



International Association for Media and Communication Research
Asociación internacional de estudios en comunicación social
Association internationale des études et recherches sur l'information et la communication

IAMCR 2016

Law Section

Abstracts of papers presented at
the annual conference of the
International Association for Media and Communication Research¹
IAMCR

Leicester, UK
27-31 July 2016



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Id: 12272

Title: Political Legitimacy and Media Regulation in China

Session Type: Individual submission

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Abstract: This paper explores how a change in political legitimacy affects functions of media law and regulation in China, and argues that the attempts to recast the foundations of the legitimacy of the Chinese state have shaped the discourse of the rule of law in general and the country's broadcasting regulatory strategies and structure in particular. As communist ideology, economic performance and official virtue decline, the Chinese state has moved to expand its legitimacy in a number of ways, including through acquiring performance-based credibility, and by strengthening the legal-rational underpinnings of the exercise of power. The idea of improving the rule of law has become one of the most frequently mentioned strategies in maintaining legitimacy. The Party-state has appealed to the rule of law in order to rationalize and legitimize its regulation of the broadcasting media. However, the strategy of "administration according to law" in the Chinese broadcasting sector was primarily driven by a concern for legal legitimacy, and the legitimization efforts have primarily centered on the procedural aspects of the rule of law. The advantages of this is a promise of some degree of predictability, some limitation of arbitrariness and some protection of media rights and freedom, but in the absence of democracy and with the marginalization of public participation in the law-making process, the state and broadcasting authority can also enact illiberal laws that restrict media freedom. This paper will first outline the structures of media regulation in the People's Republic of China, and the ways they are changing under the broader influence of the Chinese state's attempts to strengthen its political legitimacy. The paper will therefore explore the question of political legitimacy, which links the state and society. It will go on to show how changes in political legitimacy affect the function of law in Chinese media regulation, the paper will end by discussing the implications and limits of rule of law in Chinese media regulation.

Id: 12277

Title: A Privacy Tug of War: The European Right to Forgotten and the US First Amendment

Session Type: Individual submission

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Abstract: Privacy activists and First Amendment advocates struggle in a virtual tug of war, thanks to the European “Right to Be Forgotten” as it traverses across the Atlantic Ocean to the United States. The European Protection Data Act casts new light on the U.S. Constitution’s First Amendment and evokes questions about the future of American privacy rights. U.S. consumer advocates have urged the Federal Trade Commission to adopt “Right to Be Forgotten” provisions similar to European laws regulating online activities, and these movements challenge First Amendment frameworks, notably the Marketplace of Ideas Theory and the Micklejohnian Theory. While some assert privacy law in the United States may be applied or adapted to conform to the “Right To Be Forgotten,” a new stream of privacy laws may controvert First Amendment principles. It can be argued that implementation of the Right to Be Forgotten in an era of big data assumes formation of a grand arbiter who administers decisions on content removal, thus threatening free flow of information by centralizing content judgments in specific sources. Creation of an arbiter affronts the First Amendment by precluding free flow of information and endangers the robust debate that functions as the foundation for democracy in the United States.

At issue in this debate is a notion that has captured the global attention of scholars and legal analysts “The Right to Be Forgotten,” defined as third parties “forgetting” your past, is a controversial topic among legal scholars, government officials and private enterprises now facing government intervention in data control matters. The term, incorporated into the European General Data Protection Regulation, stipulates an individual should have the right to rectify personal data, thus granting individuals the right to remove data. Other terms used to describe the situation include “right of erasure” or “oblivion,” leading to definitional conversations among legal scholars worldwide coping with issues of privacy and information flow. Administration of “Right to Be Forgotten” provisions present complications, particularly for U.S.-based media businesses and search engines. When contemplating the Right to be Forgotten as applied to search engines in the US, a multitude of media law issues emerge. Constitutional theories of the First Amendment are relevant, as activists opposing government regulation of data assert violations of the free flow of information. Closely tied to principles of market economics, the Marketplace of Ideas theory resonates throughout American culture and serves as a foundation for the public relations profession. A second contention

countering the "Right to Be Forgotten" is the Meiklejohnian Theory, a tenet that holds freedom of expression as a means to successful self-government, thus a fundamental aspect of democracy. This paper explores the agitation between privacy activists and First Amendment advocates in light of the European Right to be Forgotten as it washes onto the United States shores.

