GLOBAL INFORMATION SOCIETY WATCH 2009

Focus on access to online information and knowledge – advancing human rights and democracy

Association for Progressive Communications (APC)
and Humanist Institute for Cooperation with Developing Countries (Hivos)

Global Information Society Watch 2009

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Dedicated to A.K. Mahan - an activist who valued intellectual rigour and concrete outcomes.

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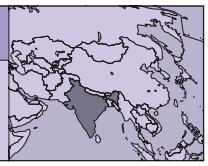

Introduction

With 1.15 billion people, India had around 40 million internet users (less than 5% of the population) and 362 million mobile phone users as of January 2009. The country continues to be the fastest growing market in the world for mobile telephony, with 15.41 million subscribers added in January 2009 alone.[1] This growth is being driven by huge markets that have led to low tariffs and the availability of low-cost handsets. Third-generation (3G) services, which allow voice, data and video to be transmitted at high speeds to wireless devices, will become available after the 3G spectrum bidding process is complete, scheduled for the end of 2009.[2]

Internet connectivity, however, is largely confined to the middle class, arguably because of an absence of contextual applications and content – including computing in local languages. Policy makers are beginning to recognise that this requires a more proactive role by the public and community sectors. The Indian government recently declared that the Universal Service Obligation Fund (USOF), previously used only for telephony, will be used to ensure broadband connectivity to all villages by 2012.[3] Governments at different levels are also taking steps towards supporting the development of much-needed applications and content, *inter alia*, as a part of the Common Services Centres (CSC) scheme discussed below. The USOF may, however, also need to be used to enable communities to develop contextual and local applications and content.

This report discusses key policy initiatives in India – the Right to Information Act; a draft policy on Open Standards in e-Governance; the Protection and Utilisation of Publicly Funded Intellectual Property Bill; and the Information Technology (Amendment) Act – that have strong implications for access to information from the viewpoint of human rights and democracy. It also discusses some key aspects of information and communications technology (ICT) infrastructure, and government programmes for universalising access.

Government programmes for universalising access: Common Services Centres

The Government of India launched the CSC initiative in 2006, with the aim of setting up 100,000 centres in rural areas across the country, each catering to a cluster of six villages. The scheme's cost of INR 57.42 billion[4] will be covered by the central government (INR 8.56 billion), state governments (INR 7.93 billion) and the private sector (INR 40.93 billion).[5] By mid-2009, all 100,000 centres were expected to be operational,[6] but the programme is running behind schedule. The CSCs, aimed at making all government services accessible locally through telecentres run by local entrepreneurs, are an important component of the National e-Governance Plan (NeGP).

The primary assumption of the programme is that a private sector/non-governmental agency-driven telecentre model, with no structured involvement of local government and community-based bodies, can cater for the information and communication needs of the poor and marginalised. However, this flies in the face of long experience in other development sectors such as public health, public education, community development, etc. There is ample evidence that developmental infrastructure, if it is to meet the canons of equity and social justice, should be viewed as "public goods", and not from a commercial perspective.

There are two early indicators of this structural problem with the CSC model. The two Indian states, Gujarat and Kerala, that have the greatest experience with large-scale telecentre programmes, even in the pre-CSC era, have chosen not to adopt the CSC model for their rural development and e-governance activities, preferring to strengthen their existing programmes – e-Gram and Akshaya, respectively. These programmes, while employing local entrepreneurs similar to the CSC scheme, do not see the private sector as "key drivers".[7] Instead, the government's development agencies and community bodies play that role.

While public funding to ensure the universalisation of access is necessary, it should not be used for controlling access to information. Our study of the e-Gram programme revealed that the internet access at their telecentres is provided as an intranet, which allows access only to a small list of websites. Other sites cannot be accessed at these centres.

