

Honourable delegates,

The subject I've been asked to speak about is the 'Enabling Environment' for community media. I think that by 'enabling environment', we mean the body of all the laws and regulations which have a bearing on the viability of such media. The topic then raises two questions:

Firstly, are States actually obliged under international law to facilitate community media? In particular, does the right to freedom of expression imply that citizens have a right to community media?

And secondly, assuming that such a right exists, how can it best be implemented? What kind of laws should governments adopt to enable community media to grow?

The answers to these questions are not necessarily the same for different types of media. The traditional broadcast media which Steve Buckley discussed – namely radio and TV – require a different legislative response than the new, often internet-based forms of community access which Jo Tacchi spoke about, such as blogging and podcasting. Consequently, I will discuss these two distinct types of media separately, starting with community broadcasting.

[On community broadcasting]

The flagship statement of the right to freedom of expression is found in the Universal Declaration of Human Rights, at Article 19. Article 19 is of a very general nature, but it does make a number of points which are relevant to the question of community media. Firstly, the right to freedom of expression in fact protects more than just the expression of information or ideas; it includes the right to seek and receive them. As a consequence, listening to the radio or watching TV are protected activities in the same manner as making programmes and broadcasting them across. Secondly, individuals have the right

to express themselves through *any* media of their choice, ranging from smoke signals to newspapers to podcasts.

What do these two principles tell us about community broadcasting?

The fact that individuals may use any media to express themselves of course doesn't mean that there is a human right to operate a radio or TV station. That would be technically impossible because there are only so many broadcast frequencies available, and if you try to fit too many stations into the spectrum, the result is interference. It does mean, however, that every individual has the right to a broadcasting system which maximises his or her ability both to receive and to impart information and ideas. In other words, the State should apportion the available spectrum in a pluralistic and utilitarian way: it should give licences to those broadcasters who are willing to represent different viewpoints which are broadly representative of society. To adapt a phrase from Jeremy Bentham, broadcasting should enable "the greatest amount of expression for the greatest number."

It's possible to detect a growing consensus in international law that a pluralistic broadcasting system means a system which includes community broadcasting. The *Declaration of Principles on Freedom of Expression in Africa*, which was adopted in 2002, states in Principle V that governments should equitably allocate frequencies between private broadcasting uses, both commercial and community. The Windhoek Charter on Broadcasting in Africa, which was endorsed by the UNESCO General Conference, also calls for a three-tier broadcasting system which includes public service, commercial and community broadcasters. The Special Rapporteur for Freedom of Expression of the Organization of American States has repeatedly stressed the importance of community broadcasting as a means of combating poverty.

Apart from legal arguments, there is also a strong logical case that having only national broadcasters is not the most efficient way to cut up the spectrum pie, especially in linguistically diverse countries. If you have, for example, a country with 3 different language regions, it makes more sense to opt for three community stations with limited

geographical reach than one national commercial station which divides its time equally between the different languages, and is useless to most people two-thirds of the time.

Assuming that there is a duty under international law to permit community broadcasting, how should it be implemented in the domestic legal order?

A logical starting point is to define the concept of 'community broadcaster' in law.

This raises the question how the term 'community' should be understood. Are we talking about geographical communities, or about communities of interest, such as the community of Welsh speakers, the community of women or the community of war veterans?

I think that in most countries, the case for defining communities territorially is more compelling. A territorial station will have something on offer for most people in its catchment areas, whereas a station for a community of interest may not be of much use to the majority of the population. In addition, there are likely to be a vast number of different communities of interest with a reasonable claim to a licence. Deciding between these communities could easily become a fairly arbitrary exercise.

On the other hand, in those countries where there are important minority groups which are dispersed over a wide area, the case for recognising 'communities of interest' is stronger. In Canada, for example, there is a nationally broadcast station for native Americans; this makes sense because most local community stations would tend to serve the majority immigrant population.

A second question raised by the definition of community broadcasting is the governance structure.

There are three basic options. Community stations could be publicly run, like national public service broadcasters; they could be run commercially; or they could be run by civil society organisations on a not-for-profit basis.