Id: 12316

Title: The legislative policy of the freedom of information law in Egypt: - the views of academicians, legal experts and Media personnel

Session Type: Individual submission

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Abstract: The main topic of the study revolves around the law of freedom of information exchange with regard to legislation and absence of a comprehensive vision for the public sharing of data, information and knowledge in contemporary Egyptian society.

In addressing the research topic, a survey research was conducted over a sample of 192 subject units of three different categories: academicians, legal experts and media personnel in Egypt.

Indeed, there is a dire need for a law that controls and guarantees information flow inside Egypt.

The importance of the current study stems from the need to address the of freedom of information law, the international experience of the freedom of information trading and the vision of academics, legal experts and media personnel for the legislative policy of the freedom of information law in Egypt.

Research questions were stated as following:- What is the social reality of the Freedom of Information Law in Egypt? What is the Freedom of Information Act? What is the legislative framework for the circulation of information?

Findings showed that there no relationship of statistical function between the work sectors of research individuals and their estimation of the law of freedom of information exchange before the 25th January Revolution. Furthermore, researchers' vision varies towards the absence of freedom of information exchange in Egypt according to their work sectors.

Research implications reveal that the issue of information freedom is a substantial topic that needs further scholarly examination.

Id: 12740

Title: The Protection of Journalistic Sources in National Law: The Case with Cameroon

Session Type: Individual submission

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Abstract: Journalists often receive leaked documents or information from sources who wish to remain anonymous, for instance because the information provided was purported to remain confidential within a certain (private or public) organization. Leaked information and documents are a crucial source of journalistic input and it is usually provided to journalists only when they can guarantee the confidentiality and the anonymity of their sources. The cultivation of sources is not only professionally essential for journalists, it is an important source of news worthy information for debate and discussion in a democratic society, a good recipe for investigative journalism, at least the legal protection of journalistic sources should be guaranteed, otherwise sources of information may dry up. Thus, without effective laws to protect journalistic sources, press freedom and freedom of expression would be seriously undermined. Drawing from Part IV of the December 1990 media Law, article 50 (1-2) making provision for the protection of sources, this paper argues that the lack of precision in the formulation of the law has invited divergent, self-serving and conflicting interpretations which has been at the root of the tension and controversies between the administration and the critical private press. Also, raids and searches on media offices seriously undermine the protection of journalistic sources in Cameroon because investigators who surprised a journalist at his/her workplace have very wide investigative powers which, by definition, give them access to all documents held by the journalist. Thus limitations on the confidentiality of journalistic sources needed extremely careful scrutiny by the court.

Key words// Cameroon, media law, press freedom, freedom of expression, freedom of information, protection of sources.

Id: 12889

Title: La autorregulación periodística en Chile

Session Type: Individual submission

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Abstract: Durante los últimos años han surgido en Chile una serie de asociaciones que promueven la autorregulación periodística. Los medios escritos y audiovisuales se han organizado para crear consejos de ética que los ayuden a hacer bien su trabajo. Al mismo tiempo varios medios han creado sus orientaciones programáticas o manuales de estilo que han hecho públicos. Esta investigación se propone ahondar en los motivos que llevaron a la creación de cada uno de los entes autorreguladores, de dónde se inspiraron y el principal trabajo que han hecho para mejorar la profesión durante los últimos años. Asimismo la investigación se propone ahondar en el legado del profesor de derecho de la información, José María Desantes en materia de autorregulación periodística.

