

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

Just over a year has passed since the election of President Fernando Lugo on 15 August 2008, and it is fair to say that the people's expectations are higher than the new government's ability to respond. This is seen when it comes to issues such as access to the internet, and the liberalisation of the information and communications technology (ICT) sector.

When it comes to accessing online information the key challenges are gaps in the policy and legislative arena, and the country's low internet penetration.

Access to the internet

Paraguay remains the South American country with the lowest rate of internet penetration (4.1% in 2007), far below figures for other members of the Mercosur¹ common market. The access prices in Table 1 give an indication of the disadvantage Paraguay faces.

Table 1: Comparative internet access prices

Country	Price	Kilobits per second (kbps)
Paraguay	USD 25	64
Uruguay	USD 26	256
Brazil	USD 25	800
Argentina	USD 22	1024
Spain	EUR 29	1024
Portugal	EUR 15	2048

Source: copaco.com.py, antel.com.py, ajato.com.br, fibertel.com.ar, telefonica.es, adsl.sapo.pt, www.internetworldstats.com/stats15.htm

However, at the last Mercosur summit, which took place in Asunción (23-24 July 2009) with all member country presidents in attendance, ICTs did not make it onto the agenda.²

In March 2009, the telecommunications regulatory body Conatel announced the liberalisation of the internet market, and opened up international bandwidth to operators. Prior to this, the international signal had always been the exclusive domain of Copaco, the state-owned telecoms company. This "liberation" should reduce the cost of access for internet service providers (ISPs). However, despite liberalisation, private operators are not accessing international bandwidth directly yet. The cost of access for the end-consumer (for a poor quality connection) remains the same, and, according to Conatel, Paraguay still currently has only between 40,000 and 50,000 internet users.

The leading private sector internet provider in Paraguay is the mobile operator Tigo, owned by Millicom International Cellular. To date, six months after liberalisation, the company has not lowered its prices, and the service continues to be the same. As a result, the country remains with the lowest usage rate in the region.³

Policy and legislative environment

In the absence of an umbrella ICT policy, legislative developments in the sector have been piecemeal – some of it good, some bad.

The existing legal framework governing internet access points to the opening up of the sector, promoting and strengthening the development of competition in the market, and favouring the growth of private investment. The legislation is clear and managed transparently, guaranteeing equal access to resources like spectrum. Most of the main problems have been identified, and funds are available to improve universal access (through a universal access fund).

Intellectual property laws are also in place. The law protecting copyright and related rights is Law No. 1.328/98 and its Regulatory Decree.⁴ The General Directorate of Intellectual Property (DGPI) falls under the Ministry of Industry and Commerce, and has the following specific functions:⁵

- Assuring the adequate administration of the national systems of copyright and related rights, as well as that of industrial property.
- Promoting intellectual productivity, in its literary, artistic and scientific forms, as well as the scope of its industrial application, and the diffusion of technological knowledge within the cultural sectors.
- Assessing and participating in the formulation of national policies in all those areas that have to do with the protection of intellectual property and other similar rights.
- Promoting initiatives and developing activities that improve the protection of national industrial property such as trademarks and inventions.

At the same time, the National Constitution of Paraguay, approved in 1992, protects freedom of expression and the freedom of the press. It also guarantees the right of any person to produce and share information.⁶

1 Mercosur is a regional trade agreement between Argentina, Brazil, Paraguay and Uruguay. Bolivia, Chile, Colombia, Ecuador and Peru currently have associate member status. Venezuela signed a membership agreement in 2006 (en.wikipedia.org/wiki/Mercosur) but the congresses of Brazil and Paraguay have not taken a decision on its membership yet.

2 rafamemmel.com/category/tic-en-paraguay

3 rafamemmel.com/category/tic-en-paraguay

4 www.cej.org.py/games/Leyes_por_Materia_juridica/CIVIL/LEY%20%201328.pdf

5 www.mic.gov.py/?option=com_content&task=view&id=2&Itemid=4

6 www.acnur.org/biblioteca/pdf/0055.pdf

However, major gaps still exist for a policy and legislative environment that will guarantee access to online information. These involve implementing the constitutional right to information, and the implications of the country's Criminal Code.

Right to information

Article 28 of the constitution guarantees the right to information. Public sources of information should be accessible and free to all.⁷ Access to public information legislation was drafted in 2005, and presented before the Chamber of Deputies. The draft was approved by the Chamber in 2006; however, it was rejected by the Senate. As a result, the draft law has been returned to the Chamber of Deputies.

With input from the Senate advisory committee, the draft legislation as approved by the Chamber of Deputies suffered a series of modifications. Limitations introduced that did little else but restrict citizen access to public information were kept.

GIAI, a civil society grouping promoting access to information, is presently working on a similar proposal for presentation before the Congress, while recognising that the chances of its approval are likely to be quite remote. For example, Congress has rejected legislation that would establish the obligation on its members to place their sworn declarations of assets (e.g., income and gifts) online.

GIAI involves more than twenty organisations, among which is Radio Viva, who are striving towards the following goals:

- Citizen awareness on the right to access public information, and private information that is of public interest
- Increasing the scope of the right to access information
- Approval of a law on access to public information, with ample citizen participation in its preparation, promulgation, and implementation
- Promoting the effective enforcement of the law.

The Criminal Code (1997)

The Criminal Code of 1997 covers various forms of electronic communication and has implications for the use of the internet. The code covers areas such as:

- Alteration of data
- Computer sabotage
- Fraud
- Violation of the secrecy of communication

However, legal experts say there are many loopholes that need to be clarified. For instance, "alteration of data" only applies if the offender "changes" such data, and not in cases when the data are erased or deleted. It is also not clear if it has implications for the offence of altering a public database such as civil records or police records.

In the case of "computer sabotage" the sanctions for illegally transferring money from an account are unclear. The text for "fraudulent computer operations" is unclear about things like whether or not this includes email, and the interception of email communication.

Action steps

Despite the liberalisation of the sector, and some legislative clarity, much work still needs to be done. Most importantly, civil society, the private sector and other social actors must demand that an ICT policy is developed. This should, amongst other things, deal with:

- Equal access to international optical fibre
- The simplification of the licensing regime
- The modernisation of the regulatory framework
- The development of regulations to govern voice over internet protocol (VoIP)
- The institutional strengthening of Conatel. ■

7 Ibid.

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

www.GISWatch.org

