; particularly the increase of time spent on the Internet as well as time spent watching television (TV) due to the digital switch-over. He deliberated on the causes of such augmentation, asserting factual premise such as the increased volume of Internet information, the increased number of platforms and channels in TV distribution, and the decentralisation of the TV markets in the European Union (EU).

The panel was closed by **Ms. Beata Martin-Rozumilowicz, the deputy head for operations of the elections department for the Office for Democratic Institutions and Human Rights (ODIHR)**. She underlined the importance of free and independent media during elections. Pluralism is essential in this, also in new media, which become ever more prominent in the electoral process.

In the discussion that followed the participants deliberated on the various challenges and opportunities mentioned by the introducers. The concept of self-regulation was particularly eminent throughout the discourse. Some participants argued that the established system of self-regulation is currently not functioning in a number of OSCE participating States, and that there is a dire need to further discuss how to solve this problem. Another issue discussed was that of minority media and that the fear of “otherness” acts as a significant barrier to pluralism; diversity is at the heart of any democratic society, it should therefore be nurtured and sustained.

The intricacies of defining new media were prominent throughout the discussion. The question of “*what is a new medium?*” was considered, various participants had differing perceptions. Some criteria were introduced by participants to identify a media, for instance there would need to be editorial control, need for an outreach and an impact by the source, and a need for professional standards. Moreover, the importance of pluralism of sources was emphasised, as well as access. Access was considered crucial for pluralism and achieving freedom of expression and freedom of the media.

Ultimately, the need for more discussions on how to increase media pluralism was stressed. The discussion carried over to debates on possible downsides of new media. It was agreed that any restrictions on the free flow of information must be based on legislation in accordance with international standards, and that more education on the Internet and new media is needed (media and Internet literacy). Finally, the functioning of the established system of self-regulation was criticized. In a number of OSCE participating States, its functioning is rather feeble; so there is a need for discussion on how to solve this problem and to review how it works and how it can be extended on to the Internet.

Session two on *Regulatory Aspects of Digital the Switch-Over* was moderated by Mr. Andrey Rikhter, Director of the Office of the OSCE Representative on Freedom of the Media.

Introductory speeches were delivered by **Mr. Mark Thompson, Policy Reports Editor of the Open Society Media Program; Ms. Maja Cappello from the Audiovisual and Multimedia Content Directorate of the Communications regulatory Authority in Italy; and Mr. Emir Powlakić, Deputy Director for Broadcasting at the Regulatory Communication Agency of Bosnia and Herzegovina.**

This session addressed the question of how the digital switch-over can contribute to the promotion of media pluralism. The switch-over to digital terrestrial broadcasting is a technological process that enables us to gain access via television and radio to a previously unimaginable amount of information. If carried out properly, the experience of switching from analogue to digital terrestrial broadcasting can further strengthen plurality of content, opinion, programming, electronic-media outlets and freedom of expression.

The second session also introduced the *Guidebook to the Digital Switch-over*, commissioned by the OSCE Representative on Freedom of the Media, which offers practical help to those OSCE participating States in which the switch-over will be a challenge in coming years.

Mr. Thompson presented in his speech the main findings of a study on digitalisation that the Open Society had recently prepared. He highlighted the struggle to find mutual norms and principles for what surrounds new media; not just the topic itself but the terminology, which is also heavily disputed. He furthermore discussed the various discrepancies that exist in society; asserting that disparities exist not only between online or offline media but also a social divide probably resulting from a problem of literacy and a lack thereof. He argued that the digital switch-over is perceived to be locked within intellectual societies or expert circles, and that a more universal lack of understanding creates a niche, which can be problematic for its successful adoption.

Ms. Cappello illustrated the outcomes of a switch-over process, and discussed the trends in Italy as an example. She gave an insight on the regulatory tools that would ensure media pluralism. She argued that there is often confusion between plurality and pluralism. What is plural is not necessarily pluralistic, it is not as important to have many channels, for instance, if they are all owned or financed by the same source. Conclusively, Ms. Cappello maintained that access to content is a pre-condition to pluralism, and that content accessibility is now one of the most crucial features.

The panel was closed by **Mr. Powlakić** who gave his perspective on the role of the digital switch-over in Bosnia and Herzegovina, and the role of the regulatory agency as a watchdog of the ongoing process. He noted that public service broadcasting in the 21st century has to be independent, accountable, well equipped and well staffed. Moreover, Mr. Powlakić identified a crucial problem that would arise after the completion of the switch-over, namely, that there will be many more channels than content there is to offer. Conclusively, he reiterated the importance for society to be involved as a whole in the digitalization process in order to foster and maintain a pluralistic environment.

In the debate that followed, the participants agreed that pluralism is not an automatic consequence of digitalisation. Digitalization should be safeguarded for fundamental freedoms, and governments have a responsibility to ensure that the switch-over is carried out fairly, in a manner which fosters pluralism (and not only plurality). The need

to ensure the strong position of public service broadcasters in the digital era was also discussed.

The participants also raised the issue of allocating frequencies. There was a shared concern for oppositional and minority media and that in some regions they may struggle if governments do not ensure equal opportunities, particular for licensing. It was also stressed that the licensing procedure needs to be transparent and precise in the digital era; as well it needs to be applied in an impartial way. Another important point discussed regarded registration and the fear thereof. It was asserted that registration should not be used as a means for control, but it should facilitate transparency. Furthermore, the conception of quality of content versus quantity of content was heavily discussed. There was a general agreement that the quality of media and pluralism of media are particularly important, and that there needs to be incessant investment in new opportunities to nurture quality in the mainstream media. Discussed was also the potential diminution of local frequencies, particularly as dominant technologies are expected replace analogue radio. Often local radio is the only citizen radio, and it may have difficulty in the digitalization process. The importance of local media was emphasised.

When it comes to regulation, it was argued that there should not be a continuation of generic directives, as the online and offline media differ immensely, and the approach of regulating them should reflect this difference.

The session concluded with acknowledgement that the digital switch-over should be carried out by following international best practices, and that there is more need to be forward looking, and more discussion on how to achieve media pluralism with the digital switch-over.

Session three on *Internet Regulation in the OSCE Area: Introduction of the First OSCE Internet Matrix* was moderated by Ms. Ženet Mujić, Senior Adviser to the OSCE Representative on Freedom of the Media.

Introductory speeches were delivered by **Ms. Sanja Kelly, Senior Researcher and Managing Editor for Freedom House** and **Dr. Yaman Akdeniz, Associate Professor at the Human Rights Law Research Centre of Istanbul Bilgi University.**

This third session introduced the findings of the first comprehensive OSCE study on Internet legislation, which includes an overview of legal provisions related to freedom of the media, the free flow of information and media pluralism on the Internet in the OSCE region. The session also provided for discussion of the effectiveness of Internet legislation and regulation, as well as the efficiency of alternative methods of dealing with unwanted content. Moreover, it was debated to what extent legislation drafted for off-line media can be transferred to the Internet without negatively impacting on the free flow of information.

Ms. Kelly began by introducing the main findings of a study that Freedom House had recently released. The study, she argued, identifies a number of recurring threats across the globe. She elaborated on these specific threats, discussing specifically formal arrangements that governments may have with Internet providers, restrictions imposed by authorities, blocking access, and the impact of a non-independent judiciary, among several others.

The study that Ms. Kelly based her presentation on also identified four main negative trajectories; the issue of blocking and filtering, the issues of cyber attacks, the issue of

centralised infrastructure, and the issue of imprisonment for online activities were highlighted and discussed in depth.

Mr. Akdeniz put forward the OSCE wide Internet regulation study. He began by revealing the main differences between the OSCE and the Freedom House report; he explained that there are no country comparisons and that the study was a fact-finding based report, consisting of results of a variety of questions that had been posed to all OSCE participating States.

Moreover, Mr Akdeniz elaborated on some recommendations he suggested to be imperative for an improved global information society having unhindered access to information. He contended that network neutrality is a crucial aspect and that there should be no discrimination between particular services or platforms. He illustrated some sample case studies with regard to blocking of online content and cutting off online access, raising issues such as prior-restraint, or the Internet “kill-switch”, introduced by some participating States. Conclusively, Mr. Akdeniz reiterated that States should refrain from blocking websites, and the importance of maintaining access and abiding by OSCE commitments and international standards.

In the discussion that followed, several participants pointed out the delicate balance that exists between access to information and national security. However, several other participants expressed that access to information is a basic and indisputable human right, therefore heightened security measures do not justify the means used against journalists, be it in the old as well as the new media whilst performing their journalistic duties.

During the debates that took place in this session various topics were discussed and some general concerns were reaffirmed. Online censorship was recognised as one of the main problems in the OSCE region. Also the conflict between the right to privacy and the open nature of the Internet was debated. Furthermore, the legitimacy of regulating harmful content was maintained by various participating States; Turkey in particular, suggested that blocking certain online content protects victims from harmful practices on the net. The Turkish representative also emphasised that the filtering system to be introduced in the country is a voluntary system that enables the protection of children on the Internet. Moreover, a set of guidelines for Internet regulation and Internet use was requested by some participants; considering the borderless nature of the Internet, it is often unclear to many governments where their involvement should begin and end.

The closing remarks at the **Closing Plenary** were delivered by **Ms. Dunja Mijatović, the OSCE Representative on Freedom of the Media.**⁶

Ms. Mijatovic kept her closing remarks short, as the moderators were to summarize their working sessions after her speech. She stressed again the importance of what had been discussed between civil society and governmental representatives. Moreover, she assured the participants that she pursues her task whole-heartedly, trying to assist the participating States in implementing the commitments that were reiterated in the Astana declaration. “These words are obligations that our heads agreed upon, we can not say the adherence to obligations is a matter of different views, traditions and cultures, of course we all have different traditions and cultures and we must value and protect these, but our differences must not result in limiting freedom of expression and freedom of the media” she said.

⁶ Please see Annex VI for the Closing Remarks by Ms. Dunja Mijatović

Ms. Mijatović then reminded all OSCE participating States to look back at the declarations and commitments they agreed upon, as well as the Joint Declaration, the OSCE-wide Internet Study, and particularly the link on the OSCE website “Internet freedom at crossroads” where much vital information could be found.

She extensively thanked the speakers, the participants, the Lithuanian Chairmanship, ODIHR, the Conference Services, the translators, and her staff.

The moderators of the working sessions then gave a short overview of the main issues and recommendations that were discussed during the three sessions.

2. RECOMMENDATIONS

This part of the report focuses on recommendations that were given during the three working sessions. The following range of recommendations was made by delegations of the OSCE participating States, international organizations, and NGOs, and aimed at various actors, including the OSCE participating States, OSCE Institutions and field operations, other international organizations and civil society.

These recommendations have no official status, they are not based on consensus, and the inclusion of a recommendation in this report does not suggest it reflects the view or policy of the OSCE. They are, however, a useful indicator for the OSCE in reflecting upon how participating States are meeting their commitments, determining future priorities, and considering new initiatives and areas that need to be improved regarding freedom of the media.

Recommendations to the OSCE participating States

- Governments should ensure that the right to freedom of expression applies to all sources of communication and information, including the Internet.
- The digital switch-over should be used to ensure pluralism of broadcasting content. Pluralism does not necessarily mean a higher number of channels; it is crucial to identify the difference between pluralistic and plurality.
- Participating States should formulate specific and positive policies and approaches to promote pluralism through new media. The effect such policies and approaches have on pluralism should be monitored by regulatory bodies.
- There is need for more projects fostering Internet and media literacy, particularly among the so-called “digital natives”, children and teenagers.
- There needs to be an increased involvement of the public in any rule-making process, as well as more public information campaigns during the digital switch-over process.
- Online media should not be asked to register as such. In some countries special media registration procedures for websites still exist or have been recently introduced.
- There is need for more local TV programming; local and minority broadcasters should be supported so that they can get access to necessary transmitting equipment. Transparent decisions whether some groups get subsidised decoder equipment, on what grounds and how, must be made according to the situation in each country.
- Any state aid to broadcasters in transition to digital TV shall be carefully designed so as not to give undue preference to one commercial operator over others. Liberalisation and privatisation in the media and communications fields should go in parallel with preparations for digitalization.
- In the selection process of programming packages to go on the digital broadcasting platforms, diversity and plurality are crucial. The national Public Service Broadcaster must be guaranteed a multiplex spot and “must-carry” rules shall apply.
- Governments should work toward providing affordable and qualitative Internet

access to those parts of the population who do not have it yet.

- Governments should recognize access to Internet as a human right.
- Governments should critically review existing legislation aimed at regulating the Internet.
- Participating States should refrain from blocking of online content, as blocking is considered an extreme measure and indefinite blocking could result in prior restraint.
- Participating States should foster Internet and media literacy projects and ensure education for law enforcement agencies, children, and Internet users.
- Governments should refrain from introducing so-called Internet “kill-switch” or “three-strikes” legislation, as they constitute a disproportionate measures;
- All actors should work towards developing alternative approaches to deal with illegal content; this applies equally to governments as to civil society.

Recommendations to the OSCE, its Secretariat, Institutions and Field Missions

- The OSCE should assist participating States in the digital switch-over process being based on media laws and policies that ensure the preservation and strengthening of human rights, including freedom of expression, freedom of the media and access to information.
- The OSCE should assist participating States in the digital switch-over being used to ensure pluralism of content. Pluralism does not necessarily mean a higher number of channels; it is crucial to identify the difference between pluralistic and plurality.
- Institutions and field missions should foster Internet and media literacy projects and ensure education for law enforcement agencies, children, and Internet users.
- OSCE Field Missions should assist in fostering media pluralism, particularly with regards to minority media.

Recommendations to other intergovernmental organizations and to non-governmental organizations

- International organizations and NGOs should foster Internet and media literacy projects and ensure education for law enforcement agencies, children, and Internet users.
- There needs to be an increased involvement of the public in any rule-making process, as well as more public information campaigns during the digital switch-over process.
- International organizations and NGOs should support local media as an important addendum to the digitalization process.

Recommendations to others, including media industry

- There is a need to recognize that the right to freedom of expression applies to all sources of communication, including the Internet.
- There is a need to formulate specific and positive policies and approaches to promote pluralism through new media.
- There needs to be an increased involvement of the public in any rule-making process, as well as more public information campaigns during the digital switch-over process.
- There is an increased need for Internet and media literacy projects and to ensure education for law enforcement agencies, children, and Internet users.

3. SUMMARIES OF SESSIONS

SESSION 1: Challenges and Opportunities for New Media to Foster Pluralism

Moderator: **Mr. Roland Bless**, Principal Adviser to the OSCE Representative on Freedom of the Media

Introducers: **Mr. Thomas Hammarberg**, Council of Europe Commissioner for Human Rights

Dr. Sejal Parmar, Senior Legal Officer for Article 19

Mr. Andre Langé, Head of Department for Information on Markets and Financing for the European Audiovisual Observatory

The session focused on the main developments related to new media, such as the media freedom implications of the switch-over to digital broadcasting, media pluralism and freedom of expression on the Internet. Furthermore, the changes in the ways people communicate, including how they access, share and receive news and other information were discussed. In this context, new forms of media and hybrid platforms and their impact on media pluralism were elaborated on.

How new technologies necessitate new approaches to safeguarding existing OSCE commitments on media freedom and freedom of expression were also addressed during the session. More specifically, how governments deal with challenges posed by new technologies was exposed. Prospective threats to media freedom through government attempts to curb the rights of those who present critical views on new and traditional media outlets was also discussed.

Commissioner Thomas Hammarberg in his introductory speech drew the participants' attention to the practices of and his experience with the Council of Europe. He argued that current procedures are in fact not promoting diversity or pluralism. For instance, there are still big problems when it comes to the fair and equal allocation of frequencies. He suggested that there is also a need to discuss how to ensure the rulings of the European Court of Human Rights (ECHR) in promoting and protecting media pluralism in new and old media. The Commissioner emphasized the significance of media pluralism, stating that it is a pillar of a functioning society, yet sadly, not an obvious reality; there are many attempts by media authorities to influence the market, as well as problems with the printing and distribution of newspapers in some countries.

He elaborated on the importance of public service broadcasting (PSB), and the need to ensure its independence and impartiality. He argued that PSBs are used for state-propaganda in many countries, and that not enough critical voices are heard. PSBs could function as a counter-force to media monopolies in the private media industry, there is a need, therefore, to secure the independence of PSBs, as well as to achieve and maintain self-regulation in print media.

Commissioner Hammarberg then gave an overview of new media and its developments. The phenomena of online media with its ability to reach a wide audience very quickly was weighed against the increasingly apprehensive trend of governments attempting to control such new forms of media. He presented the recent developments in Turkey, declaring that the recently introduced 'Internet filtering package' was of concern, urging the government to accept assistance from the CoE and other international organizations. He also mentioned that the CoE was soon to present a report on the current media freedom situation in Turkey.

The Commissioner concluded his introductory speech with some observations, remarks and recommendations to the participants. He contended that media policy and legislation must ensure a genuine pluralistic environment, and that such rules should also apply to the online media market. The procedure of allocating frequencies is a test for governments in promoting pluralistic media landscapes; online media must be excluded from registration requirements; the independence and impartiality of PSBs should be guaranteed; and finally, he argued that governments should support PSBs, particularly financially, giving BBC online as an example of a prominent success in this field.

The second introducer **Ms. Sejal Parmar**, defined the key concepts of "pluralism" and "new media". Media pluralism is regarded as prerequisite for freedom of expression. She associated pluralism with the recognition and respect for diversity in the media supply or ownership through the presence of a plurality of independent and autonomous media (external pluralism) and a diversity of media contents or output available to the public (internal pluralism), stressing the crucial difference between plurality and pluralism. Furthermore, she explained that new media is no longer really "new", but that it has only recently become the subject of any government or intergovernmental discussions, mainly due to policy-makers lagging behind technological developments in this area. Ms. Parmar described "new media" as encompassing any media that allows on-demand access to content any time, anywhere, on any digital device while allowing interactive user feedback and participation, as well as a community formation around media content. "New media" allows the usage, but also the creation, publishing and distribution of media content by non-traditional media actors, notably ordinary citizens.

She identified how new media can address the problems encountered by traditional media in promoting pluralism. New media can help overcome limitations created by supply limitations in the traditional media; increase the production of independent content; improve (at low cost) the representation of minorities who may be underrepresented in traditional media; it can help develop regional, local, and community media; it can increase the number of information sources; ameliorate the effects of media concentration and foreign ownership in traditional media; and allow content to be inexpensively produced and distributed so that anyone with access to the Internet can write a blog, post comment, upload a video or podcast, update or tweet.

Parmar also identified four main challenges that arise to the possibilities of new media fostering pluralism. The lack of universal access to such media, even among OSCE states is one such challenge. The second major set of challenges relates to content restrictions imposed by national authorities. She elaborated on the detrimental impact such restrictions can have on pluralism with specific examples such as measures to block or filter content; imposition of intermediary (ISP) liability through specific laws governing Internet or privacy and data protection laws; cyber-attacks, such as (governmentally ordered) distributed denial of service (DDoS) attacks; monitoring and collection of information about individual communications and activities that result in

undermining the confidence regarding Internet sources; criminalization of legitimate speech on the Internet; and media laws and judiciary decisions which restrict Internet based media. The third major challenge she identified concerns what appears to be ambivalence and inconsistency on the part of states toward Internet freedom, pluralism through the Internet as well as the relevance of international legal standards on freedom of expression on Internet-based media. The fourth challenge concerns the policy gaps that exist vis-a-vis new media. She noted the need to formulate specific and positive policies and approaches to promote pluralism through and in new media. In conclusion, Ms. Parmar emphasized the need for promoting Internet literacy.

The panel was closed by **Mr. André Lange**, who introduced the European Audiovisual Observatory, describing its role as a pan-European public service body operating within the legal framework of the Council of Europe. He put forward pluralism and freedom of expression as fundamental values of European media policy, stressed by both the Council of Europe and the European Union. These have also been revisited in the last years in the context of the development of new media. However, Lange contended that the definition of concrete measures for implementing pluralism and freedom of expression and the monitoring of their real implementation remains a highly problematic issue.

He then analysed media consumption practices, as well as some trends in new media; particularly the increase of time spent on the Internet as well as the increase of time spent watching television. The main explanation for the increased TV viewing time is certainly the impact of digital distribution. The various forms of TV digital distribution (cable, satellite and, more recently, DTT and IPTV, mobile TV) have allowed a multiplication of the number of channels, allowing the viewers to find more easily the kind of content they are looking for. According to the data collected by the European Audiovisual Observatory, the number of existing TV channels in the European Union has increased from around 2500 in 2000 to almost 8000 in 2010. The number of terrestrial channels has risen from 134 to 504, while the number of channels – mostly thematic – designed for the national audience on cable, satellite, IPTV or mobile has risen from 489 to 2201. The number of local/regional channels has more than doubled (from 1620 to 3692) while the number of channels established in a country but targeting one other country has risen from 69 to 1225. Moreover, digital distribution has allowed an increased possibility of receiving generalist channels and news channels from other countries, allowing the viewers to gather information or point of views from other countries. Furthermore, Lange asserted that such multiplication of available channels has also led to the de-concentration of TV audience.