Id: 12919

Title: Conceptual Clarity for Practical Obscurity: Tracing the Legal Roots of an Emerging Principle in Privacy Law

Session Type: Individual submission

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Abstract: The legal concept of practical obscurity is at the core of today’s debates around digital data privacy, but we know surprisingly little about its roots in legal thinking. Leading privacy law scholars Woodrow Hartzog and Evan Selinger define obscurity as “the idea that information is safe—at least to some degree—when it is hard to obtain or understand.” Practical obscurity is the legal concept that underlies European Union initiatives aimed at data privacy protection and similar policy making around the world, and it animated the CJEU’s 2014 ruling in the Google Spain “right to be forgotten” case. Government agencies in the United States use the concept to justify denying records requests when personally identifiable information is at issue and lawmakers employ it in contemplating whether a version of the “right to be forgotten” might be made a part of American law.

Practical obscurity is a controversial concept. Some legal scholars have argued that it should provide a basis for common-sense data privacy protections in the United States, while others argue that an obscurity-based American “right to be forgotten” would threaten the First Amendment-protected right of access to information and the democratic values of transparency and accountability.

Scholars seem to agree that practical obscurity was born in the 1989 U.S. Supreme Court ruling in *United States Department of Justice v. Reporters Committee for Freedom of the Press*. There, the Court ruled that a journalist’s request for an FBI “rap sheet”—an individual’s aggregated criminal history—could be denied because the privacy interest in the record outweighed the public interest in releasing it. Justice John Paul Stevens wrote for the unanimous majority that although the information in the record was public, the difficulty in obtaining it from various sources, such as local courthouses and police stations, created a privacy interest once that information was compiled in a single database. Practical obscurity may have been delivered into the world by Justice Stevens’ majority opinion in the *Reporters Committee* case, but he did not invent the term. In fact, in his opinion Stevens attributes practical obscurity, in quotation marks, to government attorneys.

Knowing more about the gestation of practical obscurity before its “birth” can help us better understand a salient and controversial legal concept as it grows and matures in policy, doctrine and daily life. This research will include background documents in the *Reporters Committee* case: briefs, motions, and other primary sources; interviews with

attorneys or clerks who worked on the case; as well as related case law and precedent. With a clearer picture of the roots of this pervasive and powerful legal rationale for protecting privacy, we can better assess its global impact on media law and policy and make more informed decisions about its usefulness as legal principle going forward.

Id: 13074

Title: The networked governance of privacy

Session Type: Individual submission

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Abstract: The concept of “networked governance or “nodal governance” recognizes that governance (the regulation of behaviour) is often undertaken not solely by the state, but by a plurality of actors (states, corporations, and technologies) through a plurality of mechanisms (legal, market, and norms) (Burris, Drahos & Shearing, 2005). While some theorists are optimistic that the rise of networked information technology and networked governance may lead to greater decentralization and democratization (Benkler 2003), others, including some scholars drawing on the paradigm of networked governance, are more pessimistic, arguing the forms of networked governance we now see in the globalized networked information economy are as exploitative and undemocratic as those that came before (Fuchs, 2010; Fuchs & Sevignani, 2013; Burris, Drahos & Shearing, 2005).

In part one, I outline the basic concepts and background of the nodal or networked governance paradigm. In part two, drawing from examples in the literature surrounding networked governance, I argue that nodal governance can have democratizing effects, but that it can also circumvent opportunities for democratic engagement. In part three, drawing again on the literature of nodal governance, I set out a conceptual toolbox that can be used to measure the impact of particular formats of nodal governance on democratic engagement. Here, I draw on concepts derived from social network analysis; the concepts of centrality, reciprocity, and structural holes are adapted for the analysis of democratic engagement in networked governance.

In part four, I analyze Canadian federal privacy law in the context of the networked governance of privacy, using the framework and typology of networked governance set out in part three. Three nodes of governance are examined: federal privacy law and institutions, private governance of privacy through user agreements, and software-coded standards of privacy. The centralities of these three nodes, as well as the reciprocity of their ties with Canadian citizens and Internet users, are empirically described. Structural holes, or areas which federal privacy law and institutions do not reach, are also empirically described.

