

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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Institutional overview



Institutional overview

Jeremy Malcolm

Consumers International
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Introduction

Access to information and knowledge is a governance domain involving a broad range of stakeholders at different levels. As will be apparent from some of the thematic reports in this volume, this results from the diversity of the issues it subsumes, including intellectual property rights, access to public information, open standards, broader communications rights such as freedom of expression, and issues around ownership of and participation in the media.

Over the last six years, new links have begun to develop between these diverse issue areas and the actors who inhabit them, largely under the umbrella of the growing civil society movement on access to knowledge (A2K). Teachers, scientists, journalists and “hacktivists” are amongst those who have found a commonality of interest in the broadening of public access to information and knowledge – as too have a diverse range of other actors at the penumbra of the A2K movement, such as farmers concerned about rights to seeds, indigenous rights activists interested in bio-piracy, and doctors and aid workers interested in access to medicines.

One of the catalysts for the emergence of this cooperative front was the World Summit on the Information Society (WSIS), which in 2003 and 2005 brought together civil society and private sector actors to observe (and to a limited extent, influence) the development of an intergovernmental accord on the principles and actions necessary for building an inclusive information society.

The form in which the theme of access to information and knowledge was addressed in the WSIS output documents was as one of eleven main action lines in the Geneva Plan of Action, in which it was declared in 2003 that “ICTs [information and communications technologies] allow people, anywhere in the world, to access information and knowledge almost instantaneously. Individuals, organizations and communities should benefit from access to knowledge and information.”¹

The force and specificity of the recommendations flowing from this principle were in many respects diluted by the imperative to agree them by intergovernmental consensus. For example, while an earlier negotiating text had lauded the benefits of free and open source software (FOSS) to promote access to information, objections from the United States (US) and European Union (EU) saw this reference removed from the

Geneva text in favour of a direction that a variety of software models, including proprietary software, should be promoted.

Frustrated with the limitations of the official WSIS output documents, civil society produced its own alternative summit paper, with stronger recommendations on the promotion of access to information and knowledge.² Since then, further declarations and other texts on access to knowledge have been drafted by a variety of civil society and private sector coalitions. These include the Geneva Declaration on the Future of the World Intellectual Property Organization,³ the Adelphi Charter on Creativity, Innovation and Intellectual Property,⁴ a draft Treaty on Access to Knowledge,⁵ the Paris Accord (an agreement between consumers and creative and inventive communities),⁶ and the Munich Declaration on copyright limitations and exceptions.⁷

Although space does not permit for the content of these documents and initiatives to be described directly, a number of the institutions responsible for implementing them will be considered below, with a focus on the activities those institutions have undertaken during the year 2008-2009.

This review considers the following broad issue areas in turn:

- Intellectual property rights, the public domain and open standards
- Democratic public media and access to government information
- Online civil rights.

Intellectual property rights, the public domain and open standards

The World Intellectual Property Organization (WIPO), an intergovernmental organisation, administers the principal intellectual property conventions, which include the Berne Convention on copyright, the Paris Convention on patents, trademarks and registered designs, and the Rome Convention on copyright and related rights. The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), both of which came into force in 2002, extend these earlier instruments in light of new digital technologies including the internet.

2 www.worldsummit2003.de/download_en/WSIS-CS-summit-statement-rev1-23-12-2005-en.pdf

3 www.cptech.org/ip/wipo/futureofwipodeclaration.pdf

4 www.sitoc.biz/adelphicharter/pdfs/adelphi_charter2.pdf

5 www.cptech.org/a2k/a2k_treaty_may9.pdf

6 www.cptech.org/a2k/pa/ParisAccord-june17draft.pdf

7 www.ip.mpg.de/shared/data/pdf/declaration_three_step_test_final_english.pdf

1 www.itu.int/wsiscs/docs/geneva/official/poa.html#c3

Since 1995 the other main intergovernmental organisation involved in the global intellectual property system has been the World Trade Organization (WTO), whose Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement largely incorporates the substantive content of the WIPO-administered conventions, but with the important difference that it treats non-compliance as a barrier to trade, and enables the WTO to impose sanctions on member countries in breach. It also provides for the resolution of disputes between nations through the WTO.