Mr. Lange further deliberated on the continuing growth of the Internet, increased diversity on the Internet, and the crisis of the print press as a result of the Internet. He also addressed the impact of the new business models on the quality of journalism, the role of user-generated content (UGC) and social networks in the production of news, the internationalization and fragmentation of the public sphere, the efficiency of self-regulation, the importance and advancement of media literacy; and the respect for privacy, all in the scope of new media.

The panel was closed by **Ms. Beata Martin-Rozumilowicz**, who discussed the ODIHR methodology for election observation, which has long considered media freedom and pluralism to be fundamental elements of genuine and fair elections.

Ms. Martin-Rozumilowicz deliberated on the potential impact new media may have on elections and political campaigning. The main source of information for voters in most OSCE participating States remains broadcast media. Yet, new media formats have now

thrown up a number of interesting questions that pertain particularly to the conduct of and political information during elections.

She closed the panel with a set of questions; to what extent is new media relevant as a campaigning platform for pluralistic political voices and opinions within societies, to what degree has new media penetrated OSCE societies as a viable alternative format of information, to what extent does new media provide voters with the possibility of direct, unfiltered access to political voices otherwise often hard to reach (as well as the reverse), and ultimately how to monitor and access the impact of new media such as the Internet upon a political electoral process.

After the introductory speeches, the participants discussed several aspects concerning new media and its challenges and opportunities to foster pluralism. The concept of self-regulation was particularly eminent throughout the discourse. Some participants argued that the established system of self-regulation is currently not functioning in a number of OSCE participating States, and that there is a dire need to further discuss how to solve this problem. Another issue discussed was that of minority media and that the fear of “otherness” acts as a significant barrier to pluralism; diversity is at the heart of any democratic society, it should therefore be nurtured and sustained.

The intricacies of defining new media were prominent throughout the discussion. The question of “*what is a new medium?*” was considered, various participants had differing perceptions. Some criteria were introduced by participants to identify a media, for instance there would need to be editorial control, need for an outreach and an impact by the source, and a need for professional standards. Moreover, the importance of pluralism of sources was emphasised, as well as access. Access was considered crucial for pluralism and achieving freedom of expression and freedom of the media.

Ultimately, the need for more discussion on how to increase media pluralism was stressed. The discussion carried over to debates on possible downsides of new media. It was agreed that restrictions on the free flow of information must be based on legislation in accordance with international standards, and that more education on the Internet and new media is needed (media and Internet literacy). Finally, the functioning of the established system of self-regulation was criticised. In a number of OSCE participating States, its functioning is rather feeble; so there is a need for discussion on how to solve this problem and to review how it works and how it can be extended on to the Internet.

RECOMMENDATIONS

- Participating States should formulate specific and positive policies and approaches to promote pluralism through new media. The effect such policies and approaches have on pluralism should be monitored by regulatory bodies.
- There is need for more projects fostering Internet and media literacy, particularly among the so-called “digital natives”, children and teenagers.
- Online media should not be asked to register as such. In some countries special media registration procedures for websites still exist or have been recently introduced.
- OSCE Field Missions should assist in fostering media pluralism, particularly with regard to minority media.

- Local media should be considered an important addendum to the digitalisation process.
- The value of pluralism has to be recognised as a basic value for democratic decision making including during elections.
- There is need for more experience sharing among participating States.
- Need for more ‘variety of content’ to foster pluralism.

SESSION 2: Regulatory Aspects of Digital Switch-over

Moderator: **Dr. Andrey Rikhter**, Director of the Office of the Representative on Freedom of the Media

Introducers: **Mr. Mark Thompson**, Policy Reports Editor, Open Society Media Program, United Kingdom
Ms. Maja Cappello, Audiovisual and Multimedia Content Directorate, Communications Regulatory Authority (AGCOM), Italy
Mr. Emir Povelakić, Deputy Director for Broadcasting, Regulatory Communication Agency, Bosnia and Herzegovina

The switch-over to digital terrestrial broadcasting is a technological process that enables us to gain access via television and radio to a previously unimaginable amount of information. If carried out properly, the experience of switching from analogue to digital terrestrial broadcasting can further strengthen diversity of content, opinion, programming, electronic-media outlets and freedom of expression. This session introduced the *Guidebook to Digital Switchover*, commissioned by the OSCE Representative on Freedom of the Media, which offers practical help to those OSCE participating States in which the switch-over will be a challenge in coming years. By providing a list of “do’s and don’ts” of the process, the Guide focuses attention on the main difficulties and opportunities associated with the switch-over. Moreover, the session covered a wide range of regulatory aspects and their impact on all stakeholders involved in the digitalization process.

Mr. Mark Thompson presented, in his speech, the main findings of a study on digitalization that the Open Society had recently prepared. Initially, he highlighted the struggle to find mutual norms and principles for what surrounds new media. There are a variety of interpretations and understandings of what encapsulates “new media”. He also suggested that projects such as the Guidebook may have a positive impact and help introduce a more unanimous understanding. Furthermore, he discussed the various discrepancies that exist in society; having asserted that disparities exist not only between online and offline media but that there is also a social divide probably resulting from a problem of Internet literacy and a lack thereof.

Thompson recognized the difficulty to keep up with the actual pace of development with regard to digitalization; whereby he contended that it is hard to find anyone who can write accurately about digitalization and all niche topics within its paradigm. These are locked in intellectual societies and expert circles, which leads to a lack of knowledge or understanding by the general public. Moreover, he listed a few familiar concepts and agendas that are still rather flawed, and argued that they must all be rethought, namely, defamation, public interest, media concentration, self-regulation, and public service broadcasting in the context of new media

When discussing issues of privacy on the Internet, Thompson contended that personalization should be addressed through means of self-regulation. It is imperative that privacy restrictions are not abused. He concluded by indicating the importance of the digital switch-over, and its effectiveness, arguing that offline media is still the primary source as most people, including in the OSCE area, continue to use more offline media than online.

Ms. Maja Cappello, as the second introducer of the session, illustrated the outcomes of the digital switch-over process and the trends occurring in Italy as a case study. She introduced the regulatory tools, which would ensure media pluralism. Moreover, she made an interesting point, which became a key part of the discussion, namely, that plurality does not equal pluralism, it is not important to have many channels if they are all owned or financed by the same source. This confusion between plurality and pluralism needs to be overcome in order to nurture genuine pluralism in the media.

Going into more technical aspects of the industry, and the switch-over, Ms. Cappello argued that, technical parameters for the digital switch-over are not sufficient to guarantee media pluralism; pluralism indicators should therefore combine both technical as well as economic parameters. In order to be informed, and to achieve goals, it is also crucial to get a clear view of the country profile, i.e. the size of the population, the number of citizens owning a television set, the number of citizens having access to the Internet, etc. It is also important for regulators to ensure that the more peripheral parts of a country also have equal access.

Ms. Cappello further described the switch-over process and experience in Italy. The structure of digital terrestrial television (DTT) networks ensures coverage of 80 percent of Italian territory. In order to maintain local television and radio, Italy reserved one third of all frequencies for local broadcasting. The networks have more than doubled in the last six years (throughout the process of the switch-over). From a quantitative point of view, these numbers are very high; however, this does not necessarily mean that the digital world is better than the analogue one. For instance, in Italy, many of the broadcasters are owned by the very same person, which is not an indicator for content plurality. Moreover, content providers that do not obtain a frequency can move online, where technical resources are virtually unlimited. She concluded by reiterating the importance of content accessibility, access to content being a precondition to pluralism.

The panel was closed by **Mr. Emir Powlakić**, who gave his perspective on the role of the digital switch-over in Bosnia and Herzegovina, and the role of the regulatory agency as a watchdog of the ongoing process. He noted that public service broadcasting in the 21st century has to be independent, accountable, well-equipped and well staffed.

The introduction of digital terrestrial television (DTT) has required an adaptation of the legal framework governing broadcasting licensing. Mr. Powlakić contended that this is still an issue for several countries using different approaches regarding regulation and licensing models. They all have their advantages and disadvantages which a state/regulator must consider. The legal parameters are unique to each country. Furthermore, he discussed the role of public service broadcasters (PSB) in a globalized and digital multi-platform and multi-channel media environment. New trends that reconfigure the whole media landscape are especially challenging for public service broadcasters.

More and more public service broadcasters expand their activities to digital platforms, facing new challenges, which are even more pronounced and present in countries such as Bosnia and Herzegovina where the process of economic, social and cultural transformation is lagging behind. Mr. Powlakić argued that public service broadcasters often have responded too slowly and inadequately to the new opportunities digitalization offers. On the one hand broadcasters operate in an increasingly commercial environment and sometimes adopt similar tactics to gain audience reach, while on the other hand they attempt to maintain and re-invent public values in order to legitimize their specific role as a publicly funded media corporation.

Mr. Povlakić described the role of regulators in the process of the switch-over, stating that among other important issues, they contribute to the expansion of media's role, especially regarding public service broadcasters building stronger and freer societies. Broadcast regulators work to develop a vibrant public interest media service in creating channels of high-quality content, representing diverse and independent perspectives, strengthening technology and distribution systems that allow people to access and contribute to this material, boosting public discussion and research about the ways in which media can better engage and inform all citizens.

He concluded by reiterating the importance of society to be involved as a whole in the digitalization process in order to foster and maintain a pluralistic environment.

In the debate that followed, the participants agreed that pluralism is not a consequence of digitalisation. Digitalization should be safeguarded for fundamental freedoms, and governments have a responsibility to ensure that the switch-over guarantees to foster pluralism.

The participants also raised the issue of allocating frequencies. There was a shared concern for oppositional and minority media and that in some regions they may struggle if governments do not ensure equal opportunities, particularly for licensing. Another important point discussed regarded registration, and the fear thereof. It was asserted that registration should not be used as a means for control, but rather, but it should facilitate transparency. Furthermore, the conception of quality versus quantity was heavily debated. There was a general agreement that the quality of media and pluralism of media are particularly important, and that there needs to be incessant investment in new opportunities to nurture quality in the mainstream media. Discussed was also the potential diminution of local frequencies, particularly as dominant technologies are expected to replace analogue radio. Often local radio is the only citizen radio, and it may have difficulty accessing digitalisation. In this context, the importance of local media was emphasised.

When it comes to regulation, it was argued that there should not be a continuation of generic directives, as the online and offline media differ immensely, and the approach of regulating them should reflect this difference. The session concluded with the acknowledgment that the digital switch-over should be carried out by following best practices, and that there is more need to be forward looking in this respect.

RECOMMENDATIONS

- The digital switch-over should be used to ensure pluralism of broadcasting content. Pluralism does not necessarily mean a higher number of channels; it is crucial to identify the difference between pluralistic and plurality.
- The digital switch-over process being should be based on media laws and policies that ensure the preservation and strengthening of human rights, including freedom of expression, freedom of the media and access to information.
- There needs to be an increased involvement of the public in any rule-making process, as well as more public information campaigns during the digital switch-over process.

- In the selection process of programming packages to go on the digital broadcasting platforms, diversity and plurality are crucial. The national Public Service Broadcaster must be guaranteed a multiplex spot and “must-carry” rules shall apply.
- Any state aid to broadcasters in transition to digital TV shall be carefully designed so as not to give undue preference to one commercial operator over others. Liberalisation and privatization in the media and communications fields should go in parallel with preparations for digitalization.
- There is need for more local TV programming; local and minority broadcasters should be supported so that they can get access to necessary transmitting equipment. Transparent decisions whether some groups get subsidised decoder equipment, on what grounds and how, must be made according to the situation in each country.
- Pluralism should not only be about quantity, but also about quality, access, and content diversity.
- In the switch-over process, governments and national regulators should take steps to increase pluralism of content and prevent concentration of property in broadcasting.

SESSION 3: Internet Regulation in the OSCE Area: Introduction of the First OSCE Internet Matrix

Moderator: Ms. **Ženet Mujić**, Senior Adviser to the OSCE Office of the Representative on Freedom of the Media

Introducters: Ms. **Sanja Kelly**, Senior Researcher and Managing Editor at Freedom House
Dr. **Yaman Akdeniz**, Associate Professor at the Human Rights Law Research Center of Istanbul Bilgi University

Questions such as how to ensure freedom of information on the Internet and how and to what extent the Internet should be regulated have been high on the agendas of many countries across the OSCE region. As more people gain access to the Internet, it seems more governments are trying to find ways to regulate certain aspects of the web. While the Internet is primarily a telecommunications infrastructure with media-like content, it is not a media, *per se*. The Internet is indeed different in that, unlike traditional media, it was born free of regulation. Now, however, there are increasing calls for it to be protected from over-regulation. Legislation is often aimed at regulating technical aspects of the Internet that, however, might become outdated within a few years, or at transforming regulation designed for offline media to apply it to the Internet without taking into consideration the specifics of the medium or the technology.

This third session introduced the findings of the first comprehensive OSCE study on Internet legislation, which includes an overview of legal provisions related to freedom of the media, the free flow of information and media pluralism on the Internet in the OSCE region. The session also provided for discussion of the effectiveness of Internet legislation and regulation, as well as the efficiency of alternative methods of dealing with unwanted content. Moreover, it was debated to what extent legislation drafted for off-line media can be transferred to the Internet without negatively impacting on the free flow of information.

Ms. **Sanja Kelly** began by introducing the sheer expansion of the Internet; the influence of the Internet has expanded rapidly, there are currently two billion users, twice as many as five years ago. However, simultaneous to this trend, there is an increasing number of emerging threats. Governments are attempting to limit such threats by limiting the Internet. Ms. Kelly presented a study on the Internet that Freedom House had recently released; she identified a number of trends that are exposed in the study. In many countries there are often formal arrangements governments have with Internet providers; restrictions are being imposed by authorities; access to particular websites is being blocked; non-independent judiciary presents a threat to freedom of expression and free (online) media.

The study that Ms. Kelly based her presentation on also identified four main negative trajectories:

First, the issue of **blocking and filtering**: Blocking of content could sometimes be legitimate, for instance in cases of preventing child pornography. However, often access

to content is blocked to political, independent, and opposition websites. In the OSCE region, for instance, in Turkey, over 5,000 websites were blocked last year. This year the number has gone up to almost 60,000 according to some sources. In Kazakhstan there is selective and sporadic censorship. One particularly worrisome aspect is that this trend of authorities not informing on what is blocked and for which purpose is not exclusive to less developed democracies.

Second, the issue of **cyber attacks**: Governments often use technical attacks to prevent users from accessing information that offers alternative views, in the OSCE region this happens quite often. Governments mostly use this strategy when they feel most vulnerable, for instance during elections. Ms. Kelly illustrated such developments by describing the occurrences of last December in Belarus. In this case the authorities even provided misleading information (for example posting different times and locations for a given protest).

Third, the issue of **centralized infrastructure**: Too much control over infrastructure would give the heads of state enough power to switch off parts of the Internet that are connected to major infrastructure.

Fourth, the issue of **imprisonment for online activities**: Imprisonment for online activities happens less in the OSCE region. However, some OSCE participating States are abusing current laws to prosecute online journalists. In Russia, for instance, bloggers and critical journalists are often prosecuted. In Azerbaijan two bloggers were recently arrested. Such occurrences lead to a chilling effect.

In his presentation, **Mr. Yaman Akdeniz** had put forward the OSCE wide Internet regulation study. He began by revealing the main differences between the OSCE and the Freedom House report; he explained that there are no country comparisons and that the study was a fact-finding based report, consisting of results of a variety of questions that had been posed to all OSCE participating States.

Moreover, Mr. Akdeniz elaborated on some recommendations he suggested to be imperative for an improved global information society having unhindered access to information. He contended that network neutrality is a crucial aspect and that there should be no discrimination between particular services or platforms. He illustrated some sample case studies with regard to blocking of online content and cutting-off online access, raising issues such as prior-restraint, or the Internet “kill-switch”, introduced by some participating States. Conclusively, Mr. Akdeniz reiterated, that States should refrain from blocking websites, and the importance of maintaining access and abiding by OSCE commitments and international standards. The Internet needs to be regarded as a fundamental human right, like in Finland and Estonia who have already set a great example. Plans like the Internet “kill-switch”, for instance, must be avoided. Also the development of so-called “three-strike” legal measures in the UK and France to combat Internet piracy is incompatible with OSCE commitments and international standards, as they violate the right to access information.

Akdeniz explained the current media freedom situation in Turkey, giving a brief overview of the filtering system that was to be introduced, and the implications thereof. Mandatory filtering software was planned to be introduced on the individual level, for instance, by families in order to prevent their children from accessing unwanted content. A number of countries in the OSCE region already have filtering systems operating on various levels; however, Turkey was the first country that had planned to introduce a state-wide filtering system, which could be used for political censorship.

If realised, this would have led to the first government controlled and maintained mandatory filtering system within the OSCE region.

In the discussion that followed, several participants pointed out the delicate balance that exists between access to information and national security. However, several other participants expressed that access to information is a basic and indisputable human right, therefore heightened security measures do not justify the means used against journalists, be it in the traditional or the new media, while performing their journalistic activities.

During the debates that took place in this session various topics were discussed and some general concerns were reaffirmed. Online censorship was recognised as one of the main problems in the OSCE region. Also the conflict between the right to privacy and the open nature of the Internet was debated. Furthermore, the legitimacy of regulating harmful content was maintained by various participating States; Turkey in particular, suggested that blocking certain online content protects victims from harmful practices on the net. The Turkish representative also emphasised that the filtering system to be introduced in the country is a voluntary system that enables the protection of children on the Internet. Moreover, a set of guidelines for Internet regulation and Internet use was requested by some participants; considering the borderless nature of the Internet, it is often unclear to many governments where their involvement should begin and end.

RECOMMENDATIONS

- Governments should ensure that the right to freedom of expression applies to all sources of communication and information, including the Internet.
- Governments should work toward providing affordable and qualitative Internet access to those parts of the population who do not have it yet.
- Governments should recognize access to Internet as a human right.
- Governments should critically review existing legislation aimed at regulating the Internet.
- Participating States should refrain from blocking of online content, as blocking is considered an extreme measure and indefinite blocking could result in prior restraint.
- Participating States should foster Internet and media literacy projects and ensure education for law enforcement agencies, children, and Internet users.
- Governments should refrain from introducing so-called Internet “kill-switch” or “three-strikes” legislation, as they are incompatible with fundamental rights and constitute as a disproportionate measure; All actors should work towards developing alternative approaches to deal with unwanted content; this applies equally to governments as to civil society.
- All actors should work towards developing alternative approaches to deal with illegal content; this applies equally to governments as to civil society.
- Any restrictive measures should be applied with the following in mind: "does this measure address the root of the problem?"

4. ANNEXES

ANNEX I: AGENDA

7 July 2011	Day 1
15:00 – 16:00	OPENING SESSION: Opening remarks Ambassador Renatas Norkus , Chairperson of the OSCE Council, Lithuania's Permanent Representative to the OSCE Dunja Mijatović , the OSCE Representative on Freedom of the Media <i>Keynote speech</i> Mr. Toby Mendel , Executive Director of the Centre for Law and Democracy Technical information by Ms. Aleska Simkic , Special Adviser to Director of the OSCE Office for Democratic Institutions and Human Rights
16:00 – 18:00	<u>SESSION I: Challenges and opportunities for new media to foster pluralism</u> <i>Moderator:</i> Mr. Roland Bless , Principal Adviser, Office of the OSCE Representative on Freedom of the Media <i>Introducers:</i> Mr. Thomas Hammarberg , the Council of Europe Commissioner for Human Rights Dr. Sejal Parmar , Senior Legal Officer, Article 19 Mr. André Lange , Head of Department for Information on Markets and Financing, European Audiovisual Observatory
18:00 – 19:00	Reception hosted by the Lithuanian Chairmanship

8 July 2011

Day 2

10:00 – 12:00

SESSION II: Regulatory aspects of digital switch-over

Moderator:

Mr. Andrei Richter, Director, Office of the OSCE
Representative on Freedom of the Media

Introducers:

Mr. Mark Thompson, Policy Reports Editor, Open Society
Media Program, United Kingdom

Ms. Maja Cappello, head of Unit at the Audiovisual and
multimedia content Directorate of the Italian communications
authority (AGCOM), Italy

Mr. Emir Powlakić, Deputy Director for Broadcasting,
Regulatory Communication Agency, Bosnia and Herzegovina

12:00 – 14:00

Lunch hosted by the OSCE Representative on Freedom of the
Media

14:00 – 16:00

SESSION III: Internet regulation in the OSCE area:
Introduction of the first OSCE Internet matrix

Moderator:

Ms. Ženet Mujić, Senior Adviser, Office of the OSCE
Representative on Freedom of the Media

Introducers:

Ms. Sanja Kelly, Senior Researcher and Managing Editor,
Freedom House

Dr. Yaman Akdeniz, Associate Professor, Human Rights Law
Research Center, Istanbul Bilgi University, Turkey

16:00 – 16:30

Break

16:30 – 17:30

CLOSING SESSION

Reports by the Working Session Moderators

Comments from the floor

Closing Remarks

Ms. Dunja Mijatović, the OSCE Representative on Freedom of
the Media

17.30

Closing of the meeting

ANNEX II: ANNOTATED AGENDA

Background

The emergence of new media, particularly the Internet, has profoundly changed the way people communicate and share and receive information. Digital terrestrial broadcasting and new media also have changed the traditional conception of “information boundaries”. New media have not just helped develop a globalized world, but they also provide us with “globalized” news, accessible often in real time and any time by one-third of the world’s population. In this regard, the Internet and new media bring people closer to each other, while at the same time increasing transparency and generating a new understanding of what is the public sphere. New media also present challenges to national jurisdiction over media outlets and content. With a server located in one country, content being produced in a second and read or downloaded in a third, the questions of the origins of news or other media content and their target audience arise. This can have an impact on media pluralism domestically and in the trans-national context.