In conclusion, the paper notes that both private and public governance can be examined through concepts of networked democratic engagement. It makes several recommendations for improved democratic engagement in all forms of privacy governance.

Id: 13104

Title: The Future of Movie Copyright Infringement in Egypt in the Netflix Era: A Descriptive Study

Session Type: Individual submission

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Abstract: Copyright infringement through illegal downloading has become more practicable with the availability of file-sharing websites and peer-to-peer (P2P) channels. Egypt, the most populated country in the Arab region and North Africa, along with other foreign markets are essential for the movie industry. Foreign markets are used to recoup the loss in domestic markets (Wang, 2003). Foreign markets represent more than 90% of the total revenues of some movies (boxofficemjo.com, 2016). Losing these markets including the Egyptian is a troublesome problem to the movie industry.

After joining the TRIPS Agreement, Egypt issued Law no.82 in 2002 to protect intellectual property (IP). Article 139 in this law protects foreign audiovisual works, including movies, produced in any of the World Trade Organization member countries from copyright infringement (Egypt IP law no.82, 2002). Under Article 147, this law incriminates the reproduction of or lending any audiovisual works without the author's authorization.

According to the aforementioned law, downloading movies is an illegal act and is considered a violation of copyrights. Before the introduction of Netflix, Egyptians were lacking access to legal venues. In Jan 2016, Netflix expanded into the Middle East, providing Egyptians with a legal option to watch movies at affordable prices starting from \$7.99 per month (about EGP 63).

Therefore, this study seeks to answer the following questions; what is the current status of illegal movie downloading in the light of the Egyptian IP law, to what extent Egyptians are willing to replace illegal downloading with authorized movie channels, and how the Netflix as a legal venue may influence the future of movie copyright. The researcher will survey a sample of 400 Egyptian illegal movie downloaders to answer these questions. The findings will provide insights into the efficiency of legal movie venues as an anti-movie piracy measure and as an alternative to protect movie copyright.

Id: 13108

Title: The file-sharer as a homo reciprocans: motives and rationales of Portuguese and Brazilian Internet users for the unauthorized sharing of copyrighted works

Session Type: Individual submission

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Abstract: Despite being firmly established in the cultural and political fields, the purely economic perspective centered on calculating any potential loss caused by file sharing has the great disadvantage of limiting itself to underlining the greater convenience in copying cultural works offered by the Internet when compared to previous analogue technologies. From this perspective, sharing is seen as a market failure rather than a fundamental dimension of culture that in fact it is (Aigrain 2011).

While most empirical studies on this subject find a negative relationship between file sharing and media sales (Smith and Telang 2012), the theoretical literature suggests that the unauthorized copying of copyrighted works can not only help increase rights holder profits but also improve social welfare (Grassmuck 2010). At the same time, due to inherent weaknesses in the data publicly available as well as in the methodologies used in its collection, this negative relationship can conceal more than it reveals (Dejean 2009).

On the other hand, the excessive emphasis of the public debate on whether file sharing of copyrighted works harms or benefits the culture industries and to what extent means that the contributions coming from the field of economics are of limited usefulness when it comes to determining measures that take into account both user welfare and the long-term sustainability of cultural production (in terms of the supply of new creative works (Handke 2012), without neglecting the financial and social costs that copyright enforcement within a context of digital abundance entails. Hence the importance, in terms of public policies, of taking into consideration not only the relationship between sales and unauthorized copies but also the users' real behavior, as well as their motives for downloading digital files of copyrighted works without the necessary authorization (Watson, Zizzo and Fleming 2014).

