



Cultural rights and the internet in Brazil

Presentation by the Association for Progressive Communications (APC), Article 19 and Public Knowledge at the 157th ordinary period of sessions at the Inter-American Commission on Human Rights

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Thank you for this opportunity to share our views on the important issue of cultural rights and the internet in Brazil. My name is Deborah Brown and I am presenting this statement on behalf of the Association for Progressive Communications, Article 19 and Public Knowledge.¹

The internet and information and communications technologies (ICTs) are enablers of cultural rights for individuals, groups and communities. As the former UN Special Rapporteur on cultural rights stated: "With the Internet emerging as a critical platform for scientific and cultural flows and exchanges, freedom of access to it and maintaining its open architecture are important for upholding the right of people to science and culture".²

The internet facilitates new forms of accessing, expressing, sharing and preserving culture for all people. It is a vital enabler for curators, collectors, storytellers and commentators, artists, poets, journalists, archivists and librarians, amongst others. The internet is also critical for those who are often marginalised and vulnerable in society, including indigenous

¹ APC is an international network and non-profit organisation founded in 1990 that wants everyone to have access to a free and open internet to improve their lives and create a more just world, Article 19 is an international human rights organisation that focuses on freedom of expression, and Public Knowledge promotes freedom of expression, an open internet, and access to affordable communications tools and creative works. It works to shape policy on behalf of the public interest.

² Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: "The right to enjoy the benefits of scientific progress and its applications" (A/HRC/20/26).

communities, women, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, displaced peoples, people with disabilities, and those who wish to express dissident opinions. In this regard, both freedom of expression and privacy are central to achieving people's cultural rights.

The Brazilian Civil Rights Framework for the Internet recognises in Article 7 that access to the internet is an essential right to exercise citizenship. Moreover, in Article 27, it establishes that public initiatives to promote digital culture and promote the internet as a social tool must promote digital inclusion, reduce the gap between those who have access to the internet and those who do not, and promote the production and dissemination of national content.

Recent research shows that 50% of Brazilian homes have no access to the internet. In rural areas, 78% of homes have no access to the internet. In lower-income homes, 85% have no access to the internet.³ These statistics suggest that access to the internet remains one of the fundamental challenges in realising the cultural rights of people in Brazil.

However, access on its own is not enough to secure people's cultural rights. Political, economic and social dynamics impact on how the internet is governed, and the kind of access people enjoy. Because of this, the influence of alarmist or reactive policies when it comes to internet governance can threaten people's cultural rights in the digital environment.

In Brazil and other countries in the Americas, there are a number of issues that we believe need serious attention, and we would like to highlight five points for the Commission:

- **Digital exclusion denies the cultural rights of those not yet online:** Significant gaps in affordable, full and high-quality access to the internet for reasons of income, education, gender, language, geographic location, and other economic, social and cultural factors remain a pressing concern in the context of realising people's cultural rights. While it was anticipated that the internet would close the poverty gap, evidence suggests that the gap between rich and poor has increased, and wealth has become consolidated amongst the minority globally who have become the primary beneficiaries of the internet.⁴ In addition to issues of cost, people face barriers in accessing and using the internet freely because they speak indigenous languages, because of gender discrimination, or because they are silenced due to holding political views that are not favoured by those in power. As such they are further marginalised. While access is critical, Brazil also needs to consider issues of gender

³ According to the latest research from TIC Domicilios (from 2014).

<http://cetic.br/pesquisa/domicilios/indicadores>

⁴ See the WEF's Global Information Technology Report 2015:

http://www3.weforum.org/docs/WEF_Global_IT_Report_2015.pdf and World Bank 2016 Digital Dividends report: <http://www.worldbank.org/en/news/press-release/2016/01/13/digital-technologies-huge-development-potential-remains-out-of-sight-for-the-four-billion-who-lack-internet-access>

discrimination, skills development, education, and freedom of expression amongst other social and economic factors when securing the cultural rights of poor and marginalised groups using the internet.

- **Mass and targeted surveillance can have a chilling effect on cultural freedoms:** The right to privacy is an important enabler of cultural expression online. People behave differently when they feel they are being watched,⁵ and because of this, communications surveillance is likely to create a people alienated from their desires and voices when it comes to cultural expression. Numerous forms of dissident and alternative cultural expression in poetry, art, music, dance or film have accompanied formative progressive political movements historically, and have been essential social expressions of the lives of marginalised groups such as LGBTI people. Surveillance targeted at marginalised or dissident groups or at the public in general creates a chilling effect on these cultural expressions and exchange. Privacy is important for freedom of expression to the extent that social and political mobilisation often require confidence and trust amongst peers to occur. Yet privacy and anonymity are under threat as governments push for weakening encryption standards and building in “backdoors” to the internet in the name of national security and law enforcement.⁶ While surveillance can be important for public safety and national security, it cannot be used as an excuse to undermine other rights, including cultural rights.
- **Efforts to curb cybercrime can inhibit cultural expression:** Criminal activity conducted through the internet is a growing menace to society. Yet policies meant to address cybercrime can violate online freedoms, including cultural rights. For example, if the report of the parliamentary Inquiry Commission on Cybercrimes is adopted, the Brazilian Congress will consider a bill, among others, that obliges internet service providers (ISPs) to remove content considered “harmful to personal honour” upon notification within 48 hours, or face criminal and civil liability. As pointed out in recent statements by the CGI.br⁷ and civil society organisations from the region,⁸ this proposal is ambiguous and may lead to the takedown of content that embodies cultural expression, including satire of the politically, socially and economically powerful, and comedy that critiques the political and social status quo.