Numerous OSCE commitments are aimed at ensuring freedom of expression, of information and of the media. The OSCE has rightfully recognized that independent media and freedom of expression are cornerstones for stable and peaceful societies.⁷

Freedom of the media is the collective embodiment of freedom of expression. Pluralism in the media is, therefore, a prerequisite for the expression of different opinions and a guarantee of individuals’ abilities to express their opinions without interference. With media in the hands of society, and not the custody of the state, pluralism is a safeguard for the marketplace of ideas.

The Supplementary Human Dimension Seminar will provide a forum for the discussion of the development of electronic media and the implications of that development on

⁷ Relevant OSCE commitments include the 1990 Copenhagen Document; the 1991 Moscow Document; the 1994 Budapest Summit Document; the 1996 Lisbon Summit Declaration; and the Charter for European Security, adopted at the 1999 Istanbul Summit

- In the 1990 Copenhagen Document, the participating States affirmed that they “will provide that no legal or administrative obstacles stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.”

- The 1991 Moscow Document states that participating States “will, in conformity with international standards regarding freedom of expression, take no measures aimed at barring journalists from the legitimate exercise of their profession, other than those strictly required by the exigencies of the situation.”

- In the 1994 Budapest Summit Document, “[t]he participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They take as their guiding principle that they will safeguard this right.”

- At the 1996 Lisbon Summit, the OSCE participating States declared that “[f]reedom of the press and media are among the basic prerequisites for truly democratic and civil societies. In the Helsinki Final Act, we have pledged ourselves to respect this principle. There is a need to strengthen the implementation of OSCE commitments in the field of the media, taking into account, as appropriate, the work of other international organizations.”

- In the 1999 Charter for European Security, the participating States in “reaffirm the importance of independent media and the free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.”

media freedom and pluralism. Among topics will be the switchover from analogue terrestrial to digital terrestrial broadcasting and maintaining freedom of expression and the free flow of information on the Internet.

Day 1

15:00 – 16:00 **Opening Session**

16:00 - 18:00 **Session I: Challenges and Opportunities for new media to foster pluralism**

This session will discuss the main developments related to new media, such as the media-freedom implications of the switchover to digital broadcasting, media pluralism and freedom of expression on the Internet. It will provide an overview of changes in the ways people communicate, including how they access, share and receive news and other information. In this context, new forms of media and hybrid platforms and their impact on media pluralism will be discussed.

The session also will address how new technologies necessitate new approaches to safeguarding existing OSCE commitments on media freedom and freedom of expression.

It will address governments' handling of challenges posed by new technologies and underline prospective threats to media freedom by government attempts to curb the rights of those who use new or traditional media to present critical views.

The discussion also will highlight the basic connection between the development of new media and the level of freedom of expression: If the free flow of information is restricted, people's right to freedom expression will undoubtedly suffer.

The following questions may be considered for the discussion:

- What is the situation regarding freedom of new media, such as digital broadcasting and the Internet, in the OSCE region?
- What is meant by and what are the indicators of "media pluralism"?
- How might the role of the civil society be increased to more strongly advocate media freedom and freedom of expression?
- How can existing OSCE commitments on media freedom and freedom of expression be implemented better, particularly in view of the challenges posed by new media?
- How can we ensure that commitments are interpreted in a similar way by participating States?

Day 2

10:00 – 12:00 **Session II: Regulatory aspects of digital switchover**

The switchover to digital terrestrial broadcasting is a technological process that enables us to gain access via television and radio to a previously unimaginable amount of information. If carried out properly, the experience of switching from analogue to digital terrestrial broadcasting can further strengthen plurality of content, opinion, programming, electronic-media outlets and freedom of expression.

This session will introduce the *Guidebook to Digital Switchover*, commissioned by the OSCE Representative on Freedom of the Media, which offers practical help to those OSCE participating States in which the switchover will be a challenge in coming years. By providing a list of the "do's and don'ts" of the process, the Guide focuses attention on the main difficulties and opportunities associated with the switch. Well-designed switchover policies and a sound legal framework are necessary to ensure a successful transition. The session will, therefore, cover a wide range of regulatory aspects to be considered by all stakeholders involved in the digitalization process.

The session also will highlight existing experiences that show how the switchover to digital has affected media pluralism in countries where it has already occurred. As 2012 is the year in which analogue terrestrial broadcasting is to end in the European Union, digital broadcasting is already in place in a number of OSCE participating States. By highlighting both good practices and potential risks associated with the switchover in relation to pluralism of content and ownership, the session aims to provide practical suggestions to countries currently carrying out this process.

The following questions may be considered for the discussion:

- What are the main regulatory aspects to be considered by the authorities to guarantee that the transition to digital enhances media pluralism?
- What are the main challenges that have been faced and good practices developed in those OSCE countries where the switchover to digital has already taken place?
- How can participating States prevent the switchover to digital terrestrial broadcasting from consolidating the characteristics of the analogue broadcasting landscape?
- How can easy access to the media landscape for new broadcasters be ensured?
- How can the switchover to digital be carried out to strengthen, rather than weaken, public-service broadcasters?

12:00 – 14:00 **Lunch Break**

14:00 – 16:00 **Session III: Internet regulation in the OSCE area:
Introduction of the first OSCE Internet matrix**

Questions such as how to ensure freedom of information on the Internet and how and to what extent the Internet should be regulated have been high on the agendas of many countries across the OSCE region. As more people gain access to the Internet, it seems more governments are trying to find ways to regulate certain aspects of the web. While the Internet is primarily a telecommunications infrastructure with media-like content, and not a media, *per se*, the web is indeed different in that – unlike traditional media – it was born free of regulation. Now, however, there are increasing calls for it to be protected from over-regulation.

Legislation is often aimed at regulating technical aspects of the Internet that, however, might become outdated within a few years or at transforming regulation of off-line behaviour to apply it to the Internet without taking into consideration the specifics of the medium or the technology. The call by many media advocates and civil society representatives for a free Internet always implies the call to preserve a global web rather than shifting toward a number of national or regional “Internets” or national “Intranets”.

Discussion will be based on the introduction of the findings of the first comprehensive OSCE study on Internet legislation. The study includes an overview of legal provisions

related to freedom of the media on the Internet, the free flow of information and media pluralism on the Internet in the OSCE region.

The session will also provide for discussion of the effectiveness of Internet legislation and regulation, as well as the efficiency of alternative methods of dealing with unwanted content. The session will further elaborate on whether or to what extent legislation drafted for off-line media can be transferred to the Internet without negatively impacting on the free flow of information.

The session will also reiterate previous commitments in the field, such as the Charter for European Security adopted by the OSCE participating States at the 1999 Istanbul Summit, in which the participating States committed themselves to ensuring “unimpeded transborder and intra-State flow of information” and PC Decision No. 633, where they pledged to take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression.⁸

The following questions may be considered for the discussion:

- Where do we stand in terms of Internet regulation across the OSCE region?
- How do newly adopted or amended laws aimed at regulating new media affect freedom of expression and the free flow of information on the Internet?
- How can we ensure that national Internet legislation or regulation does not lead to a “nationalization” of the Internet, which contradicts the global nature of the web?
- How can we assess the efficiency and applicability of international norms or treaties aimed at regulating online content?
- What measures can be provided by the relevant players, i.e., governments of participating States, international governmental organizations, non-governmental organizations, journalists’ associations and media organizations, to support a free Internet?

16:00 – 16:30 Break

16:30 – 17:30 **Closing Session**

⁸ In the Charter for European Security, the participating States in 1999 “reaffirm the importance of independent media and the free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.”

OSCE Permanent Council Decision No. 633 was endorsed by OSCE Ministerial Council Decision No. 12/04 on 7 December 2004 at the Sofia Ministerial Council at states that “[p]articipating States should take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools.” OSCE PC Decision 633 further asks the participating States to “study the effectiveness of laws and other measures regulating Internet content”.

ANNEX 3: KEYNOTE SPEECH BY TOBY MENDEL

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.

ANNEX 4: INTRODUCTORY SPEECHES TO WORKING SESSIONS

SESSION 1: Challenges and opportunities for new media to foster pluralism

Commissioner Thomas Hammarberg, Council of Europe Commissioner for Human Rights

Pluralism within the media is the hallmark of a healthy democracy. If too few voices are heard and too little meaningful information is circulated, it will be hard for a public debate to take place and for citizens to form their own opinions. Important information will never catch the public's eye.

I once asked the Ombudsman in one of the former Soviet states what reform he would consider as the most important for human rights protection in the country. His answer was: a truly independent TV channel!

Because pluralism in the media is so important, the European Court of Human Rights has confirmed, time and again, that member states have an obligation (under the European Convention on Human Rights) to protect and promote media pluralism.

But states do not always live up to this human rights obligation. During my country visits, I have been concerned by diminishing pluralism in the media.

Lack of genuine competition

In some countries, there is a lack of genuine competition: independent television and radio channels are denied licenses, critical newspapers have difficulties in buying print paper or with printing and distributing their papers.

Another problem can be that the government buys advertisement space only in the "loyal" media, signaling to business companies to follow their lead, with the consequence that independent media are in reality boycotted.

Concentration of media ownership is another problem. If the mass media is dominated by a few companies, the risk for media bias and interference with editorial independence increases. In Italy, for example, the Prime Minister is the biggest shareholder of by far the largest private television company (through Fininvest which owns nearly 39% of the shares of Mediaset). Its 'Canale 5' is among the two most watched television channels.

Even if there is competition and, as a result, a variety of media, this does not always mean that there is media pluralism. In many countries in the Balkans the number of private television channels is impressive. Still, complaints regarding the pluralism of content are often heard. Media, with a few exceptions, are regarded as partisan and biased.

Public service media

Here public service media could be an essential counter weight to the profit driven entertainment media. Public service media should be knowledge based, impartial and give a voice to all including to minorities and vulnerable groups.

However, public service media is questioned across Europe today – something which worries me greatly. There are examples where public funding is not secured or the need for a public service fee is called into question. In the wake of the economic crisis there have been budget cuts disproportionately affecting public service media. Some even argue that with the Internet, no public service media is needed.

There are examples of countries where the state-funded media serve as a mouthpiece of the government. The top management positions are filled by confidants of the President or Prime Minister.

Public service media can only exist if its public remit has been defined, its independence is ensured and respected, its financing is sustainable and if politicians rally public support.

Social media

But I have also seen some positive signs. When meeting with journalists and civil society during my travels, they often point out that in situations where no pluralism exists on television, in the radio and newspapers, the public relies more and more on online media.

Through social media many more people can impart information to a very large audience, very quickly. One does not need the expensive facilities of a broadcaster to be heard and seen by many.

The digital revolution has also caused a crisis in the print and broadcasting media. At least in the short run, this has meant less money for investigative reporting and quality news. This puts media pluralism at risk.

At the same time, traditional media have started to embrace social media.

Traditional media are expanding into digital media by producing digital versions of newspapers and magazines that can be bought online. Readers can comment on articles, podcasts and videos immediately after they are put online.

‘Old’ media co-operates with ‘new’ media: *The New York Times*, *The Guardian*, *Der Spiegel* and *Le Monde* worked together with the whistle blowing website *WikiLeaks* on the diplomatic cables sent from U.S. missions to Washington.

Journalists find stories and sources on blogs, Facebook and by following Twitter feeds.

When no journalists were allowed to enter Libya after unrest broke out in the spring this year, it was films, pictures and messages sent from people’s mobile phones which could be seen in the evening news.

“Traditional media still needed”

However, even if anyone who has access to the Internet can reach a very large audience, there is only so much information one can digest. The enormous amount of facts, rumors and opinions available on the Internet does not mean that it provides context and a complete or semi-complete picture of the world.

Though social media have created new possibilities for a more democratic dialogue on political matters, the mass media will continue to function as the main messenger of common interest news and as the key arena for public debate. The need to select information and present it in an understandable way remains. It is simply not enough to make the raw information available, as the example of Wikileaks has shown. The good news for media professionals is that we still need, maybe more than ever, journalists who explain a complex world.

Government control of the Internet

Governments increasingly try to control the Internet. As the OSCE Representative on Freedom of the Media, Dunja Mijatović, has said, “[Participating] States increasingly feel the need to regulate the content on the Internet – not just the infrastructure of the network.”

In Turkey the Telecommunications Communication Presidency (TIB) and courts have issued thousands of blocking orders for Internet sites. Even if it is legitimate to *remove* some content, such as child pornography and hate speech inciting to violence from the Internet, the *blocking* of Internet sites often results in the blocking of content which has nothing to do with child pornography or hate speech inciting to violence. In Turkey, the entire YouTube service was blocked from March 2007 until October 2010. YouTube now can be accessed again but many other websites with legitimate content are still blocked.

Surveillance and data protection

While social media have opened up new possibilities for journalists to find sources and information, surveillance and the collection of personal data has become much easier too. Today’s technology allows security services to identify not only a single source but the complete network of sources of a journalist. From easily collected data a comprehensive personal profile of a disliked journalist can be put together with relative ease. Such measures can be used to limit media freedom and, as a result, media pluralism.

Recommendations

What can be done to promote and protect media pluralism, both online and offline?

- A media policy and legislation which ensures genuine competition will go a long way to creating a pluralistic media environment.
- These rules also should apply to the online media market. Particular attention should be given to Internet Service Providers but also companies running search engines or social media.
- The allocation of frequencies is a real test if authorities are serious about media pluralism. With the switchover to digital broadcasting more frequencies have become available. This presents an opportunity to promote a more pluralistic media landscape.
- Online media should be excluded from registration requirements. Unlike broadcasting frequencies, online space is, in practical terms, an unlimited resource.
- The independence and impartiality of public service media ought to be protected through agreed guidelines and an appropriate procedure of appointing the senior management and the chief editor.

- Governments need to support public service *broadcasters* in their transformation to public service *media* by promoting their expansion into digital media and by providing them with the necessary finances. (BBC Online is one of the most prominent successful examples).
- The European Convention on Human Rights also applies online: legislators, judges, governments and officials have to make sure that any of their laws, decisions and practices aimed at controlling the Internet have a legal basis, need to pursue a legitimate aim and are necessary in a democratic society.

Conclusion

‘New media’, or social media, and public service media can be very useful for media pluralism. But what is also needed, is a strong commitment by authorities to the human rights obligation to promote and protect media pluralism, including on the Internet.

It is a pleasure and a privilege to be speaking at this meeting on the promotion of pluralism in new media. I am very grateful to the OSCE Representative on Freedom of the Media, Dunja Mijatović for inviting me to speak about this important subject: “the challenges and opportunities for new media to foster pluralism”.

I shall begin by defining the key concepts of “pluralism” and “new media”. I shall then highlight some of the opportunities and challenges presented for new media to foster pluralism.

Media pluralism has long been regarded as prerequisite for freedom of expression. Some have argued that media pluralism has now gained independent status as a right in itself through the policies of the Council of Europe, the judgments of the European Court of Human Rights as well as the EU Charter of Fundamental Rights.⁹ Pluralism is generally associated with recognition and respect for diversity in the media supply or ownership through the presence of a plurality of independent and autonomous media (external pluralism) and a diversity of media contents or output available to the public in term of (internal pluralism). A 2009 study prepared for the European Commission on media pluralism indicators adopts a broader definition of pluralism as the scope for a “wide range of social, political and cultural values, opinions, information and interests to find expression through the media”. More specifically, it understands media pluralism to mean the diversity of media supply, use and distribution in relation to: (1) ownership and control; (2) media types and genres; (3) political viewpoints; (4) cultural expressions; and (5) local and regional interests.¹⁰

Although the term has been used in the discipline of media studies for decades, the concept of “new media” has only comparatively recently been the subject of any governmental and intergovernmental discussions. This is partly because policy-makers have lagged far behind technological developments in this area. “New media” is no longer really “new”. This is the first OSCE meeting on the “new media” as such, although the OSCE has addressed “Media and the Internet” since the Amsterdam Recommendations of 2003; the Council of Europe discussed “a new notion of media” at their landmark Ministerial Conference in May 2009, while the Committee on New Media is reviewing what the “media” in more specific terms. “New media” should be deemed to encompass any media that allows on-demand access to content any time, anywhere, on any digital device whilst allowing interactive user feedback and participation, as well as community formation around media content. “New media” allows the usage, but also creation, publishing and distribution of media content by non-traditional media actors, notably ordinary people. The transformation of the media wrought by the Internet is the dominant example of the “new media landscape”,

⁹ The European Court of Human Rights has held that a pluralistic media is of essential value to democracy and has imposed obligations on states to guarantee that numerous media operators are present in a given national market (*Lentia v Austria* (1993)). The European Commission on Human Rights supported the proposition that under Article 10 ECHR states have a positive, enforceable obligation to avoid excessive media concentration (*De Geillustreerde Pers NV v Netherlands* (1976) and *Verein Alternatives Lokalradio Bern v Switzerland* (1986)). The Court has recognised that one of the ways to media pluralism is to prevent increasingly powerful financial groups from controlling the advertising sector (*Tierfabriken v Switzerland* (2002)). See Ewa Komorek, “The European Court of Human Rights, The Council of Europe and the Issue of Media Pluralism” [2009] 3 *European Human Rights Law Review* 395-414.

¹⁰ *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach* (European Communities, 2009). The study proposes a set of indicators for media pluralism and provides in-depth description of these indicators: legal indicators; socio-demographic indicators; and economic indicators.

although any media that enables digital interactivity such as digital broadcasting and mobile communications might be included in the concept of “new media”.

The “new media landscape” and policy responses to the Internet in particular have affected the pluralistic quality of content that is supplied, distributed and used to the public. There are obvious opportunities to foster pluralism through new media that provides more opportunities for individuals to express themselves, communicate, to create content and to access content.

The new media landscape affords mechanisms to address the problems encountered by traditional media in promoting pluralism in eight key ways by:¹¹

1. helping to overcome limitations created by supply limitations in the traditional media;
2. increasing the production of independent content;
3. improving representation of a range of groups who may be underrepresented in traditional media;
4. developing regional, local and community media which is lacking or absent;
5. increasing the number of information sources;
6. ameliorating the effects of media concentration and foreign ownership in traditional media;
7. providing alternative information views when political bias exists in the traditional media;
8. allowing content to be inexpensively produced and distributed so that anyone with access to the Internet can write a blog, post comment, upload a You Tube video or podcast, update or tweet.

New media can therefore be seen in these ways as a solution to the conditions limiting pluralism in the traditional media and as a key factor diminishing the need for existing policies to promote pluralism. At the same time, although new media technologies provide the capabilities and opportunities to overcome existing constraints on pluralism, these possibilities do not in themselves ensure greater pluralism than at present.

One of the challenges to the possibilities of new media fostering pluralism therefore is the lack of universal access to such media – even amongst OSCE states which include states whose populations enjoy amongst the highest levels of effective access to the Internet in the world and states who have recognised Internet access as a fundamental human right (Estonia, 2000; France (Constitutional Court), 2009; Finland 2009).

The second and major set of challenge relates restrictions of content on the Internet by states which can only have a detrimental impact on pluralism.¹²

1. Specific measures to block or filter content which are often hidden from the public (eg provisions of the controversial Hungarian Media Law (amended)

¹¹ Adapted from R Picard, “Impact of Recent Technological and Economic Trends on Policies for Media Pluralism”, *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach* Stakeholder Workshop, Brussels, 8 June 2009.