During this decade, both WIPO and the WTO became venues for the development of a counter-movement against the expansion of intellectual property laws and enforcement practices, which, together with the stand taken at WSIS, eventually developed into the A2K movement of today. A watershed in this process was the adoption in September 2007 of a “Development Agenda” for WIPO, in response to a proposal originally made by Brazil and Argentina in 2004.⁸ Civil society groups quickly rallied around this proposal, drafting their Geneva Declaration on the Future of the World Intellectual Property Organization that year, followed by the draft Treaty on Access to Knowledge in 2005, and participating in the first international conference on Access to Knowledge at Yale University in 2006.

The Development Agenda itself contains 45 recommendations in six clusters, which include the promotion of a development-oriented intellectual property culture, the preservation of the public domain, and the exchange of experiences on open collaborative projects. To date three meetings of WIPO’s Committee on Development and Intellectual Property (CDIP) have been held, and at the latest meeting in April and May 2009, the WIPO Secretariat presented a progress report on the steps taken towards the implementation of nineteen of the recommendations.⁹

The most significant outcome of WIPO’s Development Agenda so far has been the discussion of new minimum copyright limitations and exceptions by its Standing Committee on Copyright and Related Rights (SCCR). The addition of this initiative to the committee’s agenda was moved by Chile, Brazil, Uruguay and Nicaragua in 2008, elaborating on an earlier Chilean proposal. The limitations and exceptions to be studied by the SCCR include those for education, libraries, archives, innovative services and persons with disabilities. The first concrete proposal in this area is a Treaty for Blind, Visually Impaired and Other Reading Disabled Persons, tabled by Brazil, Ecuador and Paraguay in May 2009.¹⁰

Another important transnational actor in this issue area is Google, which in October 2008 reached a USD 125 million settlement agreement with publishers over its Google Book Search service, for which Google partnered with libraries to scan millions of books into a full-text index.¹¹ Final approval of the settlement is presently scheduled for October 2009, but this remains contingent upon the resolution of objections raised by certain groups, amongst them the US-based Consumer Watchdog, that the terms of the settlement unduly favour Google over other information intermediaries in its access to digitised books.

Also not to be overlooked is the transition in June 2009 of the world’s largest encyclopaedia, Wikipedia, to a dual-licensing model. This was facilitated by the agreement of the Free Software Foundation to include a clause tailored for this purpose in version 1.3 of the GNU Free Documentation Licence, under which Wikipedia was originally licensed. As a result all content previously written for Wikipedia, and all future articles, will also be licensed under the more flexible Creative Commons Attribution-Share Alike Licence. This will enable content to be more easily shared between Wikipedia and any other publication that uses the same Creative Commons licence.

Finally, brief mention should be made of open standards that impact upon access to knowledge and information. One notable development made this year in the war of competing document standards, between the OpenDocument Format (ISO 26300:2006) and the Microsoft-sponsored Office Open XML (ISO/IEC 29500:2008), was Microsoft’s inclusion of an OpenDocument Format (ODF) filter in Microsoft Office 2007 Service Pack 2. However, this filter, although mostly compliant with the ODF standard, is not fully interoperable with other implementations of that standard – in part due to limitations of the ODF specification.¹² The upcoming ODF version 1.2, expected for release within a year, should address these limitations.

Democratic public media and access to government information

Access to information and knowledge is dependent upon the existence of a democratic public sphere where discourse and debate can take place. This in turn depends upon free and pluralistic public media, as well as access to basic public information such as laws and parliamentary discussions. These will briefly be addressed in turn.

8 www.wipo.int/documents/en/document/govbody/wo_gb_ga/pdf/wo_ga_31_11.pdf

9 www.wipo.int/edocs/mdocs/mdocs/en/cdip_3/cdip_3_5.pdf

10 www.wipo.int/edocs/mdocs/copyright/en/sccr_18/sccr_18_5.pdf

11 books.google.com

12 www.odfalliance.org/blog/index.php/site/microsofts_odf_support_falls_short

Historically, one of the most important international institutions for the promotion of media diversity has been the United Nations Educational, Scientific and Cultural Organization (UNESCO). UNESCO is noted for the 1980 MacBride report,¹³ which aimed to establish what was dubbed a New World Information and Communications Order (NWICO) that would provide more balanced coverage of the developing world by the mass media. This report was seen as advocating for interference with the freedom of the press by the US, the United Kingdom and Singapore, which temporarily withdrew from UNESCO in protest – a blow from which the organisation is still recovering.