As you might expect, I agree with Mr. Buckley that the last option is the best one. The reason is that as a rule, there will be only one licence available for a broadcaster to serve a particular community. Entrusting that single frequency to the State or a commercial interest is unlikely to yield the best results in terms of pluralism, especially when public and private stations already exist at the national level. The most promising approach is to award the licence to a group which genuinely reflects the community and is interested in serving its needs. If such a group doesn't exist, then of course a different solution can be adopted until such time as the situation has changed. But in principle, community broadcasting should be broadcasting for the community, by the community.

Moving beyond the definition of community broadcasting, the domestic law will also have to determine what kind of licence terms may be imposed on community stations. Should it be possible, for instance, to impose duties relating to the content of community broadcasters' programmes?

Thinking back at what happened in Rwanda in 1994, it is clear that certain content restrictions can be justified, such as a prohibition on incitement to crime. In my view these restrictions could be identical to those imposed on commercial broadcasters at the national level.

A duty for community broadcasters to report in a politically independent way also seems advisable. The purpose of these broadcasters is after all to serve the community, not just a particular interest within it.

On the other hand, a duty to carry socially useful programmes, such as educational programmes, is much more contentious. Some would argue that such a duty is consistent with the purpose of community broadcasting. Others take the position that broadcasters should enjoy editorial freedom, and should decide for themselves what types of programmes are best for their audience.

Moving on from content issues, there is the question what kind of licence fee community broadcasters can be required to pay. Obviously, the fee should be low, perhaps non-existent, but in any case lower than the fee for national broadcasters. It should not have the effect of making community broadcasting unfeasible.

Then there is also the question of licence duration. Because community broadcasters often depend on the efforts of a small number of people, there is always a risk of sudden collapse or of a rapid decline in the station's standards. For this reason, I believe it is justified to grant the licence for a comparatively short term. At the same time, the term should be long enough to make investment in the station worthwhile, and the licence holder should benefit from a presumption of renewal when the licence expires.

Finally, on the subject of broadcasting, there is the question of finance. Funding is always going to be one of the biggest obstacles to the viability of broadcasters at the community level.

The first solution that comes to mind is direct subsidies. If they're awarded on a non-discriminatory basis, with no political strings attached, subsidies can be helpful. But they're also problematic because they endanger the broadcaster's independence: stations might prove reluctant to bite the hand that feeds them.

Instead, States can do a lot to support community broadcasting through indirect support measures. For example, they can abolish the licence fee; they can grant tax exemptions; they can abolish import duties on broadcasting equipment; and finally, they can impose limits on the amount of advertising that large commercial stations may carry, so that some of the overflow trickles down to the smaller community stations.

[On new forms of community media]

That's all I have to say about community broadcasting; and now finally a few brief words on new types of community media, like blogging and podcasting.

The enabling environment for most of these new media is an affordable internet connection, both for publishers and for their audience. Once you have the connection, you're more or less in business; how you provide the connection is more of a practical question than a legal one.

The biggest legal challenge to the internet as an enabling environment are in fact government attempts to regulate it. In a number of countries, governments have begun to transpose the regulatory model they use for traditional media onto the internet, for example by requiring a licence for sites which offer streaming audio or video broadcasts, or requiring blogs to register with the authorities.

There is really no justification for such policies. Unlike the broadcasting spectrum, the internet is an infinite resource. Anyone who wants to can have an online TV station without technical difficulties arising for anyone else. The scarcity argument which justifies the licensing of terrestrial broadcasting outlets cannot apply to the internet. In a sense, internet broadcasting is more analogous to the print media; there is no shortage of paper, hence no established democracy licences the right to use it for the production of newspapers.

As my final remark, I will quote from a Joint Declaration which was adopted last December by the Special Mandates on Freedom of Expression of the UN, OAS and OSCE. In the first paragraph, they underline the impermissibility of a licensing requirement for online services:

No one should be required to register with or obtain permission from any public body to operate an Internet service provider, website, blog or other online information dissemination system, including Internet broadcasting. This does not apply to registration with a domain name authority for purely technical reasons or rules of general application which apply without distinction to any kind of commercial operation.
(<http://www.article19.org/pdfs/standards/three-mandates-dec-2005.pdf>)

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