¹² In his recent report, the Special Rapporteur on Freedom of Opinion and Expression highlighted key challenges to freedom of expression and the right to information through restrictions on the Internet. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May 2011, A/HRC/17/27.

which give powers to the Media Council to block any internet-based news outlets);¹³

2. Imposition of intermediary liability through specific laws governing Internet (eg Turkey, Law 5651 on the Prevention of Crime Committed in the Information Technology Domain of 2007 which imposes obligations on content providers, ISPs and website hosts and mandates an agency to issue administrative orders to block websites for content hosted outside Turkey and take down types of unlawful content such as crimes against Atatürk) or privacy and data protection laws;
3. Cyber-attacks (distributed denial of service attacks and hacking into accounts or computer networks) which are often conducted at key political moments and target human rights and dissident groups;
4. Monitoring and collection of information about individual communications and activities on the Internet result in undermining of confidence of Internet;
5. Criminalisation of legitimate expression on the Internet (eg of bloggers critical of government);
6. Media laws and judicial decisions which restrict Internet based media (egs compulsory state registration schemes proposed by Minister of Information in Belarus; decision of Polish Supreme Court that all electronic press must be registered following a proposal for amendment to the press law which would have had similar effect)

The third challenge concerns what appears to be ambivalence and inconsistency on the part of states towards the Internet freedom, pluralism through the Internet as well as the relevance of international legal standards on freedom of expression to Internet-based media. On the one hand, political leaders in high profile statements have identified Internet freedom as an objective for their governments. Hillary Clinton has given numerous speeches and statements on the importance of Internet freedom since January 2010. Ireland has recently committed to promoting an “open and public” Internet during its upcoming chairmanship of the OSCE in 2010 for instance. On the other hand, there have also been calls for the development of a “civilised Internet” and tighter controls on the Internet by President Sarkozy at the e-G8 Forum in Paris in May 2011. This resultant Deauville Declaration refers to the Internet as a “helpful tool”, states that “the exercise of individual rights and responsibility have to be achieved simultaneously” and fails to properly recognise international commitments on freedom of expression. Such rhetoric serves to impede rather than encourage the development of pluralistic Internet-based media. There has been a failure by states to adopt a strong approach towards protecting “network neutrality” including the principle of non-discrimination in the treatment of Internet traffic.¹⁴

The fourth and final challenge concerns the policy gaps that exist vis-à-vis new media. There is a need for policy makers to formulate specific and positive policies and

¹³ Child pornography is a clear exception where blocking measures can be justified provided that national law is sufficiently precise and there are effective safeguards against abuse or misuse including oversight and review by an independent and impartial tribunal or regulating body. The amendments to the Hungarian media laws exempted on-demand media from the task of providing “authentic, rapid and accurate information” on public affairs at local, national and EU levels - although this obligation remains for other media.

¹⁴ “Network neutrality” requires states and ISPs to adopt rules protecting the following principles: (1) the Internet should remain open so that everyone is able to send and receive content, use the services and run the applications of their choice within the law; (2) there should be no discrimination in the treatment of Internet traffic, based on the device, content, author, or the origin and/or destination of the content, service or application; (3) meaningful information about any traffic management practices must be available to all stakeholders, end users and businesses who rely on broadband infrastructure to reach their customers. The US Federal Communications Commission adopted rules on “network neutrality” in December 2010 but in ARTICLE 19’s view these provide limited protection to users and providers of information.

approaches to promote pluralism through new media.¹⁵ Such policies should include those investing in education about new media, promoting Internet literacy skills, so that a wide range of individuals understand the benefits of new media, particularly Internet-based media and of contributing information themselves. They should also include monitoring initiatives on media pluralism that should specifically include indicators relating to new media. Such policies should be premised on the distinctiveness of new media as interactive, as well as an individual rights approach to pluralism, rather than the traditional supplier or content focussed paradigm of pluralism with respect to traditional media.

¹⁵ These policies should also address doubts about the capacity of new media, Internet-based media in particular, to offer an alternative, even a corrective to traditional media.

Mr. André Lange, Head of Department for Information on Markets and Financing for the European Audiovisual Observatory

(From PPT Presentation)

THE EUROPEAN AUDIOVISUAL OBSERVATORY

Who we are

- ... a pan-European public service body operating within the legal framework of the Council of Europe
- ... financed by 36 European Member States and the European Union, represented by the European Commission

Mission

- ... to increase transparency by providing information about the European audiovisual sector: TV, Cinema, Video, New Media

What we do

- ... collect and prepare key facts & figures covering our 36 Member States
- ... follow relevant legal developments on the national as well as pan-European level

1

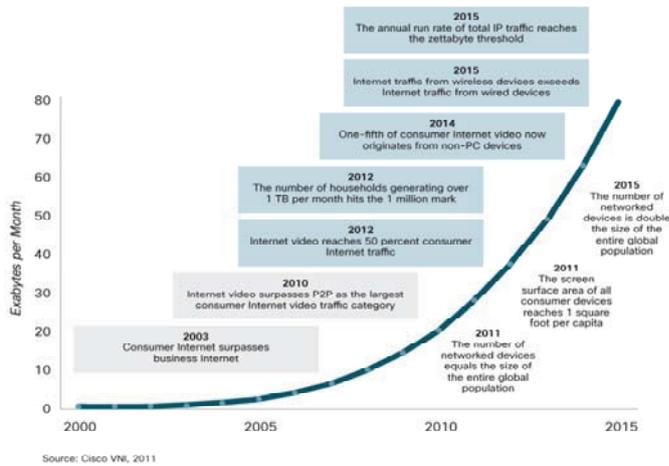
RECENT TRENDS

- The main recent trends in media consumption
 - Development of Internet and its impact on the classical media
 - The multichannel TV universe - Fragmentation of the TV audience
 - Decline of the printed press
- The economic challenges for the freedom of expression and media pluralism
 - Free vs Pay
 - Evolution of advertising market
 - Redefinition media concentration , role of gatekeepers and access to the market
- Other issues to be discussed

2

WORLD IP TRAFFIC DEVELOPMENT (2000-2015) - Exabytes per Month

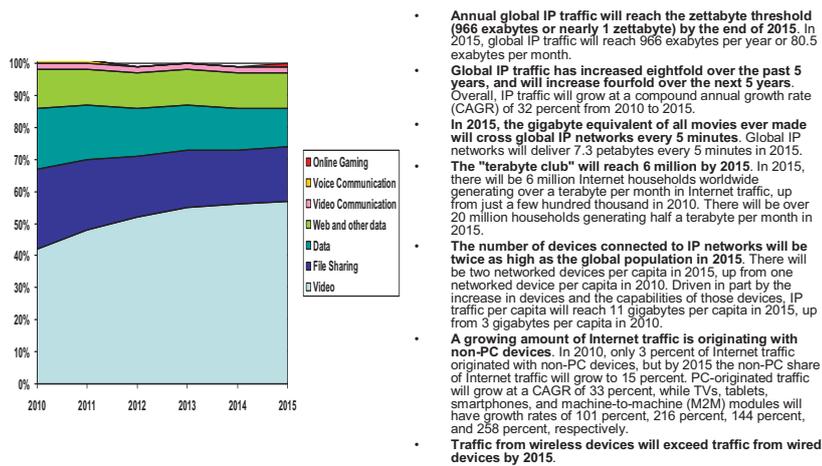
Source : CISCO VNI, June 2011



3

FORECAST OF GROWTH OF THE WORLD IP TRAFFIC (2010-2015)

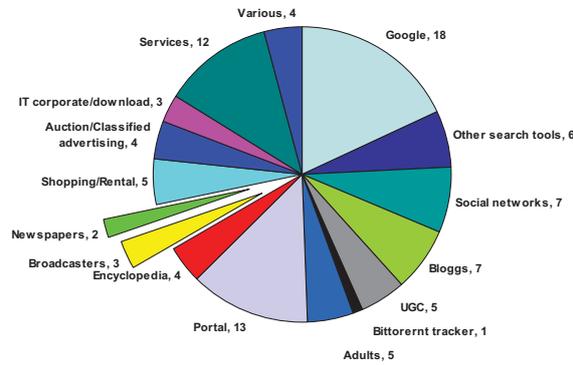
Source : CISCO



4

THE 100 MOST POPULAR WEBSITES BY CATEGORIES IN JUNE 2011

Source : European Audiovisual Observatory from Alexa ranking

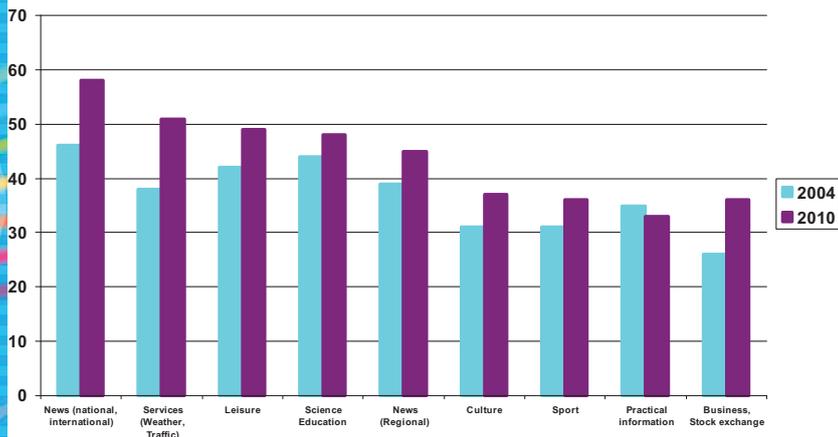


5

INFORMATION SEARCH OF THE WEB BY GENRES IN GERMANY (2004-2010)

(% of Web users regularly using the web for)

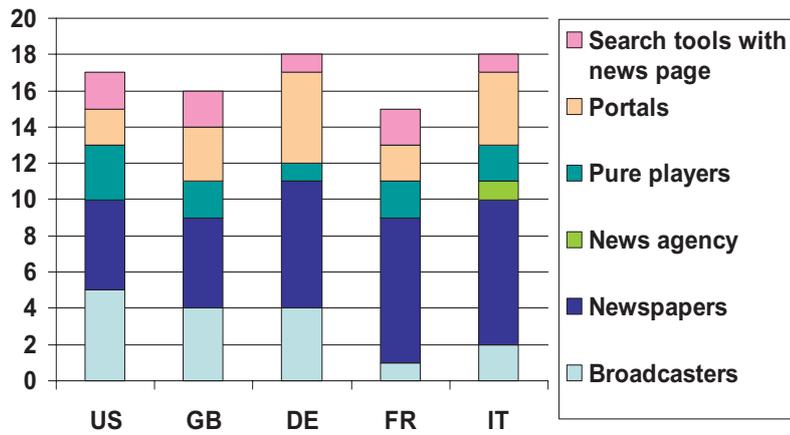
Source : ARD/ZDF Onlinestudien 2004-2010



6

NEWS WEBSITES AMONGST THE 100 TOP WEBSITES IN THE COUNTRY – JUNE 2011

Source : European Audiovisual Observatory from Alexa rankings



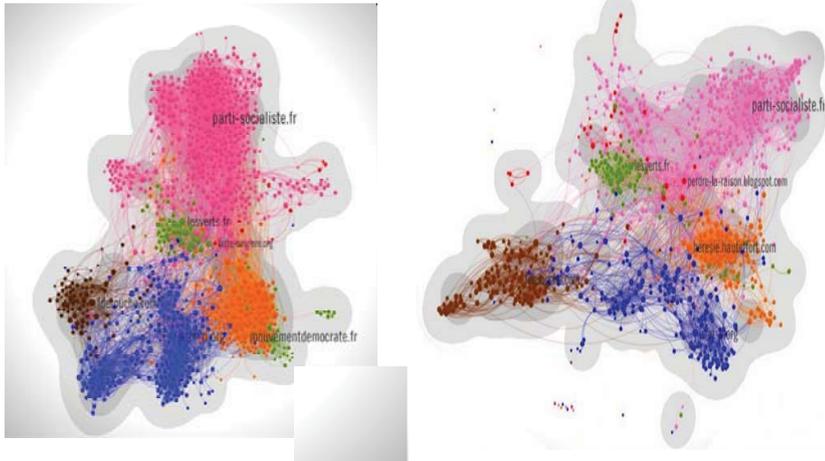
7

THE « BLOGOSPHERE » AS NEW FORM OF PUBLIC SPHERE – CARTOGRAPHY OF POLITICAL BLOGS IN FRANCE (2009-2011)

Source : Linkfluence

2009 : 1059

2011 : 1052



8

IMPACT OF THE INTERNET ON THE CULTURAL PRODUCT SALES : THE LONG TAIL THEORY (ANDERSON, 2004) – REVIEW BY A. ELBERSE, 2008

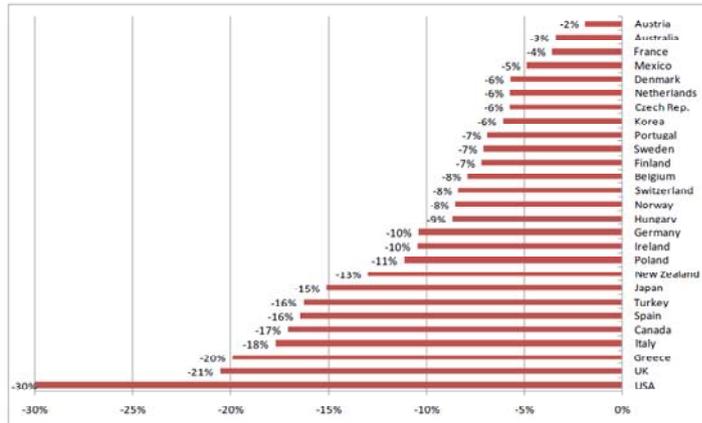


9

ESTIMATED NEWSPAPER PUBLISHING MARKET DECLINE IN OECD COUNTRIES 2007-2009 (in %)

Source : OECD

Figure 2. Estimated newspaper publishing market decline in OECD countries, 2007-2009 (in per cent)

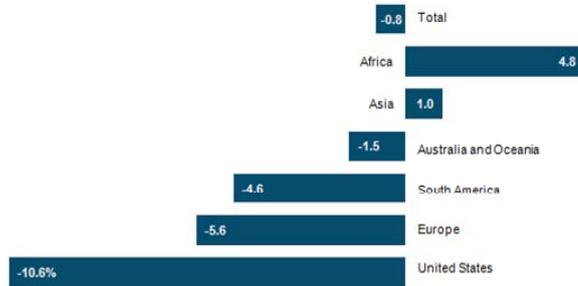


10

DECLINE OF PAID NEWSPAPER CIRCULATION (2009/2008) in %

Source: World Association of Newspapers 2010

Paid Newspaper Circulation
Percentage Change 2008 to 2009



Source: World Association of Newspapers 2010 World Press Trends annual report

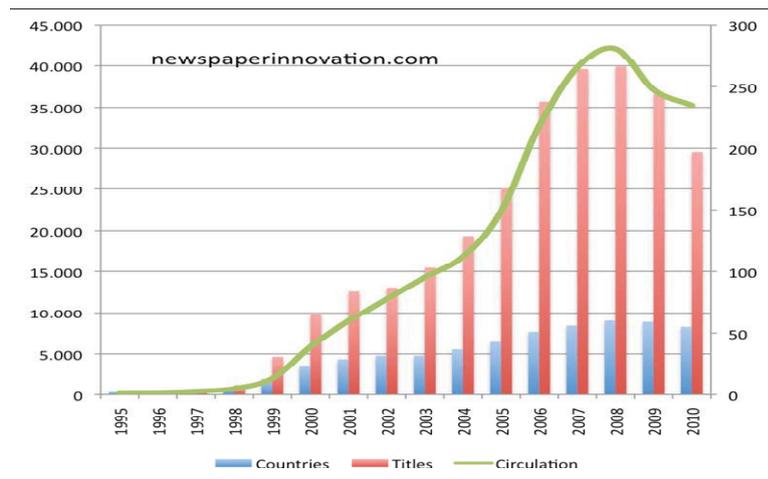
Note: * Total represents circulation figures by continent. US included for comparison purposes. Circulation figure for the United States sourced from Audit Bureau of Circulations, previous six months ending September 30, 2009.

PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM
2011 STATE OF THE NEWS MEDIA

11

DECLINE OF FREE DAILIES IN THE WORLD (1995-2010)

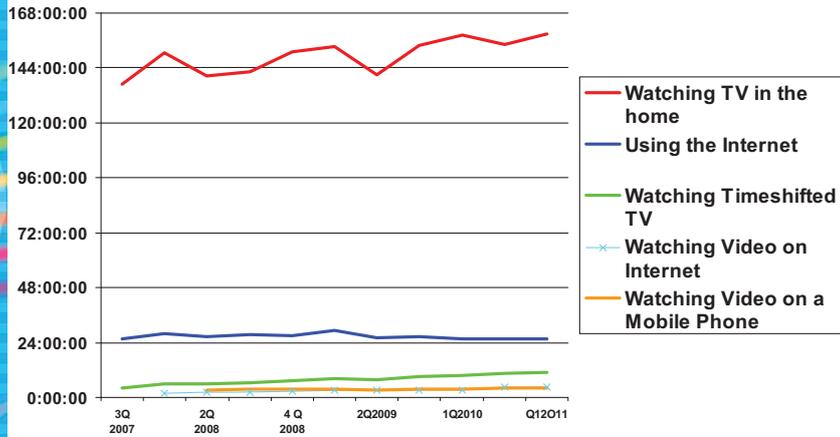
Source : Newspaperinnovation.com



12

MONTHLY TIME SPENT WITH TV, TIME SHIFTED TV, INTERNET, VIDEO ON INTERNET AND MOBILE PHONE IN US (2007-2011) in hours

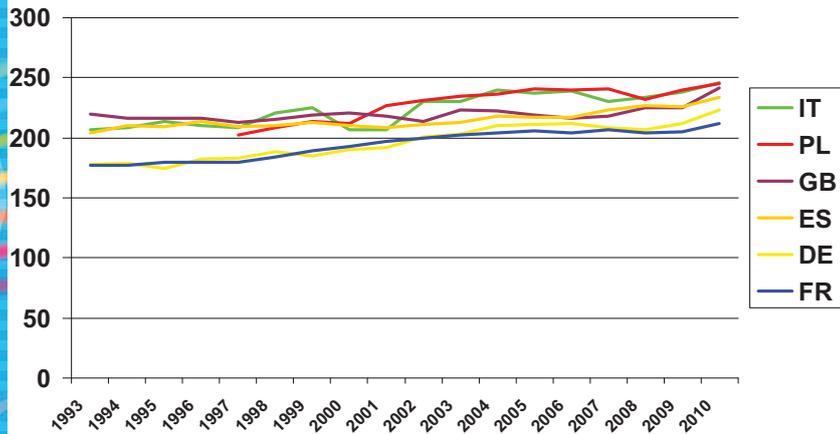
Source : Nielsen



13

AVERAGE DAILY INDIVIDUAL VIEWING TIME (1993-2010) IN THE 6 LEADING EUROPEAN COUNTRIES (in minutes/day)

Source : Eurodata-TV



14

RATE OF PENETRATION OF DIGITAL TV IN EUROPE in% of HH)

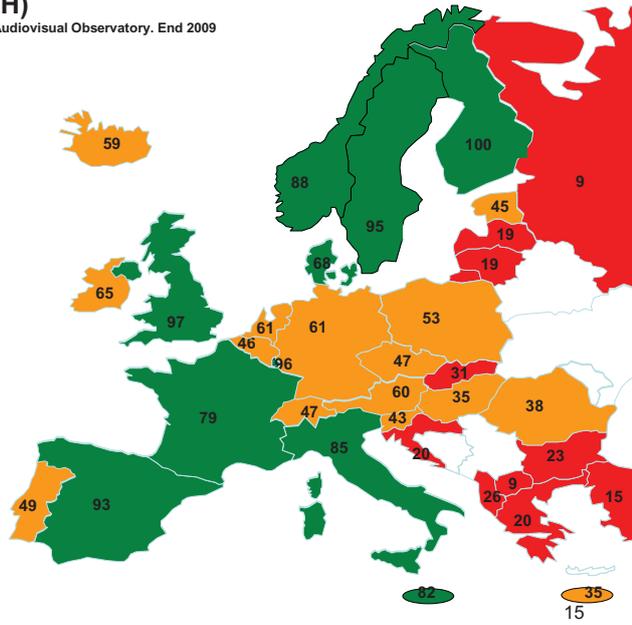
Source : Screen Digest/ European Audiovisual Observatory. End 2009