1 Cell Bharat (2009) India records 15mn mobile subscribers in January 2009, 25 February. cellbharat.com/blog/1889/india-records-15mn-mobile-subscribers-in-january-2009

2 Reuters (2009) India to auction 3G spectrum by 2009 end: Raja, *Expressindia*, 1 June. www.expressindia.com/latest-news/India-to-auction-3G-spectrum-by-2009-end-Raja/469634

3 Indo Asian News Service (2009) All villages to be broadband-enabled by 2012, *Yahoo News India*, 10 July. in.news.yahoo.com/43/20090710/836/tbs-all-villages-to-be-broadband-enabled.html

4 The equivalent of USD 1.276 billion at an exchange rate of INR 45 to 1 USD.

5 www.mit.gov.in/default.aspx?id=661

6 www.egovonline.net/news/news-details.asp?Title=1-Lakh-Common-Service-Centres-by-July-2009&newsid=15591

7 www.csc-india.org/SCAs/tabid/561/language/en-US/Default.aspx

Right to information

The Right to Information Act (RTI, 2005), a pioneering law in India, entitles citizens to request access to any public information which is not classified as confidential by the government or has specific reasons for not being shared. Information relating to rights and entitlements of the people is of significant value to large sections of the population, and the availability of such valuable information freely and in a comprehensive manner in regional languages on the internet can have a major impact on the Indian governance system.

As the number of RTI applications concerning the gargantuan governance system in India are rapidly increasing, there will soon be no way to deal with the requirements of RTI than to proactively put most government information online, obviating the need for servicing individual requests separately. This will arguably be one of the most effective means of making the internet relevant and valuable to most people; an argument which should attract the attention of both policy makers and community-based bodies considering the large-scale provision and use of the internet in rural and other marginalised areas. Already many public authorities have started to share the RTI questions that have been asked of them, along with the responses given, on the internet.[8]

India's new central government[9] has also announced a "public data policy to place all information covering non-strategic areas in the public domain." It would enable citizens to challenge the data and engage directly in governance reform and "[strengthen the] right to information by suitably amending the law to provide for disclosure by government in all non-strategic areas."[10] This policy will require information to be made digitally available since it will not be possible to meet its requirements through traditional paper-based processes.

The number of government websites, as well as the functionalities they offer, has been increasing. One good example is the NREGA[11] programme in Andhra Pradesh state, where detailed real-time information, including transactional information such as work done, wages paid, and assets acquired, is publicly shared through the programme's website.[12] IT for Change's study of the implementation of NREGA's public information systems in Andhra Pradesh show that the beneficiaries of the programme, mostly illiterate, landless labourers, are keen to follow this information on the internet, directly or through community-based organisations that work with them. Many governments have also started providing RTI information over telephones.

Recent court judgments in India have widened the ambit of public authorities from whom citizens can seek information under the Act. Entities receiving substantial public funding, even if not publicly owned, now have obligations if their work has significant public interest implications.[13] This widening of the scope of RTI to private entities will increase the availability of public-interest information in the public domain, a significant part of which will increasingly be online.[14]

Open standards for e-governance[15]

The Department of Information Technology is drafting a Policy on Open Standards for e-Governance. The draft lays down guiding principles for the selection of standards and recommends that e-governance applications should preferably have a single open standard for each application domain, which "should be irrevocably available on a royalty-free basis, for the lifetime of the standard." This is required to fulfil e-governance objectives, which include "ensuring cost-effective e-governance services" and "providing a larger spectrum of choice of solutions and flexibility to users of e-governance systems by avoiding vendor lock-in."

Such a policy has important implications for access to information – e-governance applications that conform to open standards can avoid vendor lock-in and allow citizens to access these applications using different software, whereas if proprietary standards are adopted, they always tend to favour some proprietary software over others. Today, in the absence of any clear open standards policy, a large number of e-governance initiatives require the use of proprietary software for common applications – such as web browsers,[16] spreadsheets[17] and word processing – which can increase the cost of accessing information and constrain citizen/consumer choices. This is also tantamount to citizens needing to pay specific private companies for information which is their entitlement under the RTI Act.

