

A NEW READING OF ARTICLE 19 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948) IN OUR INFORMATION SOCIETIES

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1. INTRODUCTION

The 1948 Universal Declaration of Human Rights (UDHR) raised the concept of freedom of the press to a universal right in Article 19. Since then, scholars have developed a common doctrine based on this “universality,” which has been enriched by the courts in many countries. This article will concentrate on two basic points: first, on the ways in which freedom of speech was originally conceived and later developed on a global scale, and, second, on the consequences of the most recent definition of the “Universal Right” in light of the recent World Summit on the Information Society (WSIS) Geneva Declaration.

Since 1948, other declarations, such as the 2003 Geneva Declaration of the WSIS in preparation for the 2005 Tunisian World Summit, consider Article 19 as applicable to the ICT arena. It is precisely the right recognized in 1948, at the time applied to the press, radio, television, and film, that can help us re-interpret “Freedom of Speech” and its usage in Information Societies. In the spirit of the Geneva Declaration, member countries proclaimed the following assessment, which includes the text of Article 19 (emphasis is mine).

“We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that 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. Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society.”

Since the creation of Article 19, scholars have developed a common doctrine concerning the “universality” of this right. In turn, this doctrine [Desantes (2002), Sánchez Férriz (2004), Escobar de la Serna & Bel (2003)] has been applied in many countries through the jurisprudence

of constitutional courts. Today, when we refer to Knowledge Societies for All, we have to consider the influence of the European Human Rights Convention (1950), not only on the considerations of European Court for Human Rights (www.echr.coe.int) and the decisions made by national courts, but also on the application of this doctrine to political criticism and to address the then newly-created media: radio, film, and television.

Today, after the UN Declaration has been in force for more than fifty-seven years, there are both negative and positive outcomes to be considered when designing a new working model of the freedom of speech in Information Societies. Three positive aspects should be mentioned. One is the consequential diffusion of freedom of speech into countries where these principles had been previously threatened. Second, is the increasing awareness of the public concerning individuals' right to exercise freedom of speech. And third, as a consequence of the above, is the widespread use of the right for each individual to access and create his or her own media. This phenomenon is known as participatory journalism or participatory communication. On the other hand, we should be reminded of the ways in which governments and authorities still exercise the power to prohibit the establishment of new media or to censor Internet content at will.

2. THE CATALOG OF UNIVERSAL RIGHTS IN INFORMATION SOCIETIES

The realities of the Information Society, and the ever-evolving interpretation of these rights on a global scale, call for a re-evaluation of the original spirit of the freedom of speech text.

In this context, universal rights are understood to be the right to culture, to information, and to authorship. Before enumerating these rights in the ICT arena, a global concept of freedom of speech needs to be restated as pertaining to those individuals in possession of subjective rights and with concrete skills for the use thereof. It is imperative to define these universal rights as to “who” is the universal subject and “what” is the true object of freedom of speech.

Thus, a new definition could be that the Information Society is not a closed society. Neither is it a place for a privileged few, but a society with an international focus that should be made universal. By universal we refer to all individuals, in all countries, and through all available media. Three aspects of this universality to which we refer are subjective, geographical, and technical, which will be discussed later in section 6 of this article.

The desire to face the challenge brought on by recent ICT development was seen in 2003 in the United Nations meeting “*Our Common View of Informational Societies*,” which gave birth to the Geneva Declaration. This IAMRC Conference implies a will to extend the aforementioned subjective personal application, and suggests everyone should contribute positively.

3. COMPARATIVE FRAME

In the following figure, the content of the rights recognised in Articles 19 and 27 are compared to those aspects developed within the Information Society as stated in the Geneva Declaration.

The rights to cultural access, the participation in creations, authorship, and intellectual property have their beginnings in the Internet Boom of the 1990s, and in scientific circles and international documentation.

Classic Rights UDHR (1948) Article 19	Classic Rights UDHR (1948) Article 27	Geneva Declaration (2003) Principles 1 and 21
To seek	To participate	To access – To be included
Everyone has the right ... to seek ... information and ideas through any media and regardless of frontiers.	(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts ... and its benefits.	<i>Principle (1)</i> ... to build an <u>inclusive</u> Information Society, where everyone can access information and knowledge , ... <i>Principle 21(1)</i> Universal, ubiquitous, equitable and affordable <u>access to ICT</u> infrastructure and services, constitutes one of the challenges of the Information Society ...
To receive	To share	To utilize – To share
Everyone has the right to receive information and ideas through any media and regardless of frontiers.	1) Everyone has the right ... to share in scientific advancement and its benefits.	... to build a Information Society, where everyone can utilize and share information and knowledge , enabling individuals, communities and peoples ...
To impart	To create –To produce	To create and share
Everyone has the right to impart information and ideas through any media and regardless of frontiers.	(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author	... to build a Information Society, where everyone can create and share information and knowledge ...

4. NEW PROFILE OF FREEDOM OF SPEECH

Today the academic sector claims that the original freedom of speech profile no longer meets all the demands of the new Information Society. Authors such as Claudia Padovani (2006) and Raboy (2005) echo what D'Arcy had already warned us in the 1960s: that there would be a moment when the UDHR would have to include some rights other than those written into Article 19.