Europe 36 : 55,7%
EU 27 : 71%

66% : AT, DK, ES, FI, FR, GB, IT, LU, MT, SE (+NO)

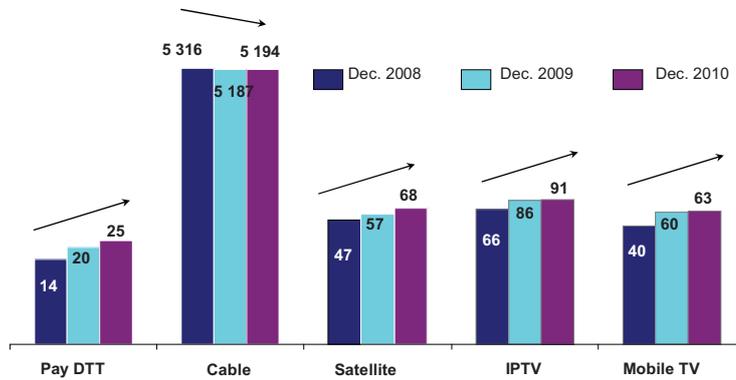
33-66%: BE, CY, CZ, DE, EE, HU, IE, NL, PL, PT, RO, SI (+CH, IS)

<33%: BG, GR, LT, SK (+AL, HR, MK, TR, RU)



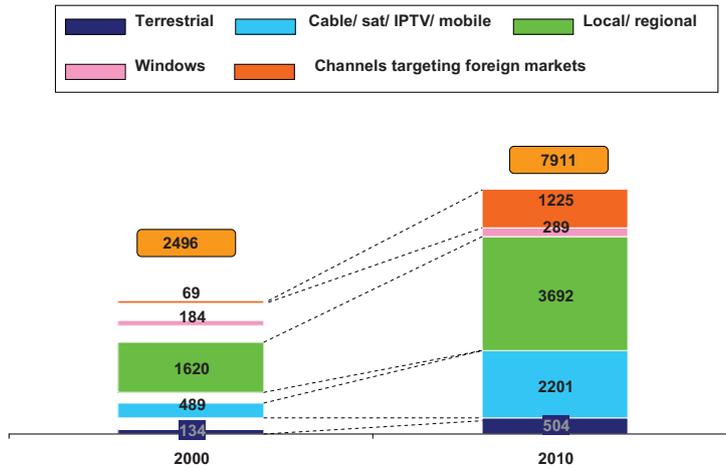
NUMBER OF TV DISTRIBUTION PLATFORMS IN THE EU (2008-2010)

Source : European Audiovisual observatory / MAVISE



NUMBER OF TV CHANNELS IN THE EUROPEAN UNION (2000-2010)

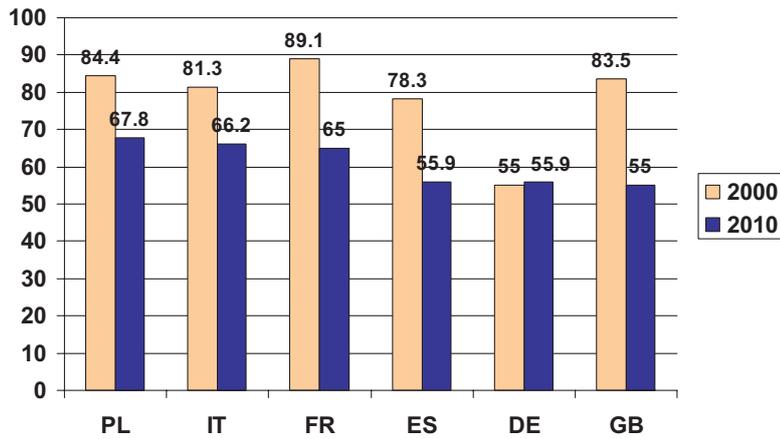
Source : European Audiovisual Observatory / MAVISE



17

CUMULATED DAILY AUDIENCE MARKET SHARES OF THE 5 LEADING TV CHANNELS IN 6 EUROPEAN MAJOR MARKETS (2000-2010)

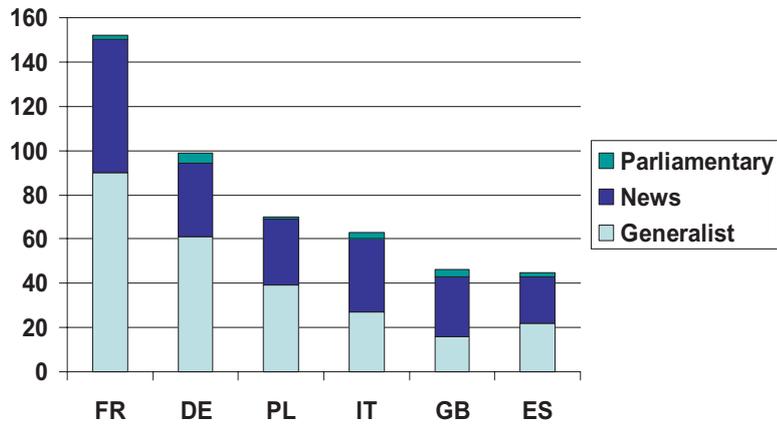
Source : European Audiovisual Observatory on Eurodata-TV data



18

NUMBER OF CHANNELS WITH INFORMATION OR DEBATES IN 6 EUROPEAN COUNTRIES (December 2010)

Source : European Audiovisual Observatory / MAVISE



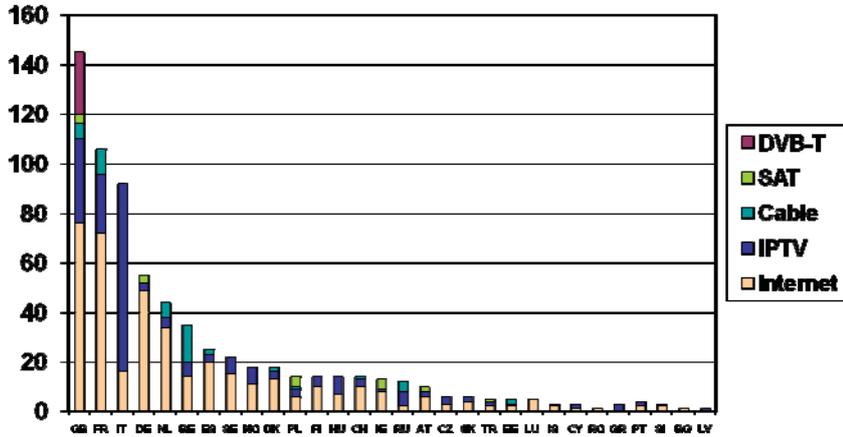
19

TYPES OF ON-DEMAND SUPPLY IN RELATION WITH THE KIND OF PLATFORMS

	nVoD	VoD services (film, TV catalogues)	Catch-up	Archives on-demand	Video sharing	Piracy	Social network
Direct Online		X	X	X	X	Streaming P2P	X
Mobile Internet		X	X	X	X	X	X
VoD Stores on-line		X	X		Videopodcasts		
Cable	X	X	X				
IPTV		X	X		X	X	
Satellite	X	Push VoD	Push & Hybrid (Web)				
DTT	X	Push VoD	Push				
Over the top (OTT)		X	X	?			
Connected TV		X	X	X	X (Viewing)		X (Viewing)

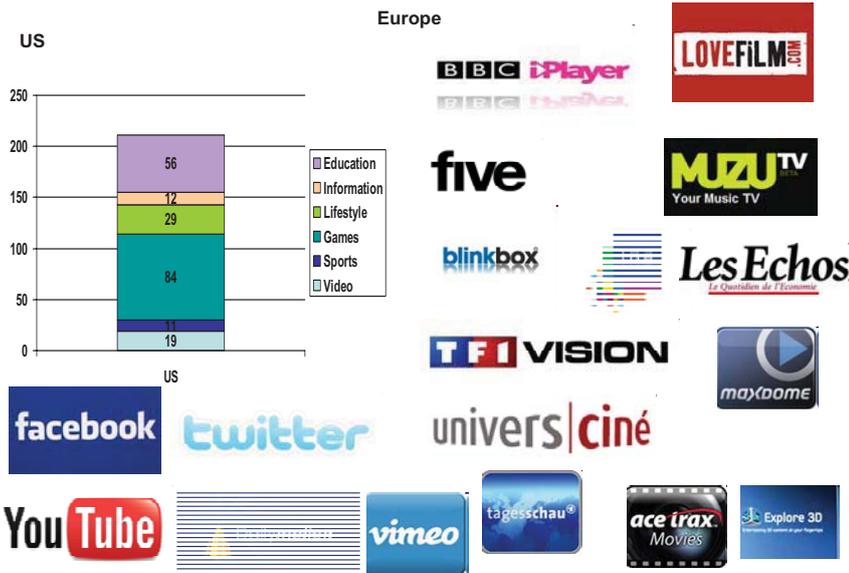
20

NUMBER OF ON-DEMAND AUDIOVISUAL SERVICES IN EUROPE (December 2008): 698 services
 Source : OBS



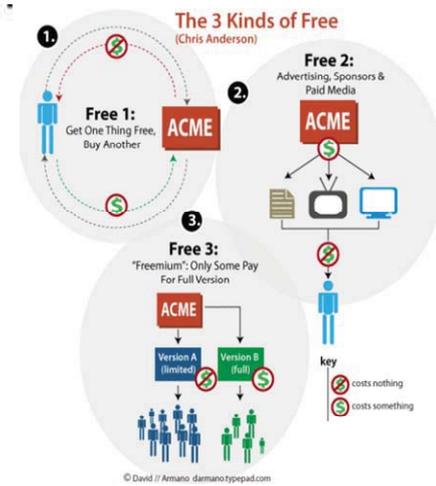
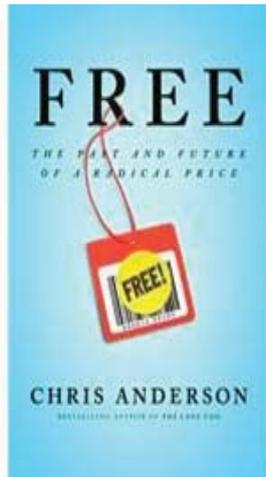
21

2011: SAMSUNG APPLICATIONS FOR CONNECTED TV SETS (June 2011)



22

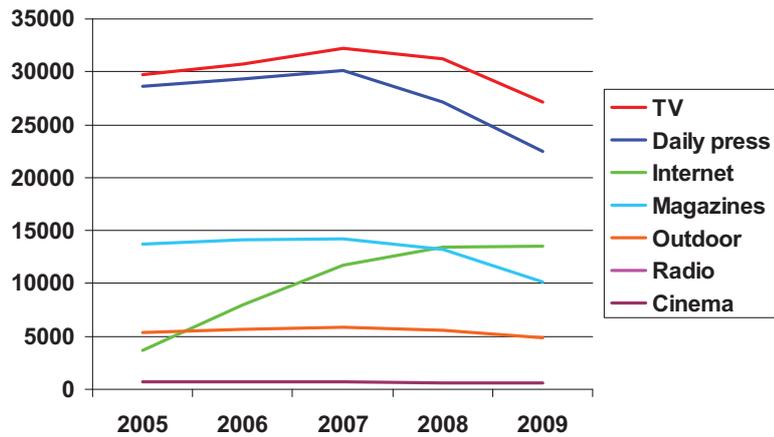
THE ECONOMY OF THE FREE



23

DISPLAY ADSPEND IN THE EUROPEAN UNION (2005-2009) EUR million

Source : WARC



24

WILLINGNESS TO PAY FOR NEWS ?

The exemple of *The Times*

Source : Paidcontent, 30 June 2011

- "We intend to charge for our news websites. The *Wall Street Journal's* WSJ.com is the world's most successful paid news site and we will be using our profitable experience there and the resulting unique skills throughout News Corp. to increase our revenues from all our content." Rupert MURDOCH, 5 August 2009
- One year after it introduced digital charges, News Corp.'s Times Newspapers in the UK says it has 101,036 digital subscribers across the web, tablets and e-readers.
- Since the £2 weekly subscription is billed as £8.66 per month, this would seem to give the publisher **£874,971 in monthly paid digital revenue.**
- The publisher is especially keen on tablets. "The Times is **downloaded onto an average of 35,000 iPads every day**, an increase of 40% in the 4 months since February". "The average for *The Sunday Times* is 31,000, an increase of 41%."

@PaulLomax @currybet We're making more money now than we did before. 100k subs is more valuable than 22m drivebys. Sorry about that.

less than a minute ago via web ☆ Favorite ↗
Retweet ↶ Reply

 **Tom Whitwell**
TomWhitwell



25

OTHER ISSUES TO BE DISCUSSED

- Impact of the new business models on the quality of journalism
- Role of the UGC and social networks in the production of news.
- Role, missions and financing of the public media
- Internationalisation of the public sphere. The leading country impose *de facto* its rules to the rest of the world.
- Fragmentation of the public sphere.
- Impact of digital technologies on IPR (piracy, financing of creation, of production of news)
- Efficiency of self-regulation
- Media literacy.
- Respect of privacy.

26

SESSION 2: Regulatory aspects of digital switchover

Maja Cappello, Audiovisual and Multimedia Content Directorate of the Communications Regulatory Authority in Italy

(From PPT Presentation)



Regulatory aspects of digital switch-over: the experience of Italy

Maja Cappello

Italian communications authority (AGCOM)

**OSCE Supplementary Human Dimension Meeting
PROMOTION OF PLURALISM IN NEW MEDIA
Vienna, 7-8 July 2011**

Summary

- **Italy's regulatory process for the allocation of frequencies**
- **Some figures from the switchover process in Italy**
- **The challenges of the digital dividend**
- **Plurality vs pluralism and scarcity of frequencies vs scarcity of content**



Pluralism, frequencies and regulation: the need for the right mix

Media pluralism is an essential pillar of the right to information and freedom of expression.

This goal is not reached by having a large number of channels, but, rather, by providing a multitude of players the chance to access to the market in a competition regime and a level playing field.

For this purpose, good regulatory tools are crucial.



Summary

- Italy's regulatory process for the allocation of frequencies
- Some figures from the switchover process in Italy
- The challenges of the digital dividend
- Plurality vs pluralism and scarcity of frequencies vs scarcity of content



The frequency planning (2/2)

The allocation of frequencies

(AGCOM Deliberations no. 300/10/CONS, 497/10/CONS, 330/11/CONS)

The plan individuates 25 national DTT networks for 56 channels assigned to Italy by the Geneva conference (8 in VHF-III band and 48 in UHF-IV and V bands):

- 21 DVB-T networks
- 4 DVB-H networks
- 1/3 of the frequencies are reserved to local broadcasting



Summary

- Italy's regulatory process for the allocation of frequencies
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- Plurality vs pluralism and scarcity of frequencies vs scarcity of content



The planned networks

MUX	Type	Channel	MUX	Type	Channel
1	Regional DTT	50, + 1 HRP channel dedicated for each region	14	National DTT	CHANNEL 40
2	National DTT	CHANNEL 8	15	National DTT	CHANNEL 51
3	National DTT	CHANNEL 9	16	National DTT	CHANNEL 52
4	National DTT	CHANNEL 26	17	National DTT	CHANNEL 55
5	National DTT	CHANNEL 20	18	National DTT	CHANNEL 56
6	National DTT	CHANNEL 30	19	National DTT	CHANNEL 57
7	National DTT	CHANNEL 36	20	National DTT	CHANNEL 58
8	National DTT	CHANNEL 25	21	National DTT	CHANNEL 60
9	National DTT	CHANNEL 39	22	DVB-H	CHANNEL 39
10	National DTT	CHANNEL 41	23	DVB-H	CHANNEL 37
11	National DTT	CHANNEL 51	24	DVB-H	CHANNEL 34
12	National DTT	CHANNEL 47	25	DVB-H	CHANNEL 31
13	National DTT	CHANNEL 48		DAR/DMB	CH 10, 6, 7, 10



The switchover process

SWITCH-OVER "DIGITAL ISLAND" CALENDAR		
2008	II sem	Area 16: Sardegna
2009	I sem	Area 2: Valle d'Aosta
	II sem	Area 1: Piemonte Occidentale Area 4: Trentino Alto Adige Area 12: Lazio Area 13: Campania
2010	II sem	Area 3: Piemonte orientale e Lombardia Area 5: Emilia Romagna Area 6: Veneto Area 7: Friuli Venezia Giulia
2011	II sem	Area 8: Liguria Area 9: Toscana e Umbria Area 10: Marche Area 11: Abruzzo e Molise
2012	II sem	Area 14: Basilicata e Puglia Area 15: Sicilia e Calabria



DTT comparison

DTT in Italy (2004)

- 4 DTT networks
- 14 FTA programmes
- No PayTV
- No MTV
- ca 400 transmitters for DTT networks
- About 300.000 decoders/STB sell-out

DTT in Italy (2011)

- 8 DTT networks
- 40+ programmes
- 2 PayTV offers
- 2 MTV Mux (3 offers)
- +3.000 transmitters for DTT networks
- +40 millions decoders/STB/iDTV sell-out



Digital TV receivers

DTT receivers end

2010:

- 47 millions DTT receivers sold in Italy since 2004
- 19.9 millions are integrated (42.4% integrated iDTV)
- The rest 27.1 million (57%) are external STB



The digital viewers

Overview end 2010:

- Digital terrestrial television (DTT):
 - 19,5 millions of households with DTT receiver
- Satellite television (DTH):
 - More than 4.8 millions (pay) + 1 FTA operator (plus some small PTV Ops)
- Mobile television (MTV):
 - several hundred thousand
- IPTV (Internet TV):
 - several hundred thousand

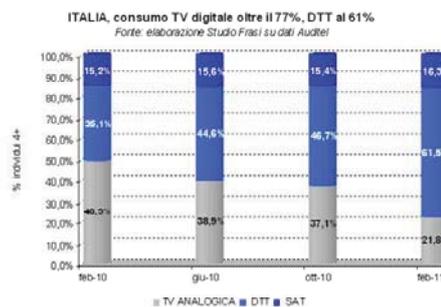


Digital TV viewing rate

Digital TV viewing

beg 2011:

- DTT reached 60% of total viewing
- Digital satellite platform (free + pay) reached 16,4%
- Total DTV (Digital TV: DTT+ SAT+IPTV) reached 77,4%



The digital offers

Overview end 2010:

- **DTT:** DTT Mux (both at national and at local level; 6 national Mux operators; > 30 FTA programs, 2 DTT pay offers)
- **IPTV** (xDSL or optical fiber): Several operators: Fastweb, Telecom, Wind/Infostrada
- **DTH:** Satellite pay TV offer from SKY Italia (+ some other minor PTV offers) + FTA offer (Tivu Sat)
- **MTV:** MTV commercial offers from 2 mobile operators (H3G, TIM) - 2 DVB-H Mux

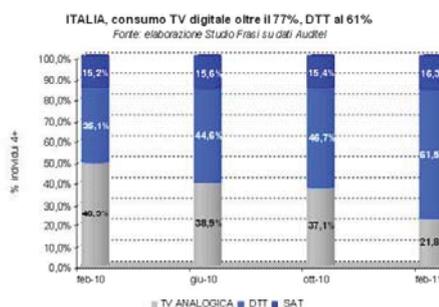


Digital TV penetration

DTT penetration

end 2010:

- DTT penetration in Italy grew to 79%
- 19.5 millions of households with at least 1 DTT receiver
- 33.2 millions total DTT receivers in Italian households



Summary

- Italy's regulatory process for the allocation of frequencies
- Some figures from the switchover process in Italy
- **The challenges of the digital dividend**
- Plurality vs pluralism and scarcity of frequencies vs scarcity of content



Digital Dividend

- **The digital dividend spectrum is becoming available in frequency bands below 1GHz as a result of the transition to all-digital terrestrial television services and is an essential and valuable public resource.**
- **It is Europe wide recognized that to maximize the potential benefits from the digital dividend, spectrum must be used and coordinated efficiently while respecting specific national competencies and requirements.**
- **Mobile broadband towards the 800 MHz band.**



Italy's approach to digital dividend

The assignment of new frequencies (1/2)

(AGCOM Deliberations no. 127/11/CONS)

- **Public consultation issued by AGCOM**
 - on procedure for the assignment of frequencies available in the bands of 800 MHz, 1.800 MHz, 2.000 MHz and 2.600 MHz
 - to enhance effective competition in the usage of other mobile frequencies at 900 MHz, 1.800 MHz and 2.100 MHz.