Building on a online survey with a self-selected sample of 301 respondents of Portuguese and Brazilian nationality as well as on a set of 16 online interviews subsequently arranged with some of these individuals, this presentation aims to draw a more accurate picture not only of the level of awareness of Portuguese and Brazilian Internet users concerning the unlawful or lawful nature of the content downloaded and/or shared by them, but also of the true motives and rationales of those who identify as file-sharers:

- What rationales do they use for justifying the downloading of copyrighted content?
- What is their opinion regarding the consequences of their sharing habits in the lives of creators, publishers and the future of cultural creativity in general?
- What do they think of the enforcement measures proposed by copyright industries that have been adopted by several national states?
- What solutions and business models do they propose to businesses and trade associations representing rights holders?

Id: 13187

Title: RipoffReport.com and Efforts to Make the Web "Forget" Harmful Speech in the U.S.

Session Type: Individual submission

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Abstract: It has been said that “the internet never forgets” (Rosen 2011), but this of course only partially true. In fact, the architecture of the web offers much opportunity for “forgetting.” Every day links are de-indexed by search engines, people untag themselves from photos on Facebook, and newspaper articles are modified with little trace of an error that may have blemished the initial publication. A debate has thus emerged around when speakers or intermediaries can be legally compelled to remove a particular piece of putatively harmful content. Unlike in Europe, any sweeping provision to compel content removal or de-indexing at the behest of an affected party would probably be ruled unconstitutional in the US. How might such interests be vindicated through private or otherwise non-judicial means instead?

In the paper, I explore a case study that illustrates some emergent ways in which the visibility of speech online is often managed without direct application of formal legal mandates. In doing so, I attempt to build on the growing body of literature (e.g. Nunziato 2009; Lessig 1999) that explores how myriad forces can be said to “regulate” behavior — and specifically freedom of expression — beyond the law itself.

The kind of speech “regulation” on display in my case study involves the leveraging of what Lessig would call the regulatory features of the market, of social norms, and of “code” (technical architecture). Specifically, I analyze the writings and interview responses of a group of activists in Australia and the United States who have targeted the somewhat infamous “gripe” site Ripoff Report (where users submit anonymous “consumer reviews” of both products and sometimes people). To be sure, these activists have indeed pushed for legal reforms to correct what they see as an increased vulnerability to the dissemination of critical or offensive speech. Most notably, they seek to make search engines liable as publishers or distributors of defamatory or otherwise tortious speech contained in links that they index. Such an outcome is, however, unlikely in the United States because of CDA Section 230 (relieving intermediaries of much liability for third party content) and the First Amendment.

Instead, it appears that perhaps these activists’ greatest success has been through mobilization of market and social opposition to gripe sites like Ripoff Report itself. There

is some anecdotal evidence that newer iterations of Google’s search algorithms have begun to demote such sites in search results. The site itself has also become more amenable to requests to modify or even remove putatively harmful content — a position which its notoriously intransigent “no removal” content policy has otherwise precluded. At the very least, I argue that the anti-Ripoff Report activists have contributed to raising popular awareness about the dubiousness of much of the material found on such sites. Even if they are not “forgotten” in search engine results for an individual’s name, it is possible that their reputational impact could be ameliorated because they are more or less ignored as sources of information.

Id: 13361

Title: PANEL. Lessons after 40 years of teaching Communication Law at the Journalism Schools/Experiencias de 40 años de enseñanza universitaria del Derecho de la Información

Session Type: Panel Submission

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Abstract: Este panel recogerá las experiencias de profesores y académicos de Derecho de la Información o de Libertad de Expresión en países donde dicha materia se imparte en las Facultades de Periodismo o Ciencias de la Información.

En concreto, nos proponemos analizar el proceso de profesionalización del periodismo en tres aspectos:

1. Cómo se va decantando el derecho que sustenta dicha profesión, iniciándose en el siglo XIX y universalizándose en el XX cuando la Declaración Universal de ONU en 1948, recoge en su artículo 19 el derecho a la información, destacando además del derecho a difundir o comunicar, el de investigar y recibir.
2. La relación causa-efecto que ha producido la enseñanza del Periodismo al máximo nivel académico en el ejercicio responsable del derecho a informar en aquellos países donde hay Facultades.
3. La mejora de calidad no sólo de las leyes que rigen el Derecho de la Información sino la Ciencia ius-informativa por la progresiva publicación de obras especializadas. Lo

que se refleja también en la jurisprudencia constitucional.