Nonetheless, “Communication and information” is today one of five major UNESCO programmes,¹⁴ and its International Programme for the Development of Communication (IPDC) is an enduring outcome of the MacBride report.

A second UNESCO programme with more particular relevance to this chapter is its Information For All Project (IFAP), established in 2000, which aims to promote access to information through ICTs. The International Federation of Library Associations and Institutions (IFLA) and its member Electronic Information for Libraries (eIFL) are other international institutions that promote this vision.

Another of the WSIS recommendations on access to information and knowledge was that governments should “provide adequate access through various communication resources, notably the Internet, to public official information.” The most important recent development in this area was the signature in June 2009 of a Convention on Access to Official Documents by twelve of the 47 members of the Council of Europe, which for the first time laid down an intergovernmental benchmark for access to official documents held by public authorities.¹⁵

Online civil rights

The Council of Europe separately resolved in May 2009 that access to the internet is a fundamental right, and that “fundamental rights and Council of Europe standards and values apply to online information and communication services as much as they do to the offline world.”¹⁶ Concern was also expressed in the resolution about the breadth of anti-terrorism legislation restricting freedom of expression. These are messages that the Council has repeated in other forums, such as the Internet Governance Forum (IGF).

The IGF, an open multi-stakeholder body convened by the UN in 2006 as one of the outcomes of WSIS, provides

a venue where internet policy issues can be discussed and debated, with the objective that these discussions (and, in appropriate cases, recommendations) would be brought to the attention of the appropriate international institutions for further action.

While the IGF has been slow to develop concrete modalities to fulfil this mandate, one experimental mechanism it has tried to use to do so has been through forming self-organised “dynamic coalitions”, one of which is the Dynamic Coalition on Internet Rights and Principles. This group was formed following the third meeting of the IGF in Hyderabad, India in December 2008, from the merger of the former Framework of Principles for the Internet and Internet Bill of Rights dynamic coalitions. One of its current activities is to review the APC Internet Rights Charter that was last revised in 2006.¹⁷

Another new institution in this arena, though less multi-stakeholder in composition given that it lacks governmental membership, is the Global Network Initiative (GNI).¹⁸ The GNI, which includes Microsoft, Google and Yahoo from the private sector, alongside civil society groups such as the Electronic Frontiers Foundation (EFF) and Centre for Democracy and Technology (CDT), released a set of Principles on Freedom of Expression and Privacy in October 2008. The principles are intended to delineate the degree to which the private sector will cooperate with governments that seek its assistance in interfering with the freedom of expression or privacy of their customers.

Conclusion

It has only been possible in this report to sketch the broadest outline of the institutional framework for access to information and knowledge. Moreover, this chapter has not even attempted to consider access to printed materials (which is particularly important in ensuring adequate access to educational materials, and especially in the developing world). Neither were the activities of regional and local non-governmental organisations considered here, or those of national governments – though many of these will be covered in the country reports to follow in this volume.

Even so, it is clear that initiatives in this area have emerged from all sectors: public, private and civil society. Within each of the three broad issue areas considered in this report – concisely labelled intellectual property rights, democratic public media and online civil rights – stakeholders from all sectors have formed productive alliances and begun to make gains that could not have been accomplished

13 unesdoc.unesco.org/images/0004/000400/040066eb.pdf

14 www.unesco.org/webworld

15 wcd.coe.int/ViewDoc.jsp?id=1377737&Site=CM

16 [www.coe.int/t/dghl/standardsetting/media/MCM\(2009\)011_en_final_web.pdf](http://www.coe.int/t/dghl/standardsetting/media/MCM(2009)011_en_final_web.pdf)

17 rights.apc.org/charter.shtml

18 www.globalnetworkinitiative.org

in isolation. For example, civil society has worked together with governments to support the WIPO Development Agenda, and with the private sector to promote online civil rights within the GNI.

What is lacking are efforts to realise similar gains from the collaboration of institutions and other actors *between* these broad issue areas. As yet, there is little coordinated engagement between, for example, WIPO and UNESCO (even within a forum such as the IGF, which was intended to foster such linkages), or between human rights groups and the open source software community. A comprehensive approach to narrowing the information divide through the use of ICTs will require stakeholders to develop a shared holistic view of the issue areas constituting this field, as complementary elements of a framework for the promotion of access to knowledge and information for all. ■

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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).

GLOBAL INFORMATION SOCIETY WATCH

2009 Report

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