Italy's approach to digital dividend

The assignment of new frequencies (2/2)

(AGCOM Deliberations no. 127/11/CONS)

- **Focus on 800 MHz (790-862 MHz)**
- **By 2013 likely amendment of the National frequency plan in order to change usage from broadcast to electronic communications systems**
- **Contest type: Auction**
- **800 MHz channel plan (block size, technical parameters, coverage and rights of use obligations)**



Summary

- Italy's regulatory process for the allocation of frequencies
- Some figures from the switchover process in Italy
- The challenges of the digital dividend
- **Plurality vs pluralism and scarcity of frequencies vs scarcity of content**



To be plural or pluralistic

- **A plural market is not necessarily pluralistic.**
- **The risk is that a large amount of channels might belong to the same economic group.**
- **Pluralism indicators should therefore combine both technical and economical parameters.**



Content accessibility

- Must carry (networks) and must offer (content) rules might compensate for market distortions.
- Rights holders will probably need to explore new exploitation mechanisms in the online environment.
- Access to content as a pre-condition to pluralism.



Thank You

AGCOM

m.cappello@agcom.it

**Mr. Emir Povlakić, Deputy Director for Broadcasting at the Regulatory
Communication Agency of Bosnia and Herzegovina**

Introduction

In the vast majority of cases, the introduction of digital terrestrial television (DTT) has required an adaptation of the legal framework governing broadcasting licensing. The introducing DTT has been and still is an issue in several countries using different approaches regarding regulation and licensing models.

The different approaches and licensing models on DTT all have their advantages and disadvantages which a state/regulator must consider before choosing. What is the first choice in one state might not be suitable or considered at all in another. Discussing DTT one tends to concentrate on technical details forgetting the consumer perspective. The vast majority of the consumers aren't interested in technique but in content. Given the opportunity to choose between different platforms a consumer will almost certainly choose the most advantageous from a content point of view. Establishing DTT leads to more channels, more content, for the consumer. In many countries DTT also means a possibility to broadcast not only nationwide but also local/ regional programme services.

Having all this in mind, the question is what will happen with the PSB in such an environment? There have been various paradigms that feed discussions regarding the possible and 'legitimate' roles of public service broadcasters (PSB) in a globalizing and digital multi-platform and multi-channel media environment. New trends that reconfigure the whole media landscape are especially challenging for PSB since they not only change the technical condition under which they are to operate, but also make necessary the re-conceptualisation of their traditional role and remit. However, many would argue that rationales for PSB have remained relatively unchanged. Contributing to diversity and quality in broadcasting, providing universal access to independent information, offering a platform for debate and thereby contributing to national culture and identity are still among the most common objectives for PSB in European countries. But the way in which these objectives are realized is shifting, a special attention is paid to the positions of technology and culture in the discourses on what constitutes an underlying principle for future of PSB.

More and more PSBs expand their activities to digital platforms, facing new challenges, which are even more pronounced and presented in the countries such is Bosnia and Herzegovina where the process of economic, social and cultural transformation is lagging behind. PSB that switched to digital start with digital thematic television and radio channels, offering programme related websites, news letters, mailing lists, and other online services and sometimes even gaming or mobile services. Some believe that PSBs have responded too slowly and inadequately to the new opportunities of a digital and networked world. On one hand they operate in an increasingly commercial environment and sometimes adopt similar tactics to gain audience reach, while on the other hand they attempt to maintain and re-invent public values in order to legitimize their specific role as publicly funded media corporations. The PSBs in many countries have to undergo certain procedures before they are allowed to start or continue their digital services and sometimes are burdened with extra requirements, such as for instance a certain amount of investments in new original content, which are a condition for approval.

Regardless of any regulatory readiness for the digital age, technological and market changes are inevitably arriving urging for new, so to say reformatory approach towards the future development of the PSBs. We have to be aware of the importance of the

public services content in new media platforms and the entire digital media environment in the context of public interest values, which should to be tested by regulators.

The regulators with their mandates in this process should among other important issues, contribute to the expansion of media's role, especially public service broadcasters in building stronger and freer societies, work to develop a vibrant public interest media service in creating channels of high-quality content, representing diverse and independent perspectives, strengthening technology and distribution systems that allow people to access and contribute to this material, boosting public discussion and research about the ways in which media can better engage and inform all citizens.

Nevertheless, for successful implementation of the digital switch-over, it is necessary that the key subjects, starting from executive, legislative and regulatory bodies do all the necessary work in their field of competence and to offer significant support to the whole process of digital switch-over. It is of special importance to set the deadline for analogue terrestrial broadcasting switch-off. Active broadcaster involvement in the process of digital switch-over is significant because they will face great challenges in a new business surrounding. Improvement in their present offers and new contents and services will dominantly influence the trust and support to the process. If better offer fails, this process could face resistance with those who see no interest in transition to new technology because it brings them additional expenses. That would raise the question of survival for those broadcasters who timely don't recognize all the benefits of digitalization and who don't engage in the implementation process.

BiH experience

Legislation in analogue era:

- Rule for terrestrial broadcasting of RTV programs
- Rule for AVM service
- Rule for distribution of RTV programs

Main changes of the licensing system from analogue era to digital are multi-faceted. They account for the separation between transmission (carriage) & content aspects. Whereas in the analogue context, a broadcasting licence holder would often also be the holder of a radio frequency, this is not necessarily the case in the digital context. In the majority of cases, capacity is allocated to one or more network/multiplex operators, as it is envisaged in Bosnia and Herzegovina. As a consequence of this separation between transmission and content aspects, the licensing process may have been in need of a complete restructuring.

With regard to content, the changes reflect and put into effect the policy options chosen by the countries as to whom is given a key role in the licensing procedure: the broadcasters or the multiplex operator. It is envisaged that TV channels are granted a right to disseminate their programme on DTT via a public tender. After obtaining this right via public tender, they have to achieve an agreement with the multiplex operator that holds a frequency intended for digital broadcasting. In Bosnia and Herzegovina, in line with the strategy on digital switchover, the CRA issued a decision establishing terms and condition for the usage of MUX A for DTT broadcasting of PSB. Other procedures such as the granting of rights of digital broadcasting to the existing channels and conducting a public tender for the selection of MUX B operator are pending.

The ratification instrument of the final acts of the Regional conference on radio communications for the planning of a digital terrestrial broadcasting service in parts of Regions 1 and 3, within the frequency band of 174-230 MHz and 470-862 MHz (RRC-06), was deposited with the ITU Secretary General on **16 January 2009**, and it entered into force on the same day.

Strategy on the digital switch-over within the frequency bands of 174-230MHz and 470-862MHz in Bosnia and Herzegovina¹⁶ was prepared by DTT Forum and adopted by Council of Ministers on **June 17th, 2009**. Established in May 2006, the DTT Forum consisted of the Council whose members were representatives of the Council of Ministers BiH and Communications Regulatory Agency, as well as the Secretariat. The Secretariat played a coordinating role and offered technical and administrative support to the five working groups (WG1 - Regulatory, WG2- Programme content, WG3 - Technical, WG4 - Promotion and WG5 – Social and economic aspect) and the DTT Council. The Strategy on Digital switchover stipulates specific DTT procedures for holders of analogue licences, will all be awarded licenses for DTT in the transition period using MUX A (PSB) and MUX B (others). The Strategy is based on principles for promotion of information society development in Bosnia and Herzegovina, encouraging further competition development and pluralism in communication sector, stimulation for creating conditions for continuous development of media freedom and interest protection for all users and operators in communication sector in Bosnia and Herzegovina concerning non-discrimination approach, quality and service prices.

April 2010: the Communications Regulatory Agency established terms and conditions for the utilization of Multiplex A (MUX A) by public broadcasting services for terrestrial digital television broadcasting during the transition period.

- *Odluka o načinu korištenja Multipleks-a A (MUX A) za potrebe zemaljskog digitalnog televizijskog emitovanja u BiH u tranzicijskom periodu*

Decision on manners of utilization of Multiplex A (MUX A) for terrestrial digital television broadcasting of three PBS programs in transition period (BiH Official Gazette No. 38/10 of 10 May 2010).

The main characteristics of the decision are: the usage of Multiplex A for digital terrestrial broadcasting of three PBS programs (for the entire territory of the B&H) has to be through common structure and within usage of synchronized networks in digital allotments. The frequency spectrum as well as infrastructure and capacity have to be used efficiently and effectively, and, until full establishment and functioning of the Corporation of PBS, the requests to the CRA will be addressed by the System board on behalf of the three PBS.

On **14 July 2010**, the Council of Ministers of Bosnia and Herzegovina adopted a Decision endorsing the Project of digitalization of public broadcasting service microwave links.

http://dtb.ba/dtt_sub_05_vijesti.html

The Council of Ministers issued a call for tenders for the supply of transmission and broadcasting equipment to be used in the process of digitalization for PBS in **February 2011**. It was the international tender opened for 42 days (30 days for appeal, 60 days for equipment delivery) It is expected that the entire process will be completed by the end of June 2011.

¹⁶ http://dtb.ba/eng/dtt_sub_17_strategija.html

Also in **February 2011**, the Ministry of Transport and Communications nominated the Expert Commission of DTT Forum whose main task is to develop the Action Plan which will entail in detail all the activities and phases in this process, including the time-frames and responsible institutions and organizations, as well as to monitor the digital switchover in line with the above Strategy. The Commission's activities have still not commenced.

OTHER: www.dtt.ba

SESSION 3: Internet regulation in the OSCE area: Introduction of the first OSCE Internet Matrix

Ms. Sanja Kelly, Senior Researcher and Managing Editor for Freedom House

Ladies and gentlemen, good afternoon,

I would like to thank the OSCE for organizing this conference, which touches upon the fundamental rules that govern the free flow of information on the internet. I would also like to congratulate OSCE and my colleague Dr. Akdeniz on the newly published matrix of internet regulation in the OSCE region, which will be an excellent resource for anyone following these issues, including policymakers, international organizations, scholars, and civil society.

Over the past decade, and particularly in the last few years, the influence of the internet as a means to spread information has steadily expanded. This mounting influence directly corresponds to the growth in the number of users around the world: over two billion people now have access to the internet, and the figure has more than doubled in the past five years. In the OSCE member states alone, there are 750 million internet users. As more people use the internet to communicate, obtain information, socialize, and conduct commerce, governments around the world have stepped up efforts to regulate, and in some instances tightly control, the new medium.

To illuminate the nature of these developments, as well as emerging threats, I will present briefly key findings from Freedom House's study of internet freedom in 37 countries around the globe, which we published in April. Apart from the issues traditionally associated with freedom of expression, our study also evaluated a broader set of issues such as access, privacy, and surveillance. The final output of the project is a 400 page report, which contains a chapter on each country under study, as well as a set of indicators assessing each thematic area. About a quarter of the countries we examined are OSCE members, which will enable me today to compare the situation and lessons learned in select OSCE states with the rest of the world.

Our study has identified a growing set of obstacles that pose a common threat to freedom of expression online. Today, I would like to focus on the following four areas:

#1 Blocking and filtering

Governments around the world have responded to soaring internet penetration rates and the rise of user-generated content by introducing new laws and establishing institutional and technical mechanisms to block what they deem to be undesirable, harmful, or illegal information. In many cases, these measures legitimately target illegal content involving child pornography, copyright infringement, or the incitement of violence. For example, in most states, the authorities have taken measures to combat child pornography by both prosecuting the perpetrators of such crimes, as well as instituting mechanisms that block access to such material.

I am deeply concerned, however, that some governments are also increasingly engaging in deliberate efforts to block access to information related to politics, social issues, and human rights. Of the 37 countries examined in our study, the governments of 15 were found to engage in substantial online blocking of politically relevant content, violating international norms of free expression. These countries restrict users' access to dozens, hundreds, or most often thousands of websites, including those of independent and opposition news outlets, international and local human rights groups, and individual blogs, online videos, or social networking groups. While China, Iran, and Saudi Arabia

have some of the most extensive and sophisticated censorship regimes in the world, some countries in the OSCE region were also found to engage in pervasive blocking.

In Turkey, for example, authorities have taken significant legal steps to limit access to certain information, including some political content. When our study was conducted last year, there were about 5,000 blocked websites in Turkey, but estimates as of last month put that number close to 60,000. While many of the blocked websites contain illegal material, the broad application of the relevant laws has also effectively restricted adults' access to legal content, including, for example, several independent news sites. In addition, access to the website of popular British evolutionary biologist and author Richard Dawkins has been blocked since 2008 after a pro-creationist Islamist claimed that the website content had insulted him, his work, and his religion. YouTube alone was blocked on and off over 20 times in recent few years.

In Kazakhstan, the authorities have engaged in online censorship, though it has been more selective, sporadic, and inconsistent. According to independently conducted tests on two main internet service providers, access is blocked—particularly by Kazakhtelecom—to certain opposition groups' websites, select regional media sites that carry political content, select social networking sites, and a number of proxy sites. For example, a popular blog-hosting platform LiveJournal was blocked by the main internet service providers for two years between 2008 and November 2010, though the government and internet service providers refused to acknowledge the blocking. However, independent technical tests and user surveys confirmed that LiveJournal was indeed inaccessible. Throughout 2010, the website of Respublika, an opposition weekly paper known for its criticism of the government and coverage of sensitive topics such as human rights abuses and high level corruption was blocked for most Kazakh users.

One worrisome aspect was evident across the full spectrum of countries we examined: the arbitrariness and opacity surrounding decisions to restrict particular content. In most authoritarian countries, there is little government effort to inform the public about which content is censored and why. In many cases, authorities avoid confirming that a website has been deliberately blocked and instead remain silent or cite “technical problems.” But in some democracies, decisions to block or remove certain content are also non-transparent and mechanisms on how to contest such decisions remain blurry.

#2 Cyberattacks

Cybercrime has become a growing global problem. Banks lose billions of dollars due to attacks perpetrated by the criminal underworld, and more and more governments are realizing that wars online can sometimes have as serious consequences as wars on the ground. Of particular interest for freedom of expression advocates, however, is the fact that some governments and their sympathizers are increasingly using technical attacks to disrupt activists' online networks and cripple opposition websites. In other words, some governments have started using technical attacks to prevent people from being able to access information that offers alternative points of view—such as alternative news sites or opposition web pages.

China has emerged as a major global source of these types of cyberattacks. The assaults have included denial of service (DoS) attacks on domestic and overseas human rights groups, email messages to foreign journalists that carry malicious software capable of spying on the recipient's computer, and large scale hacking raids on the information systems of financial, defense, and technology companies.

As with offline forms of violence and intimidation, governments seem most likely to resort to cyberattacks when their power is threatened by disputed elections or some other

political crisis. One example of this phenomenon from the OSCE region is Belarus. In the wake of disputed December 2010 elections, the government initiated DoS attacks against opposition websites, dramatically slowing down their connections, and in some instances rendering them completely inaccessible. Belarusian authorities also engaged in a type of web forgery apparently designed to confuse users and provide false information. For example, the country's largest ISP, the state-owned Belpak, in some instances redirected users from independent media sites to nearly identical clones that provided misleading information.

#3 Centralized infrastructure and kill-switch potential

Although it often goes largely unnoticed, centralized government control over a country's connection to international internet traffic poses a significant threat to online free expression, particularly at times of political turmoil. In about one third of the states examined, the authorities have exploited their control over infrastructure to limit widespread access to politically and socially controversial content, or in extreme cases, to cut off access to the internet entirely.

This centralization can take several forms. In some countries, state-run telecommunications companies hold a monopoly on internet service, giving them unchecked control over users' ability to communicate with one another and the outside world. Elsewhere, the state run company's control of the market is not complete, but its dominance is sufficient to significantly influence people's access to information. Thus, for example, when Kazakhtelecom in Kazakhstan blocks a website, it becomes inaccessible to the vast majority of internet users.

As a growing number of governments liberalize the ISP market, such centralization may become less obvious. In countries such as Belarus, a state-controlled company owns the country's network of copper wires or fiber-optic cables and sells bandwidth downstream to variety of retail level ISPs. In other countries, an array of international gateways is available to multiple, economically competitive ISPs, yet ultimate control over the country's connectivity rests with the government.

Another aspect that needs to be mentioned relates to the ongoing debates in several OSCE states over the so-called kill switch legislation, which would allow the country leader to shut down parts of the internet in case of imminent threat to national security. In the United States, for example, there is a bill—that so far has failed to advance into a law—which would give the president the power to shut down parts of the internet, particularly those relevant to the country's economic, security, and other critical infrastructure. Proponents of the bill say it is narrowly crafted and not intended to limit speech, but it is meant to eliminate vulnerability of critical systems such as banks, the power grid, and telecommunications from attacks by terrorists. The bill specifically does not grant the president power to act unless a cyberattack threatens to cause more than \$25 billion in damages in a year, kill more than 2,500 people or force mass evacuations. However, some civil society groups have warned that any such effort may have unintended consequences, such as unintentionally cutting segments of the population from the internet.

#4 Threats and Imprisonment

Today, more internet users face threats and imprisonment than ever before. In some countries—including China, Vietnam, and Myanmar—individuals can be sentenced to more than 10 years in prison for online activities, and allegations of torture are not uncommon. Most states in the OSCE region have not yet exhibited that level of repression. However, what we often see is that some governments are abusing the existing, broadly-formed laws to silence political expression. For example, in Russia, the

laws against extremism have not only been used against extremist speech, but also against political opponents who voice their criticism online and offline.

In addition, some governments have used fake allegations to imprison government critics. For example, in Azerbaijan, two activists, Emin Milli and Adnan Hajizade, were arrested in 2009. They were convicted on dubious charges of hooliganism, having been attacked by two men at a restaurant in what was apparently a government-organized provocation, but the real reason for their arrest is thought to be their posting of a satirical piece on YouTube. The video mocked the government's reported decision to import donkeys at exorbitant prices, suggesting that donkeys are treated better than ordinary people in Azerbaijan. The pair were released in November 2010 following international and domestic pressure for their release.

Moreover, in Russia, in May 2010, the authorities arrested blogger Alauddin Dudko, who had worked with Ingush opposition journalist Magomed Yevloyev before his murder in 2008. Dudko was accused of possessing drugs and explosives, but his colleagues argued that the real reason behind the arrest was his online activity.

In many countries that, so far, have not had any cases of blogger imprisonment, we continue to receive reports of indirect threats and harassment. Examples like these have had a strong chilling effect on free expression, as most people opt to self-censor rather than face a possibility of arrest or harassment.

General Recommendations

Foreign policy and international organizations

- **Recognition of internet freedom as a human right:** The international community should treat the various aspects of internet freedom as indispensable components of human rights and respond to violations of internet freedom (like systematic politically-motivated blocking of websites) as they would to other serious human rights violations.
- **Online censorship as a trade violation:** Relevant governments and international entities, such as the World Trade Organization, should investigate circumstances when state censorship—including the blanket blocking of Web 2.0 applications—might constitute a violation of international trade agreements and take action accordingly.

Domestic government policy

- **Ensure the independence of regulatory bodies:** Governments should ensure that the bodies overseeing ICTs are independent, both in law and in practice, and that the members of such bodies have sufficient expertise to make decisions on the matters under their jurisdiction.
- **Transparency and accountability:** Governments and private entities dealing with content filtering and surveillance should ensure that the procedures and criteria surrounding these practices are transparent and proportional to the stated aims. Accessible avenues of appeal to an independent oversight body or judge should be available to those who may find their content mistakenly blocked.
- **Avoid intermediary liability for content hosts:** A number of governments have imposed or are considering legislation holding online content hosts and other service

providers legally liable for information posted by users. Providers are thereby required to preemptively screen and delete content that might be disagreeable to the authorities, lest they face criminal charges or administrative punishments. Such laws should be amended to exclude pre-publication censorship requirements and put in place transparent and accountable procedures for post-publication deletion requests.

Capacity building and awareness raising

- **Education for key lawmakers, government officials, judges, and civil society actors:** In many countries, the individuals making decisions that affect internet freedom—and particularly the legal environment—have limited knowledge of the issue or the ways in which regulating ICTs differs from print or broadcast media regulations. The holding of training workshops, creation of a relevant manual, or incorporation of internet-related content into other educational curricula would help resolve this problem.

Private sector

- **Transparency:** Technology companies should be transparent about measures taken to restrict the circulation of certain content, particularly if it relates to political, social, or religious topics. This should include periodic public reporting on company policy, as well as measures to inform users accessing the application that certain information has been blocked or deleted due to government demands.

Multi-stakeholder

- **International rapid response network:** An international advocacy and assistance network should be created comprised of government, civil society, and other stakeholders for responding to the arbitrary detention of bloggers, as well as lower profile users, in order to pressure the relevant governments publicly or privately for their fair treatment and release.