En 1951 Fernand Terrou y Lucien Solal publicaron la primera obra titulada “Derecho de la información” en Europa Le Droit de l'information (Unesco, Paris, 1951). Obra traducida al inglés y español, pocos años después de la DUDH de ONU.

En los años 70 se creó en España la primera Cátedra de Derecho de la Información que lideró el profesor José M^a Desantes Guanter. Civilista con experiencia política y de gestión en medios de comunicación durante la época franquista, sufrió personalmente la injusticia de la censura, las acciones del Tribunal de Orden Público o incluso como abogado defendió a un periódico (Diario Madrid) que fue literalmente “cancelado y prohibido”.

Dicha experiencia se ha visto reflejada en el contenido de la asignatura, en sus obras y las de su escuela, así como en las tesis doctorales defendidas en las Facultades españolas, europeas y americanas.

Algunos de sus discípulos (Bel, Aguirre, Lecaros) y colegas del Derecho Constitucional (Sánchez Ferriz, Glez. Ballesteros), entre los que afortunadamente me encuentro, hemos vertebrado el Derecho de la información como disciplina para defender el ejercicio del periodista, también dotándole de derechos y deberes, que la propia Constitución Española de 1978, en su artículo 20, recoge unos años después.

Id: 13408

Title: El derecho a comunicar: de la Carta Magna Libertarum de Juan Sin Tierra (1215) a la Constitucionalización de las libertades informativas

Session Type: Individual submission

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Abstract: Nuestro trabajo analizará los precedentes doctrinales y las circunstancias históricas en que se hace posible la constitucionalización (y antes el reconocimiento por el Monarca en todo tipo de documentos) de las libertades informativas.

Nuestra tesis es:

1. Que hasta el siglo XVIII (cuando aparecen las primeras Declaraciones modernas) no hablamos de derechos del ámbito público sino en forma muy excepcional.
2. Aún cuando se reconozcan algunas libertades como en la Carta Magna Libertarum/ “the Great Charter of Liberties” (1215) estas carecen del carácter universal propio de todo derecho, tal y como hoy lo entendemos, por lo que –en realidad- se reconocían como libertades privilegio, tanto en las monarquías absolutas como en los ordenamientos precedentes.
3. Sólo cabe hablar de derechos fundamentales y de libertades públicas cuando en el siglo XVIII se reconozca la natural igualdad y libertad de todos los hombres.
4. En este marco general hallan una paradigmática evolución las libertades informativas que progresivamente van conociendo formulaciones nuevas en un proceso que se inicia con la libertad de pensamiento y conciencia, la libertad de imprenta, la libertad de prensa y la libertad de información (escrita, audiovisual, etc.)
En forma incipiente, veremos los precedentes doctrinales de Francisco de Vitoria (+ 1546) en la Escuela española de Salamanca y, las primeras declaraciones de libertad. Los títulos legítimos del “ius gentium” de Vitoria marcan un cambio que fraguará en el siglo XVIII . Seguiremos obras de autores del XIX y XX como Wheaton, Burillo o Desantes que han recogido las lecciones dictadas a sus alumnos.
Veremos cómo se ha recibido en el ámbito anglosajón gracias a traducciones o ediciones que recogen autores como Henry Wheaton, History of the Law of Nations in Europe and America (1845)); o James Brown Scott que lleva a Estados Unidos la doctrina de Grocio y Vitoria.

Id: 13446

Title: Argentina, Chile and Uruguay: Public information access, political system stability and political culture.