Recently, as the policy draft is nearing finalisation, some large proprietary software companies have been making a strong last-ditch effort against the adoption of single and royalty-free open standards.[18] A newly formed

8 A repository of the requests that have already been answered, presented in a way that is searchable by the citizens, is made available by the RTI site. See: archive.digitalopportunity.org/article/view/125253

9 A new central government took charge in May 2009.

10 ibnlive.in.com/news/full-text-of-presidents-address-to-parliament/94140-3-single.html

11 The National Rural Employment Guarantee Act (NREGA) is Indian legislation that provides a legal guarantee for one hundred days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage. See: nrega.nic.in

12 nrega.ap.gov.in

13 Saxena, P. (2009) *Economic & Political Weekly EPW*, XLIV (16), 18 April, p. 13-16.

14 Bangaladesh, South Africa and Nigeria already have provisions in their own RTI legislation providing for its application in certain cases to non-governmental entities in both the private sector and civil society

15 Although typically referred to as "e-government" (in that it deals with services to citizens and not just internal government ICTs), the term "e-governance" is used by the state as well as in this report throughout.

16 See fyjc.org.in/mumbai/PreordainedMessages/BrowserNotSupported.aspx which is a site for processing online admissions to government colleges in Maharashtra state in India. This site was apparently developed by the Maharashtra Knowledge Corporation Ltd, which is a public sector organisation.

17 incometaxindiaefiling.gov.in/portal/downloads.do

18 See: www.egovonline.net/news/news-details.asp?newsid=16033 and www.dnaindia.com/money/report_members-irked-with-nasscom-over_1274086

alliance of civil society organisations promoting free and open source software is actively opposing such regressive pressures.[19]

The Protection and Utilisation of Publicly Funded Intellectual Property Bill

The government has introduced the Protection and Utilisation of Publicly Funded Intellectual Property Bill in parliament. The Bill aims "to provide for the protection and utilisation of intellectual property originating from publicly funded research."[20] India joins China, South Africa, Brazil and Malaysia in considering this kind of legislation,[21] which is similar to the Bayh-Dole legislation[22] in the United States (US).

Whether the Bayh-Dole legislation has actually provided any impetus to innovation or has only increased the cost of access to information is a moot point. Historically, developing economies have adopted lenient regulations on intellectual property (IP), which has tended to promote their development. It is usually developed/mature economies which seek to protect their competitive advantages by having highly restrictive IP regimes (US *vis-à-vis* Europe in the early and middle 20th century is the best example of such a practice).

In India it is necessary that the results of government-funded research are widely disseminated and freely available in the public interest, without any IP restrictions. Creating an IP regime where universities can commercialise their research carries the serious danger that publicly funded research could shift from areas of public interest, where commercial possibilities are low, to more profitable areas, which may benefit only a small part of the population. Such regimes have seen severe distortions in health-related research, aimed disproportionately at areas with higher commercial potential (like anti-aging medicine) while diseases such as malaria or tuberculosis receive little attention. The other impact that these sorts of IP regimes have is making the research outputs much more expensive. Second-generation drugs to treat AIDS are too expensive for most in developing countries.

The rush for new IP systems that restrict access to information has a lot to do with the emergence of the internet as a globally open and free space for knowledge sharing, and is an attempt to negate the most progressive possibilities offered by the internet. On the other hand, the internet is being used for new ways of not only sharing but also collaboratively developing new knowledge. The Council of Scientific and Industrial Research (CSIR) in India has launched an innovative "open source drug discovery" programme to combat infectious diseases that afflict the developing world. This programme, inspired by open source software development models, works largely through an online networking mode, using the web portal www.osdd.net which provides "data on the pathogens, tools for data analysis, and discussion forum[s] for members to share ideas, [and] projects for students to participate in drug discovery, etc."[23]