(From PPT Presentation)

Freedom of Expression on the Internet

OSCE Report – Study of legal provisions and practices related to freedom of expression in the Internet in OSCE participating States

20 Questions

A. Access related questions

- **1. Are there specific legal provisions on the right to access the Internet?**
 - 1A. Please provide the name of the law/s, and relevant sections of these laws if such laws exist.
 - 1B. If the answer is No to the above question, please state whether your country is planning to introduce such a law in the near future? Please state whether there is a draft bill involving this matter.
- **2. Are there general legal provisions which could restrict users' access to the Internet?**
 - 2A. Please provide the name of the applicable law/s, and relevant sections of these laws if such laws exist.
- **3. Are there specific legal provisions guaranteeing or regulating “net neutrality”?**
 - 3A. Please provide the name of the law/s, and relevant sections of these laws if such laws exist.
 - 3B. If the answer is No to the above question, please state whether your country is planning to introduce such a law in the near future? Please state whether there is a draft bill involving this matter.

20 Questions

B. Content regulation related questions

- **Are there specific legal provisions outlawing racist content (or discourse), xenophobia, and hate speech?**
 - 4A. Please provide the name of relevant law/s and regulations, and the relevant sections of such provisions.
 - 4C. Please state specifically whether the possession and/or distribution of such content is criminalized.
 - 4D. Please state which sanctions (criminal, administrative, civil) are envisaged by law.
 - 4E. Please also state (if applicable) the maximum prison term envisaged by law for such offences.
 - 4F. Please provide any statistical information in relation to convictions under relevant law/s for the reporting period of 01 January 2007 – 30 June 2010.
 - 4G. Please state whether the law (or relevant regulations) prescribes blocking access to websites or any other types of Internet content as a sanction for these offences. If the answer is Yes, then please provide the blocking statistics for the reporting period of 01 January 2007 – 30 June 2010.
 - 4H. Please state whether your country has signed or ratified the Additional Protocol to the CoE Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No 189).

20 Questions

B. Content regulation related questions

- 5. Are there specific legal provisions outlawing the denial, gross minimisation, approval or justification of genocide or crimes against humanity?
- 6. Are there specific legal provisions outlawing incitement to terrorism, terrorist propaganda and/or terrorist use of the Internet?
- 7. Are there specific legal provisions criminalizing child pornography?
- 8. Are there specific legal provisions outlawing obscene and sexually explicit (pornographic) content?
- 9. Are there specific legal provisions outlawing Internet piracy?
- 10. Are there specific legal provisions outlawing libel and insult (defamation) on the Internet?
- 11. Are there specific legal provisions outlawing the expression of views perceived to be encouraging “extremism”?
- 12. Are there specific legal provisions outlawing the distribution of “harmful content” (i.e. content perceived to be “harmful” by law)?
- 13. Are there specific legal provisions outlawing any other categories of Internet content that have not been mentioned above?

20 Questions

C. Blocking, content removal, and filtering related questions

- 14. Are there general legal provisions which require closing down and/or blocking access to websites or any other types of Internet content?
- 15. Are there specific legal provisions which require blocking access to web 2.0 based applications and services such as YouTube, Facebook, or Blogger?
- 16. Are there specific legal provisions based on the “notice and take-down” principle?
- 17. Are there specific (public or private) Hotlines to report allegedly illegal content?
- 18. Are there specific legal provisions requiring schools, libraries, and Internet cafes to use filtering and blocking systems and software?

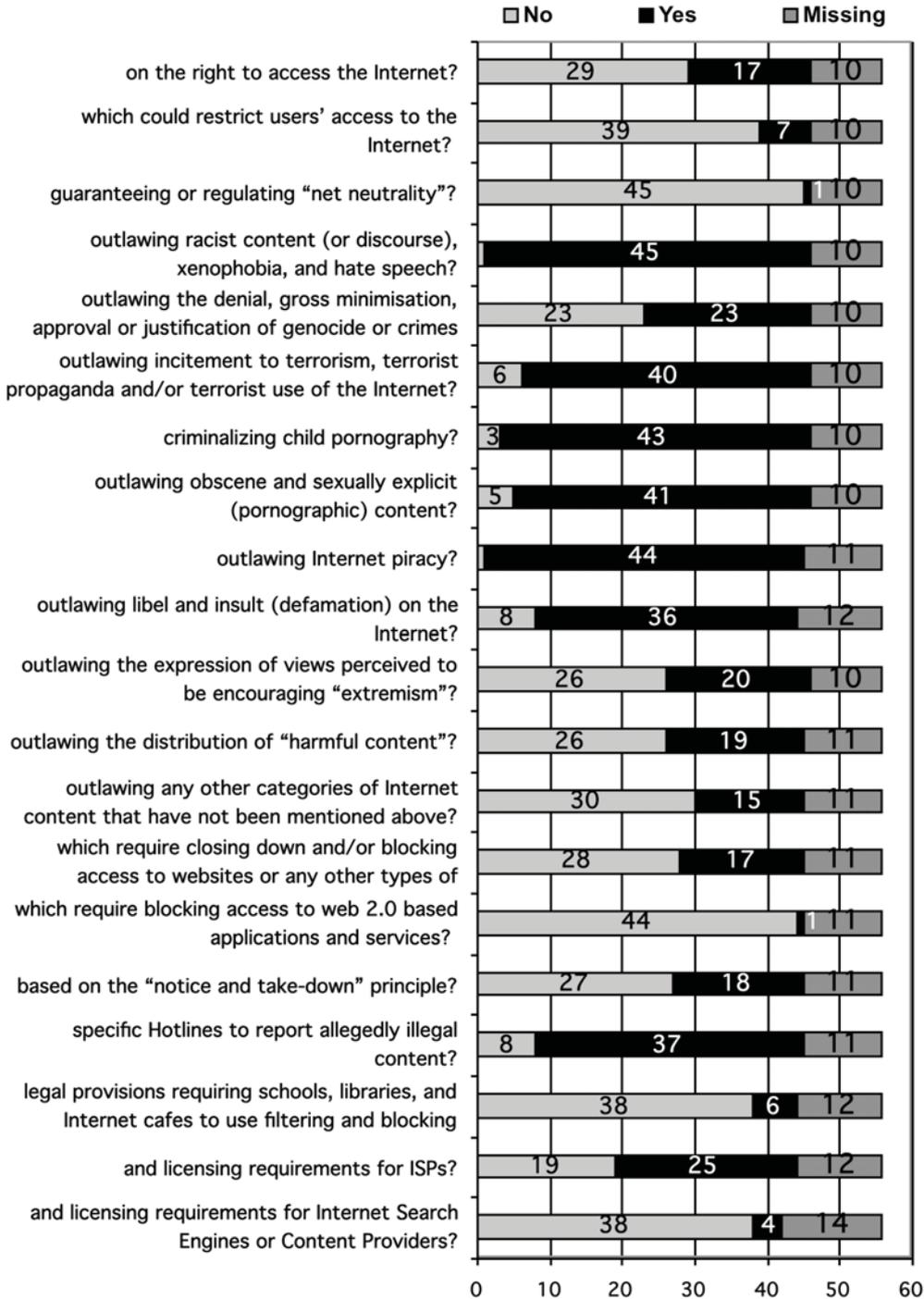
20 Questions

D. Licensing and liability related questions

- 19. Are there specific legal liability provisions and licensing requirements for Internet Service Providers?
- 20. Are there specific legal liability provisions and licensing requirements for Internet Search Engines or Content Providers (e.g. Google, Yahoo, etc.)?

Response Statistics

Are there specific legal provisions....



The open and global nature of the Internet should be ensured

- Participating States need to take action to ensure that **the Internet remains as an open and public forum for freedom of opinion and expression, as guaranteed by OSCE commitments**, enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. **OSCE participating States should keep in mind the borderless nature of the Internet when developing online content regulation policies.** The preservation of the global nature of the Internet requires participating States to consider regional and alternative approaches to online content regulation.

Access to the Internet should be regarded as a human right

- **Access to the Internet remains the most important pre-requisite to be part of and take part in the Information Society.** Access to the Internet is one of the basic prerequisites to the right to freedom of expression and the right to impart and receive information regardless of frontiers. **As such, access to the Internet should be recognized as a fundamental human right.**
- **EXAMPLES:** Countries such as **Finland** and **Estonia** already have ruled that access is a fundamental human right for their citizens. In **Finland**, since July 2010, subject to section 60(3) of the Communications Market Act, all Finnish citizens have a legal right to access a one megabit per second broadband connection, reportedly making Finland the first country to accord such a right.

Network neutrality should be respected

- **Legal or technical measures regarding end-users' access to or use of services and applications through the Internet should respect the fundamental rights and freedoms guaranteed by international human rights principles, especially freedom of expression and the free flow of information.** Online information and traffic should be treated equally regardless of the device, content, author, origin or destination. Service providers should make their information management practices of online data transparent and accessible.
- **EXAMPLES:** Network neutrality is an important prerequisite for the Internet to be equally accessible and affordable to all. It is, therefore, troubling that more than **80% of the participating States do not have** legal provisions in place to guarantee net neutrality. **Finland** and **Norway** stand out as best practice examples with Finland having anchored network neutrality in its corpus of laws while Norway, together with the industry and Internet consumers, developed workable guidelines.

Internet 'kill switch' plans should be avoided

- **Existent legal provisions allow several OSCE participating States to completely suspend all Internet communication and "switch off" Internet access for whole populations or segments of the public during times of war, states of emergency and in cases of imminent threat to national security.** Reaffirming the importance of fully respecting the right to freedom of opinion and expression, the OSCE participating States should refrain from developing, introducing and applying "Internet kill switch" plans as they are incompatible with the fundamental right to information.
- **EXAMPLES:** **Azerbaijan, Bulgaria**

States should refrain from mandatory blocking of content or websites

- Given the limited effectiveness of national laws and the lack of harmonization at international level to prosecute criminal online content, a number of OSCE participating States **started to block access to online content deemed illegal and Web 2.0 based social media platforms situated outside their legal jurisdiction**. As blocking mechanisms are not immune from significant deficiencies, **they may result in the blocking of access to legitimate sites and content**. Further, **blocking is an extreme measure and has a very strong impact on freedom of expression and the free flow of information**. Participating States should therefore refrain from using blocking as a permanent solution or as a means of punishment. Indefinite blocking of access to websites and Internet content could result to “**prior restraint**” and by **suspending access to websites indefinitely states can largely overstep the narrow margin of appreciation afforded to them by international norms and standards**.
- Blocking of online content can only be justified if in accordance with these standards and done pursuant to court order and where absolutely necessary. Blocking criteria should always be made public and provide for legal redress.

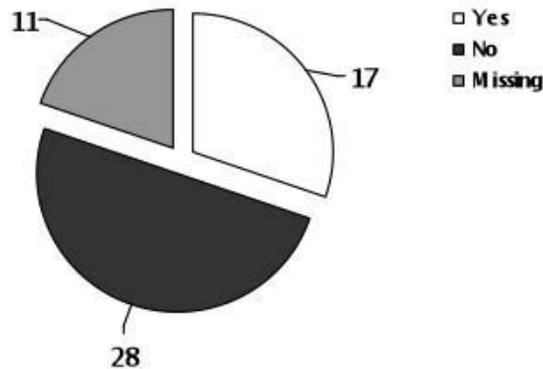


Figure 17. OSCE participating States' responses with regards to specific legal provisions which require closing down and/or blocking access to websites or any other types of Internet content (Q14)

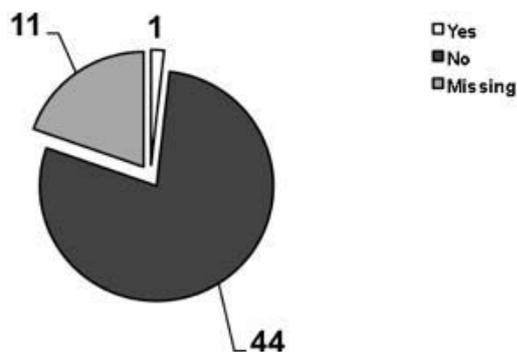


Figure 18. OSCE participating States' responses with regards to specific legal provisions which require blocking access to web 2.0 based applications (Q15)

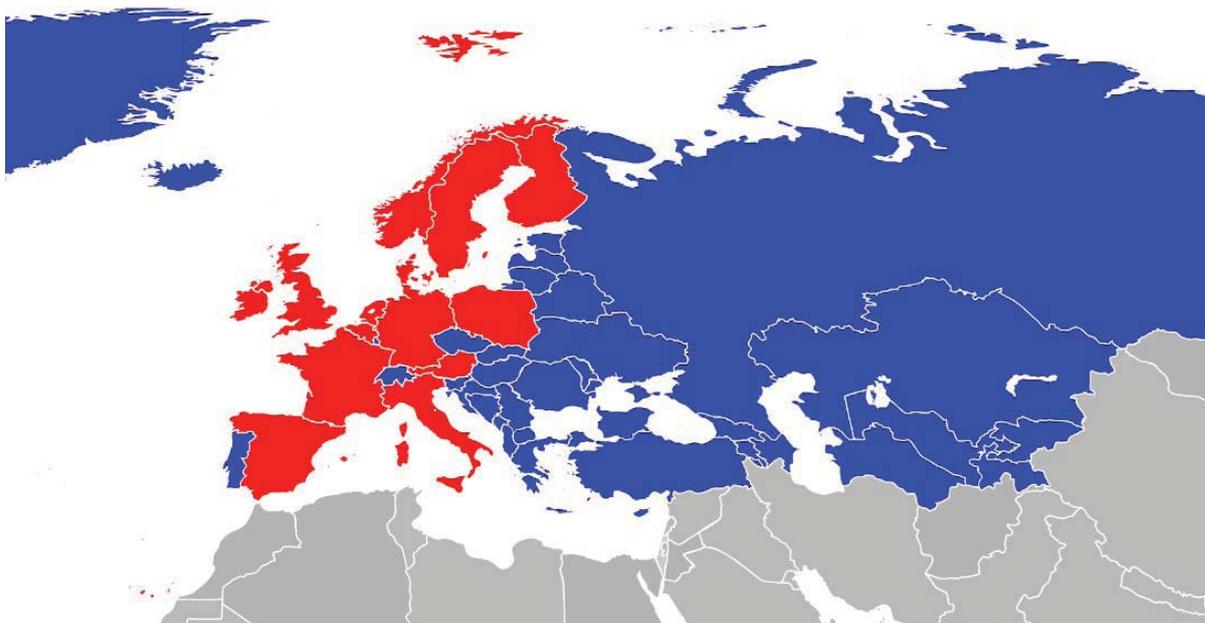
Voluntary blocking and content removal arrangements

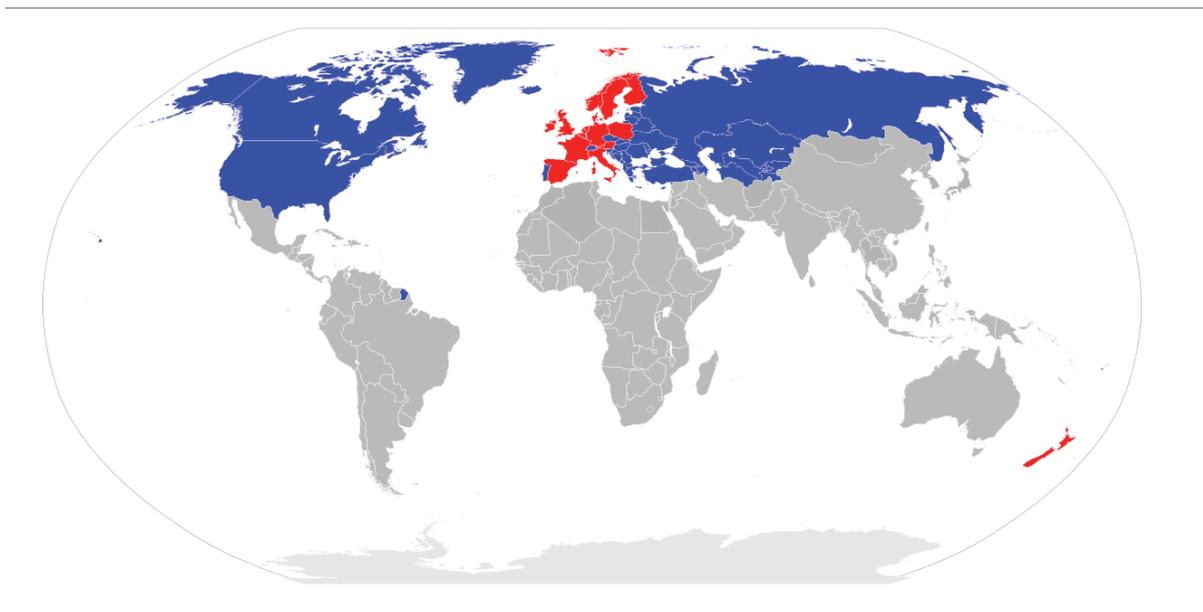
- Voluntary blocking measures and agreements exist in a number of OSCE participating States. **Any blocking system based exclusively on self-regulation or voluntary agreements between state actors and private actors have to be conceived in a way as not to interfere with fundamental rights.**
- **A blocking or removal system based exclusively on self-regulation, or voluntary agreements risks to amount to a non legitimate interference with fundamental rights.**
- **So far as blocking and content removal measures are concerned (whether voluntary or otherwise), any restriction must meet the strict criteria under international and regional human rights law.**

EU on Blocking Access to Child Pornography

- **No Mandatory Blocking for child pornography but**
- The Prague declaration developed under Czech Presidency 2009 set forth a series of recommendations recognizing access blocking as one very valuable component in the fight against child sexual abuse and exploitation.
- The Prague declaration was followed up by the European Commission with the 29.03.2010 proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA.
- Member States “**may take the necessary measures** in accordance with national legislation to prevent access to such content in their territory”.
- **CIRCAMP (Internet Related Child Abuse Material Project) Countries: Driver: Norway Co-driver: UK**
- **Forerunner countries:** Denmark, Belgium, France, Finland, Ireland, Italy, Malta, Poland, Sweden, the Netherlands, Spain, Germany

EU CIRCAMP – Voluntary Blocking of CP





Filtering should only be encouraged as an end-user voluntary measure

- OSCE participating States should encourage the use of end-user filtering software on individual home computers and in schools if their use is deemed necessary. However, the deployment of state level upstream filtering systems, as well as government mandated filtering systems, should be avoided. If the use of filters is encouraged by the states, users should be made aware of the potential limitations of filtering software.
- In terms of filtering software use, such tools are mostly used in schools, libraries, and Internet cafes within the OSCE region.
- In most cases, there are no legal requirements for their use but in certain participating States such as **Belarus, Croatia, Lithuania, Poland, and Turkey** there are legal provisions for academic institutions, libraries, and/or Internet cafes. In other states such as **Canada, the Czech Republic, Hungary, and Norway** the use of filters is voluntary and not subject to any laws or legal provisions.
- However, **Turkey** decided to introduce a country-wide mandatory filtering system that will be functional as of 22 August 2011. If realized, this will lead to the first government controlled and maintained mandatory filtering system within the OSCE region.

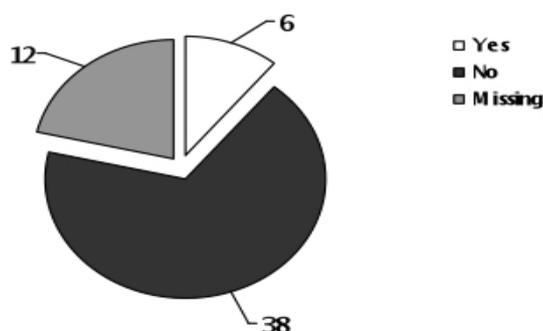


Figure 19. OSCE participating States' responses with regards to specific legal provisions requiring schools, libraries, and Internet cafes to use filtering and blocking systems and software (Q18)

'Three-strikes' measures to protect copyright are incompatible with the right to information

- **The development of so-called “three-strikes” legal measures to combat Internet piracy in a number of participating States is worrisome.**
- While countries have a legitimate interest to combat piracy, restricting or cutting off users' access to the Internet is a disproportionate response which is incompatible with OSCE commitments on the freedom to seek, receive and impart information, a right which in fact should be strengthened by the Internet.
- **Participating States should refrain from developing or adopting legal measures which could result restricting citizens' access to the Internet.** A discussion on whether or not current international standards on intellectual property protection are suited for our information society might be necessary.
- **EXAMPLES:** The OSCE FoM study noted that the development of ‘threestrikes’ legal measures to combat Internet piracy in a number of participating States including in **France and United Kingdom** is worrisome.

ANNEX V: Biographical Information on Keynote Speaker, Introducers and Moderators

Dr. Yaman Akdeniz

Associate Professor, Human Rights Law Research Center, Istanbul Bilgi University, Turkey

Dr. Yaman Akdeniz is an Associate Professor of Law, at the Human Rights Law Research Center, Faculty of Law, Istanbul Bilgi University. Akdeniz is also the founder and director of Cyber-Rights.Org based in the UK and the co-founder of BilgiEdinmeHakki.org, a pressure group working in the field of freedom of information law in Turkey.