This point of view is initially correct, as the right conceded in Article 19 should be updated to include the changes in mass media. However, I am not sure it is “politically” correct. From a more dogmatic point of view, the following reasoning seems, to me, to be more complete.

Without a doubt, the guarantees included in the generic right we are analyzing, which are the same as those in the Bill of Rights, are insufficient, as affirmed by Stephens (2005, p. 6). For this reason, “it is helpful to ‘unbundle,’ as Stephen writes, “this generic right as a group of three rights. Those are, one, the right to seek, information and ideas; two, the right to receive information and ideas and, three, the right to impart information and ideas to others. Almost all international statements on free expression are now interpreted to recognise the multi-faceted nature of the right.”

The truth is that all international constitutions that include this standard recognize the multifaceted nature of the generic “right to be informed.”

In the WSIS in Tunis, convened by the United Nations in November 2005, the existence of “communication rights” was discussed. This was an initiative of the World Forum on Communication Rights (www.communicationrights.org) that has its basis in the United Nations Charter as well as Article 19.

These discussions, I understand, are an apparently “new proclamation of rights,” more than the petition of a specific new right. Thus, this petition is really a public movement towards the awareness of the right to information in a globalized society. According to Padovani and Pavan (2006) and Raboy (2004), this idea was already included in the United Nations Charter.

As the WSIS applied the UDHR framework to the Geneva Declaration, this implied that these rights become the “standard” rights to be incorporated into the Information Society. In particular, both principles, (a) those of the equality of Human Rights, and, (b) that of non-discrimination, are protected on all levels of information and communication, as well as in public technologies (Jorgensen [2003] cited by Padovani, 2006).

5. REVISION OF UNIVERSAL RIGHTS AND EQUALITY

This universal right refers to subjective, geographical, and technical issues. The original “ius communicationis” based on a Lecture defending American Indians, traces its roots to Francisco de Vitoria in the *Relectiones “De Indis” Class of 1538-1539* (Edited by Urdanoz, Obras de

Vitoria, Madrid, 1960, p. 705), and was translated and studied in depth by José M^a Desantes (2002).

Although those original mediated techniques or methods of communication should be updated, the principles can still be considered fundamental.

By subjective, Desantes (1994, p. 17) affirms that “the subjective universality of rights is applied to everyone. Communication and Society are natural to mankind. By geographical, in fact, both, communication and society are necessary for man to live everywhere. Therefore, no one has the right to deprive anyone else of that privilege.”

For this reason, the principle of non-discrimination—as stated in Article 2 of UDHR and in the Spanish Constitution Article 14—becomes more relevant to communication.

By technical, “universality” also applies to the mass media for another reason: if communication is a necessary right, then none of the means of communication can be excluded.

When referring to the positive norms of any—without distinguishing any one medium in particular—one understands that all mass media are included, even those in the past and those yet to come in the future. This reasoning applies to Article 19.

The Geneva Declaration also states:

“All individuals, everywhere, should have the opportunity to participate and no one should be excluded from the benefits that are offered by the Information Society.”

The term “excluded” refers to the right to access and inclusion, which will be discussed in the next section of this article.

Today, we are looking at a universal right in an attempt to avoid the non-participation of those who lack the opportunity or means to make their presence in this information society effective.

6. THE ACCESS TO INTERNET AS AN INCLUSIVE RIGHT

If a basic principle to the right to information is universal, in the sense that this fundamental right to free communication may be exercised in any place and through any medium, then this right should be applicable to all media with which one can receive, have access to, or share. We may ask, in this context, Is the right to access Internet included in the generic information right?

It is precisely in Section 2 of the Geneva Declaration, dedicated to the “*Infrastructure of ICT*” where it is stated that connectivity is fundamental, but that this declaration does not automatically authorize the right. In particular it says, “*Connectivity is a central enabling agent in building the Information Society. Universal, ubiquitous, equitable and affordable access to ICT infrastructure and services, constitutes one of the challenges of the Information Society and should be an objective of all stakeholders involved in building it.*”

Furthermore, regarding the right to access a medium, this “universal access to Internet” should be considered on a broader basis as a part of the right to education and access to culture.

Given this, without falling into utopian postulations, one must not consider that the right to culture automatically implies free and accessible Internet at home. This access, of course, differs depending upon of each governing body, its cultural level, and political dedication.

In any case, the right to information is based more on access to the contents of Internet than to the right to access the Web. Access to Internet content is an obligatory first step and, as a result, a foundation of the universal right to culture and information through any medium. However, this access implies that not all of the contents available on the Web are to be given the same treatment since some sites are protected by authorship rights, which is an exception to public's right to receive information.

7. CONCLUSIONS

As a result of some negative aspects of an inclusive interpretation of rights on a global scale, it is necessary to maintain those principles that inspired the Universal Declaration and adhere to the spirit behind those principles.

The mere universality and equality of Article 19 of the UDHR allow us to adapt it to the Information Society and individual circumstances.

Presently a new definition for “Universal Rights” is being forged. The Universal Access to ICT is a way of exercising freedom of speech—in particular, the right to seek information.

It is important to remember that there is a policy that calls for non-discrimination through ICT use, which, in turn, refers to the spread of Internet access.

The individual should be the central unit of the universal rights system. As peace is the fundamental aim of democratic societies today, the guarantees of fundamental rights should be more important than ever.

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