Such internet-based collaborative knowledge production is important to ensure its wide non-commercial availability: "The discovery of new/potential drugs will be in the public domain, thus precluding monopoly. The potential drugs will be made generic as soon as they are discovered. This will enable pharmaceutical companies to bring the medicines to the market, and yet keep drug prices competitive."[24]

New trends

The Information Technology (Amendment) Act (2008) has recently been passed, allowing government agencies to intercept email and block websites and web content.[25] The causes for such action include the "sovereignty or integrity of India, the defence of India, the security of the state, friendly relations with foreign states, public order, and preventing incitement to the commission of any recognisable offence relating to [the] above."[26] Apart from these reasons being extremely wide and vulnerable to misuse, the amendment has no provision for the affected party – whose email has been intercepted or whose website is blocked – to be heard before the decision is taken.

Action steps

While the removal of constraints to accessing information (ensuring negative rights)[27] is important, it is as much an imperative to go further with proactive public and community action to ensure universal access to ICT infrastructure and the availability of empowering information on the internet, as well as developing collaborative – free and open – models of knowledge creation, and ensuring protection against undue commercial encumbrances over the free flow of information and knowledge.

In a world where new ICTs promise to transcend many structural inequalities based on access to information, progressive forces are faced with twin challenges: (a) a new thrust worldwide towards restrictive IP laws and practices and their coercive implementation,[28] often through techni-

19 FOSSCOMM.in

20 rajyasabha.nic.in/legislative/amendbills/Science/protection_utlisation.pdf

21 So, A.D. et al. (2008) Is Bayh-Dole Good for Developing Countries? Lessons from the US Experience, *PLoS Biology*, 6 (10). www.plosbiology.org/article/info:doi/10.1371/journal.pbio.0060262

22 The legislation, also dealing with intellectual property arising from federal government-funded research, was pushed forward by two senators, Birch Bayh and Bob Dole. According to Wikipedia: "[I]t gave US universities, small businesses and non-profits intellectual property control of their inventions and other intellectual property that resulted from such funding." en.wikipedia.org/wiki/Bayh-Dole_Act

23 www.domain-b.com/organisation/csir/20080916_csir.html

24 Ibid.

25 Under Section 69 and Section 69A respectively.

26 Ninan, S. (2009) In the name of national security, *The Hindu*, 7 June. www.hindu.com/mag/2009/06/07/stories/2009060750090300.htm

27 See en.wikipedia.org/wiki/Negative_and_positive_rights

28 Digital rights management (see en.wikipedia.org/wiki/The_Digital_Imprimatur) and the proposed ACTA (see en.wikipedia.org/wiki/Anti-Counterfeiting_Trade_Agreement) are examples of such coercive processes.

cal restrictions, and (b) states seeking new forms of digital control over citizens' lives in denial of the exciting new opportunities of a free, uninhibited public sphere and free personal expression.

Unfortunately, in India, while different groups engage with some of the issues discussed in this report in a piecemeal manner, there is little recognition of how they connect and reinforce each other in the building of a new social paradigm – euphemistically called an *information society* – that may require a set of coordinated civil society responses. Civil society needs to identify these new, strongly political contours of the struggle for rights, democracy, equity and social justice and organise itself appropriately.

It is mostly not appreciated how the nature of the technical and techno-social paradigms that are being constructed today, largely by the already dominant forces, will determine some basic characteristics of the emerging information society, including its progressive possibilities. The very poor participation of the otherwise very politically aware and active Indian civil society groups in the third meeting of the United Nations Internet Governance Forum that was held in December 2008 in Hyderabad is worrying. It requires considerable theoretical and research work in information society studies from the perspective of a developing country like India to develop new coalitions of civil society actors – from across the domains of civil society work such as technology, governance, access to knowledge, education, health, etc. – for purposeful advocacy and action around key information society issues, that by definition have implications for society as a whole. ■

GLOBAL INFORMATION SOCIETY WATCH 2009

GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels
- **Encouraging** critical debate
- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy.* It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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