



## Why are communication rights so controversial?

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„Millions of people in the poorest countries are still excluded from the right to communicate, increasingly seen as a fundamental human right” – Kofi Annan, UN Secretary General, from 17<sup>th</sup> May 2003.

The communication rights topic, the right to communicate (r2c), is among the most controversial ones in the negotiation process leading up to the World Summit on the Information Society (WSIS). Based on the discussions in the PrepComs so far, it is very likely that r2c will be neglected altogether or will only survive as a vague compromise.

Why is this so? From a common sense point of view it seems absurd to deny the right to communicate. People cannot avoid communicating, exchanging their views with others. But often enough the most natural thing in the world is the most problematic one.

Exactly this was the case with r2c, about 25 years ago. The struggle over r2c was a shock, and the shock was so long-lasting that even to mention r2c today leads reflex-like to a categorical automatic refusal to include phrases with “communication” or “communicate” in official political documents such as declarations or action plans for WSIS.

### **Only a resurrection of the old “New World Information and Communication Order” debate?**

History does not repeat itself, but structures sometimes get inherited. The old controversy about the New World Information and Communication Order (NWICO) seems to be experiencing a resurrection in our times, on the occasion of WSIS. The controversy then lasted about ten years, from 1975 to 1985 and escalated into the withdrawal of the USA from the UNESCO. They have only returned as of fall 2003.

UNESCO at the times of cold war was then heavily dominated by members from the non-aligned or the developing countries, supported by the communist states’ block. These members did not accept a Western understanding of freedom of expression as the basis for democracy and open societies; they criticized the Western information and media monopolies as a new form of information colonialism. Instead they considered information and communication, the right to communicate, as a means to development and independence, a rationale for their national identity.

### **Right to communicate – a debate about human rights or about dominance of the information markets?**

What were the opponents of a r2c afraid of? A codified r2c, so the main argument from media organizations such as „World Press Freedom Committee“ (WPFC) then and today, weakens the universal claim of art 10 of the Universal Declaration of Human Rights (UDHR). With r2c they claim, the individual human right to „*freedom of expression*“, also in general interpreted as a guarantee for a free, independent press, would be very likely to mutate into a collective substitutive right. Parties other than free

individuals, in case of doubt the state, would then decide who is allowed to communicate with whom about what. „Freedom of expression“ should not be restricted, not even to defend cultural identity against foreign information flooding. A so-called „prior consent“, the right of governments to control the content of the media and other information resources, would be unacceptable.

Governments in the WSIS process are still debating today over the universality and the binding force of human rights in the context of information societies. In reality it is a debate about who owns and controls the information and media markets, who has the right and the power to manage the structure of the Internet, who are the main players in Internet governance and modern communication infrastructure in general.

But let us follow for a moment the human rights discussion. The debate about r2c is mainly a controversial interpretation of art 10 of the UDHR.

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

### **The reinterpretation of human rights in the light of contemporary technology is not sufficient**

We are mainly interested in the consequences of “impart information”. Is the right to impart information the right to communicate, is it freedom of communication?

We doubt it - although main-stream legal literature considers the various aspects which are codified in art 19 UDHR and in many other “great” texts of humanity, to be freedom of communication rights.

We also doubt that a so-called hermeneutic approach towards existing and codified human rights is sufficient. Rather than demand new rights, advocates of this approach believe it more realistic to reinterpret existing rights in the light of modern media and technological development and to make sure that old rights, and particularly the right to freedom of expression, will become universal reality. To demand a new right, or even to question the relevance of, for instance, art 19 – it is feared - may weaken the universality of the principle of human rights.

### **A new dimension of communication in network environments**

We do not wish to reject these approaches totally, but we believe them to be insufficient, mainly because the concept of communication has gained a new dimension in the electronic environments of the Internet – a new dimension different from the traditional understanding of communication. This new dimension could not have been foreseen by the founders of the “grand” texts in the middle of the last century.

With the new media and with new electronic services a shift is taking place - gradually, slowly, but inexorably - from the distribution paradigm to an interaction paradigm and finally to a communication paradigm. Despite of a few hesitant steps towards digital interactive TV the official world of the media was and still is one-way-communication (1:n).

Within this paradigm it is professional journalists, privileged by a straightforward interpretation of, for instance, art. 19, and the globally operating owners of the media system who decide what will become the subject of public awareness and political interest (the power of agenda setting). These privileges and monopolies are being challenged by the potential of contemporary interactive and end-user oriented technologies, which are paving the way new forms of media and political participation.

Electronic environments will produce, in addition to spontaneous and creative ways of communicating and knowledge sharing, new ways to establish public opinion, new transfer mechanisms for the use of information and new means for generating political decisions.

### **Right to communicate - no war but strong criticism of undesirable trends**

No wonder the established media system, the official political system, the dominant information industry and also main-stream human rights advocates are playing down the demands for a new and universal r2c. It is not only the memory of the old NWICO debate, it is the concern that existing power structures and property rights are likely to be questioned by direct democratic, participative, knowledge-sharing behaviour within the communicative paradigm.

The demand for an inclusive r2c is not necessarily a “declaration of war” on the existing media, political and economic systems, but it is a strong criticism of undesirable trends in the media system such as monopolisation and extreme commercialisation and the manipulation of information content, a strong criticism of equally undesirable trends in politics such as impeding free communication (by legal and technical mechanisms of control and surveillance) and making access to knowledge and information more and more controlled and scarce.

r2c is, consequently, the right to experiment with alternative, not necessarily substitutive forms of building new democratic forms of media publicity where everyone has the right to participate and everyone has the chance not only to have their opinion heard also to be taken into serious consideration.

### **Right to communicate – of high economic relevance**

r2c is not an ethical, moral issue only. It is of high economic relevance. r2c means to pave the way for new business models for the organization of knowledge and information which are appropriate to electronic environments and which will be based on principles of knowledge sharing, of peer-to-peer-exchange, of transparent, open and free forms of production. More and more economists are convinced that the future of an innovative and successful economy depends on the extent to which free communication, free exchange and knowledge and collaborative forms of producing knowledge are made possible.

r2c is universal and fundamental. It is a basic human right, a personal individual right, but also a principle of organizing knowledge and information and of renewing the media and the democratic system. It is thus clearly a candidate for a new human right which requires codification in the “grand” texts. WSIS does not have the mandate to establish new rights, but it does have the legitimacy to open the door to a new understanding of communication in the information society which, in reality, is nothing other than a communication society. A constructive development and extension of human rights is needed rather than merely a reinterpretation of existing rights.

### **What needs to be done?**

The general acceptance of the r2c will, of course, not solve all problems. There are still many things which need to be clarified.

- Human rights, and also the r2c, must not be allowed to be stripped of their individual and universal (inclusive) claim, which might lead to the danger of a patriarchal state.
- r2c must not be used as a justification for human rights violations by misusing national and cultural peculiarities as an excuse.

- But on the other hand, r2c must not be used as a rationalization for the Western individualistic, or rather atomistic understanding of media and information freedom. This, many believe, in principle, is not a guarantee for the development of a just, inclusive and sustainable world society, where knowledge and information are fairly shared and where communication can flow freely and unrestrictedly.

What is needed today are open communication spaces, open environments for the electronic world, where everyone, at any time and any place has the right and thus the chance not only to “seek”, “receive” and “impart” information, but to behave communicatively.

This is the right to enter a space of free exchange of knowledge and information, and to contribute cooperatively and collaboratively to the production of new knowledge, unrestricted by formally legitimized authorities, by technical restrictions, or by legal barriers.

r2c, or the generic concept of communication rights, is an indispensable part of a vision for the information society.