Session Type: Individual submission

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Abstract: Matías Ponce – Professor Universidad Católica del Uruguay

Abstract

The goal of the research is to compare the progress on regulatory practices and transparency in three cases in Latin America: Argentina, Chile and Uruguay. The progress in access to public information is analyzed from the levels of stability of the political system and political culture.

What association between practices and regulation on transparency and levels of institutionalization and culture of each political system?

The methodology is based on a documentary and legislative analysis on the progress that has been made in transparency and regulation of the current state of the institutionalization of the party system and the values associated with transparency in every political culture.

Values and transparency practices are linked to the levels of institutionalization submit each party systems or what is called political stability. In turn, the values that make up the political culture associated with transparency can promote better standards of compliance or even stimulate higher levels of transparency.

This analysis seeks to integrate under a complex look on one hand, the values and practices of transparency with levels of stability of the political system. Go to the root of the problems regarding the issues of access to public information requires this type of analysis. "The processes that underpin reform is no less important than the content of the reform, it is perhaps even more important" (Rodrik, 2004).

The thesis is that higher levels of institutionalization of the political system associated with a best practice on transparency and values associated with it in the political culture.

Key Words: Transparency, Public Information, Political Stability, Latin America, Institutions.

Id: 13598

Title: The regulatory framework of the uruguayan media system: strengths and weaknesses of the reform process

Session Type: Individual submission

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Abstract: Con antecedentes previos desde los años 60, fue recién en 2004 que se plantea una reforma integral del sistema de medios uruguayo con posibilidades razonables de concreción. El contexto nacional y regional abre, por primera vez, expectativas que hacen pensar en la viabilidad social y política de una reforma mediática que fuera más allá de los intentos previos, que apuntaron principalmente al fortalecimiento del sector público-estatal de medios y que básicamente habían fracasado. Se construyó entonces un programa que apuntaba en cuatro direcciones de cambio: fortalecimiento del sector público-estatal de medios (nuevamente), legalización y promoción del sector social-comunitario, estímulos a la competencia y desestímulos a la concentración en el sector privado-comercial, promoción de la producción audiovisual nacional e independiente. Todo ello requería un rediseño normativo e institucional que, se planteó, debía incluir un fuerte componente de participación ciudadana, tanto para la construcción como para la aplicación del nuevo marco regulatorio.

Transcurrida una década larga del proceso reformista, con un equipo de investigadores uruguayos nos propusimos realizar un análisis que permita comprender cómo se articularon, en torno a distintos hitos del proceso los actores sociales y políticos implicados y los resultados en términos de avance o bloqueo que produjeron. Para ello adaptamos a nuestro caso una herramienta metodológica utilizada para el análisis de otros procesos reformistas. Una primera fase del trabajo utiliza información secundaria e investigaciones previas disponibles y una segunda somete el análisis a la discusión de un conjunto de referentes de los distintos actores sociales y políticos implicados.

El trabajo busca aportar a una mejor comprensión de lo sucedido y espera también ayudar a los actores interesados en la reforma a repensarla y eventualmente reimpulsarla, en un contexto nacional y regional que aparece como menos favorable que el del primer impulso. El marco de alianzas y las coaliciones de veto generadas en torno a hitos clave de la reforma pueden ayudar a comprender mejor las marchas y contramarchas de un proceso que ha tenido avances importantes, pero a un ritmo mucho más lento y con resultados bastante más pobres que los esperados por esos actores.

En este texto presentaremos un aspecto parcial de ese trabajo tomando dos hitos clave del

proceso reformista: la Ley de Radiodifusión Comunitaria de 2007 y la Ley de Servicios de Comunicación Audiovisual de 2014. Complementaremos el análisis con elementos de trabajos anteriores en que discutimos los procesos de participación social en torno a estas leyes antes y/o después de su aprobación así como una norma intermedia que fue el marco regulatorio para la televisión digital abierta de 2012-2013.

Id: 13670

Title: Freedom of press in Kashmir.