⁵ See Borland, J. (2007, 8 August). Maybe surveillance is bad, after all. *Wired*.
<http://www.wired.com/2007/08/maybe-surveilla/>

⁶ A “backdoor” in computing is a method of bypassing the normal method of authentication. In cryptography specifically, a backdoor would allow an intruder to access the encrypted information without having the correct credentials. Source:
https://cs.stanford.edu/people/eroberts/cs181/projects/ethics-of-surveillance/tech_encryptionbackdoors.html

⁷ See <http://cgi.br/esclarecimento/nota-de-esclarecimento-em-razao-do-relatorio-da-cpi-crimes-ciberneticos/>

⁸ See <https://www.apc.org/en/pubs/joint-statement-brazilian-congress-drop-dangerous>

- **Intermediaries should respect human rights:** Because much of the internet is owned and managed by the private sector, companies are playing an influential role in how cultural rights are exercised online. It is therefore critical that internet intermediaries adhere to their responsibility to respect human rights as outlined by the UN Guiding Principles on Business and Human Rights.⁹ In this regard, the Manila Principles on Intermediary Liability provide a framework developed by civil society groups for protecting freedom of expression and human rights generally.¹⁰ We encourage the Commission to consider the specific recommendations of the Manila Principles in terms of their mechanisms for regular review and specific criteria for content restrictions. These are included in the appendices to our submission.
- **Private sector media monopolies and copyright regimes limit cultural diversity:** Media concentration conspires against democracy, as it creates obstacles to the pluralism of ideas and limits the public's access to information.¹¹ While the internet to some extent offers a way to challenge the monopolies of traditional media in Brazil, the corporatisation of the internet through companies such as Facebook, Google, Apple and Microsoft and the convergence of ISPs with large media companies, like Globo, is narrowing the potential of the internet as an enabler of broad-based cultural expression, and as a way to access the cultural expressions of diverse groups.¹² For example, evidence suggests that algorithms of widely used search engines, like Google, have the ability to influence popular views on culture.¹³ The accumulation of personal data by Google and Facebook for marketing and other purposes also limits access to diverse and plural cultural expression. Another problem is the emergence of zero-rating practices. They take the agency away from local entrepreneurs and innovators and limit the potential of the internet to be a rich, pluralistic and diverse platform for content and cultural expressions. At the same time the expansion and enforcement of intellectual property and copyright regimes conflict with cultural creativity and access to culture. These, in the context of inter-regional trade agreements, could create an even more chilling effect on vibrant cultural exchange online.

⁹ UN Guiding Principles on Business and Human Rights: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹⁰ Manila Principles on Intermediary Liability: <https://www.manilaprinciples.org>

¹¹ See "Latin American organisations demand guarantees for the right to freedom of expression": <https://www.apc.org/en/pubs/latin-american-organisations-demand-guarantees-rig>

¹² See Jensen, M. (2016, 18 March). Digital convergence: Global trends in broadband and broadcast media concentration. APCNews. <https://www.apc.org/en/news/digital-convergence-global-trends-broadband-and-br>

¹³ See Collins, K. (2016, 12 February). Why Google search suggests "Muslims support terrorism". Quartz. <http://qz.com/616109/why-google-search-suggests-muslims-support-terrorism>

In conclusion, as the NETmundial Statement¹⁴ emphasises, the internet should be safeguarded as a critical space for creativity and innovation, and preserved as a fertile and innovative environment based on an open system architecture that upholds the end-to-end nature of the open internet. It is encouraging to see the Commission addressing human rights issues online and we are confident that with its solid foundation in the field of human rights, the Commission will progressively tackle human rights online in an effective way and call on relevant technical specialists to assist with it. We, the organisations presenting this statement, are available to work with the IACHR on improving the enjoyment of human rights online in Latin America.

As the IACHR has pointed out, Latin America continues to have the highest levels of inequality in the world. This reaffirms the need to give priority to the protection of economic, social and cultural rights, and to strengthen commitment to establishing the Special Rapporteur on ESCRs at the IACHR.

Thank you for your attention, and we are happy to answer any questions.

¹⁴ See <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf>

Appendix

In order to avoid freedom of expression violations, the Manila Principles state that content providers should have mechanisms to review decisions to restrict content in violation of the intermediary's content restriction policies. The Manila Principles establish some criteria in case of content restriction requests in 3 C i-iv:

- i. The reasons why the content at issue is in breach of the intermediary's content restriction policies.
- ii. The Internet identifier and description of the alleged violation of the content restriction policies.
- iii. Contact details of the issuing party or their agent, unless this is prohibited by law.
- iv. A declaration of good faith that the information provided is accurate.

In addition, Principle 6 states that:

- e. Intermediaries should publish transparency reports that provide specific information about all content restrictions taken by the intermediary, including actions taken on governmental requests, court orders, private complainant requests, and enforcement of content restriction policies.
- g. Governments, intermediaries and civil society should work together to develop and maintain independent, transparent and impartial oversight mechanisms to ensure the accountability of the content restriction policies and practices.
- h. Intermediary liability frameworks and legislation should require regular, systematic review of rules and guidelines to ensure that they are up-to-date, effective, and not overly burdensome. Such periodic review should incorporate mechanisms for the collection of evidence about their implementation and impact, and also make provision for an independent review of their costs, demonstrable benefits and impact on human rights.