His recent publications include Internet Child Pornography and the Law: National and International Responses (London: Ashgate, 2008); and Racism on the Internet (Council of Europe Publishing, 2010). Akdeniz also authored the Report of the OSCE Representative on Freedom of the Media on Turkey and Internet Censorship published in January 2010, and the Study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in the OSCE participating States.

Dr. Roland Bless

Principal Adviser to the OSCE Representative on Freedom of the Media

From 1991 to 1992 Bless was an information officer at the Swiss Government Office for European Integration affairs in Bern. Between 1993 and 1997 he was the Head of the Press and Information Service at the Federal Chancellery of the Swiss Government in Bern.

From 1997 until 1999 Mr. Bless was the foreign correspondent for Swiss daily newspaper “Tages Anzeiger” (and other newspapers) in Hanoi, Vietnam.

From 1999 until 2000 Mr. Bless was Spokesperson and Head of Press and Public Information unit with the OSCE Mission in Kosovo. From 2001 to 2004 he served as the Spokesperson of the Stability Pact for South Eastern Europe in Brussels.

Since 2004 he worked for the OSCE Representatives on Freedom of the Media, Miklós Haraszti and Dunja Mijatović, as Senior Adviser and Director of Office, prior to assuming his current position.

Bless holds a Master’s degree in history and political science, and a Ph.D. in history (University of Zurich). He is a Swiss national.

Ms. Maja Cappello

Head of Unit at the Audiovisual and Multimedia Content Directorate of the Italian Communications Authority (AGCOM)

Maja Cappello was elected EPRA Vice-Chairperson at the 33rd EPRA Meeting in Ohrid on 27 May 2011.

Cappello joined the Italian regulator AGCOM in 1998 and has participated at EPRA meetings since 2000. She is regularly involved in audiovisual regulatory issues at European level, both contributing to international conferences and committees, as

participating as national expert in European Union and Council of Europe co-operation projects. She is author of articles and speeches in the areas of audiovisual media services, media pluralism, copyright and consumer protection and holds an LL.M. in EU law and a Ph.D. in European social law after graduating in Law in 1994. She is lecturer in Media law at University level (Bachelor's, Master's and Ph.D.) since 2001.

Mr. Thomas Hammarberg

Commissioner for Human Rights, Council of Europe

Thomas Hammarberg is the Council of Europe Commissioner for Human Rights. He formerly was Secretary General of the Olof Palme International Centre, 'Save the Children' Sweden and of Amnesty International, on behalf of which he received the Nobel Peace Prize. Working for the advancement of human rights he held positions such as Ambassador on Humanitarian Affairs for the Swedish Government and as the UN Regional Adviser for Europe, Central Asia and the Caucasus for the UN High Commissioner for Human Rights and as Kofi Annan's appointed representative for human rights in Cambodia.

Ms. Sanja Kelly

Senior Researcher and Managing Editor, Freedom House

Sanja Kelly is a senior researcher and managing editor at Freedom House. She presently serves as the project director for the survey of Internet Freedom and women's rights in the Middle East and North Africa. In that capacity, she heads research, writing and administrative operations for the project, and manages a team of over 40 international consultants. In recent years, Kelly has conducted extensive field research and interviewed over two hundred leading women's rights activists, public figures, and scholars in the Middle East. Kelly is frequently interviewed by U.S. and international media outlets and she is the author and editor of several articles and books examining democratic governance and women's rights. A native of Bosnia and Herzegovina, she also serves as a Balkans analyst for Freedom House publications and acts as a spokesperson for Freedom House on the issues of political development in the region.

Mr. André Lange

Head of Department for Information on Markets and Financing, European Audiovisual Observatory

Prior to joining the Observatory in 1993 as part of the initial team, Andre Lange had a distinguished international career as a researcher, specialising in socio-economic aspects of the European media sector. He worked as university lecturer and researcher at the University of Liège, the European Institute for the Media in Manchester, the University of Paris-Dauphine and the Free University of Brussels, and held a lecturer traineeship (1988-89) with the Directorate of Human Rights at the Council of Europe. He headed the Audiovisual and Cultural Industries Department of the French research institute IDATE (1989-1993) before joining the Observatory. Lange has published a large number of books, studies and scientific papers for international bodies, national ministries, professional organisations and research institutes. He formerly was lecturer on the History of television at the Free University of Brussels. Lange holds a doctorate in Communications Studies from the University of Liège (1986). His book, *The Future of the European Audiovisual Industry* (1988), received the Emile Bernheim Prize for European Integration.

Mr. Toby Mendel

Executive Director of the Centre for Law and Democracy

Toby Mendel is the Executive Director of the Centre for Law and Democracy, a Canadian-based international human rights NGO that focuses on providing legal expertise regarding foundational rights for democracy, including the right to information, freedom of expression, the right to participate and the rights to assembly and association. Prior to that he was for 12 years Senior Director for Law at ARTICLE 19, a human rights NGO focusing on freedom of expression and the right to information. He has provided peak level expertise on these rights to a wide range of actors including the World Bank, various UN and other intergovernmental bodies and numerous governments and NGOs in countries all over the world.

Before joining ARTICLE 19, he worked as a senior human rights consultant with Oxfam Canada and as a human rights policy analyst at the Canadian International Development Agency (CIDA). He has published extensively on a range of freedom of expression, right to information, communication rights and refugee issues, including comparative legal and analytical studies on public service broadcasting, the right to information and broadcast policy.

Ms. Dunja Mijatović

OSCE Representative on Freedom of the Media

Dunja Mijatovic of Bosnia and Herzegovina was appointed OSCE Representative on Freedom of the Media on 11 March 2010. She is an expert in media law and regulation. In 1998, as one of the founders of the Communications Regulatory Agency of Bosnia and Herzegovina, she helped to create a legal, regulatory and policy framework for the media in a complex post-war society. She was also involved in setting up a self-regulatory Press Council and the first Free Media Helpline in South East Europe.

In 2007 she was elected Chair of the European Platform of Regulatory Agencies. She was the first non-EU Member State representative and the first woman to hold this post. Previously, she chaired the Council of Europe's Group of Specialists on freedom of expression and information in times of crisis. During her Chairmanship, the CoE Committee of Ministers adopted the Declaration by the Committee of Ministers on the protection and promotion of investigative journalism and Guidelines on protecting freedom of expression and information in times of crisis. As an expert on media and communications legislation, she has worked in Armenia, Austria, Iraq, Jordan, Montenegro, Serbia, Slovenia, Morocco and the United Kingdom.

Ms. Ženet Mujić

Senior Adviser to the OSCE Representative on Freedom of the Media

Ženet Mujić holds degrees in German literature and media studies from the University of Konstanz, Germany, and in International Relations from Central European University in Budapest. She joined the Office of the RFoM in early 2009 where she covers the free flow of information and pluralism on the Internet. She is also the focal point for media developments in South East Europe. Before assuming the post, she was working in Kosovo and Croatia where she coordinated the Media Unit of the OSCE Mission and helped in the creation of a media framework in Kosovo, concentrating on the legislative, regulatory and educational aspect.

Publication of several articles in the field of international relations and conflict prevention include "Public Diplomacy and the OSCE in the Age of Post-international Politics", in: Security Dialogue 34 (3) 2003; and "The OSCE Representative on Freedom of the Media - An Intergovernmental Watchdog: An Oxymoron?" European Yearbook for Human Rights 2010, Vienna.

Dr. Sejal Parmar

Senior Legal Officer, ARTICLE 19

Sejal Parmar (*LL.B. Law (honorary)*, LSE; *PhD Law*, EUI, Florence) joined ARTICLE 19 as Senior Legal Officer in 2008. Her work focuses on the relationship between freedom of expression and the right to information and other rights (such as the right to equality, freedom of religion and the right to health). She leads ARTICLE 19's legal and policy work on UN human rights bodies' resolutions on "defamation of religions" and the interpretation of international law on incitement to hostility, discrimination and violence. She regularly delivers oral statements, presentations and trainings to a broad range of audiences and writes policy papers, legal analyses and amicus briefs. Parmar is also currently Visiting Lecturer in International Human Rights Law at Queen Mary, University of London.

Mr. Emir Powlakić

Deputy Director for Broadcasting, Regulatory Communication Agency, Bosnia and Herzegovina

Emir Powlakić graduated from the Law Faculty in Sarajevo and since January 1999 has worked for the Communications Regulatory Agency. In the agency he was a licensing analyst, team leader, deputy director for licensing and head of department for licensing. He currently is serving as a Head of Division for licensing, digitalization and coordination in broadcasting.

In 11 years of working for the Agency, he was engaged in matters relating licensing for broadcasters, distributors and service providers of audiovisual content, freedom of expression, hate speech and copyright. He participated in drafting relevant rules and regulations of the agency in the field of broadcasting.

From the very beginning of the DTT Forum in Bosnia and Herzegovina. he was a permanent member of the Working Group for regulation, and has also participated in drafting the strategy on the switchover from analogue to digital terrestrial broadcasting. Currently, he is a member of the Expert Commission for developing an action plan for implementation strategy of switchover.

For many years, he has been the Representative of Bosnia and Herzegovina on the Standing Committee for Media and New Communication Services (CDMC) of the Council of Europe in Strasbourg. In November 2010 he was elected for second two-year term as a member of the Bureau of CDMC.

He occasionally represents Bosnia and Herzegovina at the Standing Committee on Transfrontier Television and he participates in the work of the European Platform of Regulatory Authorities.

Dr. Andrey Rikhter

Director of the Office of the Representative on Freedom of the Media

Andrey Rikhter of Russia assumed his post as the director of the Office of the Representative on Freedom of the Media on 1 July 2011. Rikhter served as the founder and director of the Media Law and Policy Institute in Moscow. He was a professor of law and journalism and at Lomonosov Moscow State University where he taught and undertook research on mass media law and international journalism.

Rikhter has degrees in law, foreign languages, as well as a doctorate in journalism. He also has served as the Moscow Representative to the International Commission on Radio and Television Policy, a visiting professor in journalism at Belmont University in Nashville, Tenn., and a visiting researcher at the Gannett Media Studies Center at Columbia University in New York City.

Mr. Mark Thompson

Policy Reports Editor, Open Society Media Program

Mark Thompson designs research projects and edits policy reports for the Open Society Media Program.

He edits the Open Society Institute website, www.mediapolicy.org, and research reports produced by the Open Society Institute Media Program. He has worked as a consultant for various and governmental organizations and NGOs.

Thompson also has been a political officer for a United Nations peacekeeping mission and spokesman of an OSCE mission, as well as a journalist, historian and translator. Publications include *Forging War* (1999), *Forging Peace* (2002, with Monroe Price) and *The White War* (2008).

ANNEX VI: Opening and Closing Remarks by Ms. Dunja Mijatović, OSCE Representative on Freedom of the Media

Opening Remarks

Your excellencies, dear colleagues and participants,

It is a pleasure to welcome you today to this Supplementary Human Dimension Meeting on the promotion of pluralism in new media. This is the third SHDM my Office has organized, in co-operation with ODIHR, on the topic of media freedom.

I am pleased that you are here today because the roles played by governments and the NGO community in promoting media freedom and media pluralism are of utmost importance.

Media pluralism, which is the expression of a multitude of opinions, is a crucial component of and a prerequisite for media freedom. Governments must understand that providing their citizens with a variety of views can only strengthen their democracies. Well-informed people make well-informed decisions, which are the indispensable foundation that democracies can build upon.

This is why media freedom and media pluralism are at the heart of the Helsinki Process and the OSCE principles and commitments that we share.

In this digital age, we now can access and consume whatever media we want, wherever and whenever through methods never before believed possible. The emergence of new media has completely changed the way people communicate and share and receive information. New media offer a promise of a truly democratic culture with more equal participation and interactivity.

But let us not be naïve.

To date, the levels of media freedom and pluralism throughout the OSCE region are significantly different. Although it is true that today more information is available and more easily accessible, new laws and other restrictive measures in many countries hinder the opportunities that new media can offer.

The lack of pluralism remains a challenge when inventive ways are found to preserve the dominance of a few, selected voices during the switch from analogue to digital broadcasting.

Also, attempts to control the Internet are growing. We are witnessing more and more countries adopting laws aimed at regulating or controlling the web and we also see more and more governments trying to put the topic of web regulation on the international agenda.

Let me be clear here. Governments do have a role to play when it comes to Internet content and to protecting children, fighting racism, incitement to hatred and cybercrime. The question is not whether governments should or should not regulate the Internet. The questions are how, what and to what extent content should be regulated? And, perhaps

most importantly, with what results? Has governmental regulation proved to be efficient and, if not, are there alternative speech-friendly methods that would be more efficient?

With new technologies radically reshaping the media landscape, traditional regulatory assumptions have been called into question and, in many cases, old rules have become counterproductive. These new challenges underline the need to discuss how new technologies necessitate new approaches to safeguarding OSCE commitments regarding media freedom.

Today and tomorrow, this meeting will provide a forum to discuss these important questions. Three working sessions will focus on different aspects of the effect of new media on media pluralism.

The first session will provide an overview of the new media landscape including new forms of media and hybrid platforms and their impact on media pluralism. The discussion also will highlight the basic connection between the development of new media and the level of freedom of expression.

The second session will discuss to what extent the digital switchover is used to benefit people and how it can assist in creating a pluralistic society. To answer those questions, the session will introduce my Office's most recent publication, "*The guidebook to the Digital Switchover*", which aims to ensure that the switch further strengthens the plurality of content, opinion and programming. The session also will highlight how the changeover has affected media pluralism in countries where it already has occurred.

During the last session, ensuring freedom of information on the Internet and Internet regulation will be discussed. The session also will introduce the findings of the first OSCE-wide study on Internet content regulation. The study assesses how national Internet legislation and practices comply with existing OSCE media freedom commitments and relevant international standards.

I hope that our deliberations will prove to be a valuable contribution to the important question of how new technologies necessitate new approaches to safeguarding OSCE commitments regarding media freedom.

I wish you all an interesting and fruitful conference.

Closing Remarks

I am very thankful for the organizers and the non-governmental organisations in particular, as dialogue is the only way to achieve results. I do my tasks whole heartedly, trying to implement the commitments that were reiterated in the Astana declaration; these words are obligations that our heads agreed upon, we should not say it is a matter of different views, different traditions or even different cultures. Of course we have differences; we should value and protect these. Nevertheless, these should not result in limiting freedom of expression and freedom of the media.

Governments that are elected still do not have the right to tell us what should and should not be accessible. It is extremely important that we are governed by the rule of law. We have to move away from the fear of something different or something new, and instead embrace such developments. We need to respect and abide by the core values agreed upon 35 years ago, and reiterated recently. On this note, I would like to stress that the Budapest Summit and PC Decision 633 are crucial for the work of my Office and in ensuring freedom of expression and freedom of the media. I urge all participating States to look back at this document.

We have also seen some shortcomings in the conference, due to rapid changes in the technological environment:

- With regard to terminology; the notion of new media and its implication on pluralism are not uniform and are still evolving.
- When it comes to defining pluralism it became clear that the number of media outlets and channels is not necessarily an indicator of pluralism.
- On the other hand we have also learned that the methodology for achieving pluralism is still in its infancy.

Please refer to the website (<http://www.osce.org/home/80718>) for more information on *Freedom on the Internet*, and to view the joint declaration that was signed by all 4 rapporteurs; also the link: *Internet freedom at a crossroads* I urge everyone to access and read the documents on this website.

ANNEX VII: Opening Remarks by Mr. Andrius Krivas, Representative of the Chairman-in-Office

It is my honour to speak in the presence of the OSCE Representative on Freedom of the Media Ms. Dunja Mijatović and other distinguished organizers and participants on behalf of the Chairmanship-in-Office at the opening of this meeting on pluralism in new media. As many of you know, media freedom and freedom of expression are priority topics for the Lithuanian Chairmanship. I am pleased to note that the incoming Irish Chairmanship has also indicated that media freedom will continue to be a priority during their Chairmanship next year.

This sustained focus reflects the wide range of challenges confronting free media across the OSCE area. Early last month, the Chairmanship and the RFOM Office co-organized a two-day conference in Vilnius on the “Safety of Journalists in the OSCE Region.” That event, which brought together government officials, experts and media representatives from throughout the region, added substantially to our understanding of the threats and violence directed at journalists today. The resulting recommendations provide a very good basis for beginning to address this problem.

Today’s meeting is the next logical step in examining the state of free media in the OSCE region.

As you will see from the annotated agenda, a multitude of OSCE commitments address the issues we will discuss over the next two days. Among them are the 1991 Moscow Document, the 1994 Budapest Summit Document, the 1996 Lisbon Summit Declaration and the Charter for European Security, adopted at the 1999 Istanbul Summit.

In addition, I would like to draw your attention to Permanent Council Decision 633 of November 2004, which calls upon participating States to “*take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools.*”

New media, brought into existence by previously unimaginable advances in technology, offer an unprecedented opportunity for people throughout the world to enjoy freedom of opinion and expression and to exercise their right to impart and receive information. It is critically important that these new platforms remain open to all. Media pluralism, which is the opportunity to have many voices heard, whether the platform is digital broadcasting, the Internet, mobile telephones or more traditional media, must become a reality.

During the rest of today and the whole day tomorrow we hope there will be an open and constructive discussion on how the Internet, among other media, can remain an open and public forum. We also hope to see this meeting conclude, as the conference in Vilnius did, with constructive recommendations that will help the participating States to make concrete progress on this issue at the Vilnius Ministerial Council.

Thank you.

ANNEX VIII: Side Events

The Helsinki Document of 1992 (Chapter IV) called for increasing the openness of OSCE activities and expanding the role of NGOs. In particular, in paragraph (15) of Chapter IV the participating States decided to facilitate during OSCE meetings informal discussion meetings between representatives of participating States and of NGOs, and to provide encouragement to NGOs organizing seminars on OSCE-related issues. In line with this decision, NGOs, governments, and other participants are encouraged to organize side meetings on relevant issues of their choice.

Friday, 8 July
<i>Title: Media Pluralism and Human Rights</i>
<i>Convenor: Council of Europe Commissioner for Human Rights</i>
<i>Time: 12.15 – 13.45</i>
<i>Venue: Segmentgalerie 1 – 1 floor</i>
<i>Language: English, Russian</i>

OVERVIEW OF SIDE EVENT

As submitted by the organizer

Hofburg, Vienna

Friday, 8 July

Time: 12.15 – 13.45

Venue: Segmentgalerie I

Title: Media Pluralism and Human Rights

Convenor: Council of Europe Commissioner for Human Rights

Summary: The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, is organising a series of public events during 2011 to highlight the importance of freedom of expression and of the media for the protection of all other human rights.

At this side event, Miklós Haraszti, currently Adjunct Professor at the School of International and Public Affairs at Columbia University in New York, will speak about media pluralism and human rights. Media pluralism is an essential part of democracy and freedom of the media. However, pluralism is not always a reality in media in Europe today. What are the main difficulties in protecting and promoting media pluralism? What can governments, legislators and others do?

The presentation will be followed by a commentary from the Commissioner and a discussion, with questions from the audience.

ANNEX IX: Statistics on Participation

The SHDM was attended by a total of 191 participants, including 102 delegates from 42 of the 56 OSCE participating States.

The Meeting was attended by 36 representatives from 5 institutions (OSCE High Commissioner on National Minorities, OSCE Parliamentary Assembly, OSCE Parliamentary Liaison Office, OSCE Office for Democratic Institutions and Human Rights, and the Office of the Representative on Freedom of the Media) and missions (Centre in Astana, Office in Baku, Centre in Bishkek, Mission to Bosnia and Herzegovina, Mission to Moldova, Mission to Montenegro, Office in Tajikistan, Project Co-ordinator in Ukraine, and Office in Yerevan).

In addition, five representatives from three international organisations: Office of the Council of Europe Commissioner for Human Rights, Council of Europe Office in Vienna, and the European Parliament were present.

41 representatives from 37 non-governmental organisations participated in the Meeting.

ANNEX X: List of Participants



OSCE Supplementary Human Dimension Meeting
on
Promotion of Pluralism in New Media

FINAL LIST OF PARTICIPANTS

Vienna, 7 - 8 July 2011

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Opening Remarks

Opening and Closing Remarks

Keynote Speaker of the Opening Session

Moderator of Session I

Introducer of Session I

Introducer of Session I

Introducer of Session I

Moderator of Session II

Introducer of Session II

Introducer of Session II

Introducer of Session II

Moderator of Session III

Introducer of Session III

Introducer of Session III