Session Type: Individual submission

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Abstract: Free press is a prerequisite for any democracy. The worth of free press can be best understood from the famous quote of Thomas Jefferson, "The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them."

The freedom of press or media becomes even more important when we are talking about a place like Kashmir which has been a conflict area since early 90's. This paper attempts to understand the present status of press freedom in Kashmir. The paper attempts to understand the media legislations and the rights of journalist who are working in Kashmir.

Methodology: Interview of Accredited Media Professionals from both print and electronic media from Kashmir will be conducted. The list of such journalists is available on the website of the Department of Information and Public Relations, Jammu and Kashmir (<http://jkdirinf.in/>).

Significance: The study is significant as it will not only help in disclosing the press freedom status of media in Kashmir but will also help in analysing the problems faced by the media professionals. The findings can further help in policy formulation as far as media legislations for a free press are concerned.

Few theories which are relevant to the topic of the study are: The Authoritarian Theory, Libertarianism or Free Press Theory, Social Responsibility Theory and Natural Law and Natural Rights Theory

Id: 13853

Title: Past, Present and Future of European Copyright: Where are User's rights'

Session Type: Individual submission

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Abstract: One of the most problematic aspects of copyright legislation is the protection of users' rights: citizens' rights to access protected works when this is needed to protect freedom of expression and information or to promote other cultural, political and social objectives.

Through Europe's copyright history there have been efforts to ensure these rights, mainly through the adoption of limitations and the harmonization of domestic legislation to include them too. However, today, users' rights are marginalized in favor of the protection of economic rights (Griffiths, 2010) and the harmonization, especially concerning those limitations, is mostly considered a failure (Geiger & Schön herr, 2014).

This work analyzes the most important aspects of Pan-European Copyright history to make sense of why we are in the current situation where users' rights protection seems so weak and if new policy efforts will actually result in any meaningful change.

Efforts to have limitations that protect users' rights started even before there was a European Union, with the Berne Convention. Part one looks at international treaties that dictate how copyright is legislated inside the EU. Through analyzing legal texts, judicial decisions, literature and legislative records, this work highlights their negative legacy, particularly through restrictive interpretation and application of limitations and barriers to the adoption of better legislation that can have a meaningful impact.

Part 2 focuses in the Union's nine European Directives and decisions from the Court of Justice of the European Union that together give shape to the present of European Copyright. Particularly, the InfoSoc Directive of 2001, and its role in establishing exclusive rights and limitations to protection, and in trying to achieve harmonization. An analysis of legislation and jurisprudence, literature and records will help determine why has this harmonization failed and why it has been especially harmful to the rights of the user. Has legislation simply not been ambitious or good enough? (Hugenholtz, 2000). What has been the role of the CJEU? Has it contributed to harmonization or to more fragmentation? (Ramalho, 2015) And what role has it played in the restrictive interpretation of limitations?

Part three looks into the future, and analyzes the Digital Single Market Strategy for Europe, which, includes the Commission's plans for modernization of the EU copyright framework and aims to be a roadmap for future proposals into 2020, including updating the Infosoc Directive.

Will the proposed policy actions and reform included in the Strategy be enough? Is there a chance that reform will finally achieve something or is this a retreading of past efforts that will yield the same results? Is there more transparency now than before and is it enough to ensure the adequate representation and protection of the interest of the public? Or is the danger of bypassing democratic accountability another credible threat to users' rights (Horten, 2013).

Finally, part four, offers alternatives that could help us break with the past and work towards stronger protection of users' rights in the future.

Id: 13895

Title: PANEL: The Roots and Future of the Right to Communicate. Titulo: Nuevos derechos fundamentales sobre comunicación

Session Type: Individual submission

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Abstract: La información siempre ha sido un factor clave en las sociedades, pero actualmente el desarrollo económico, social y político gravita sobre procesos comunicativos. De alguna forma la sociedad del siglo XXI presenta como elemento diferencial la forma como la información se emplea.

En las sociedades democráticas la protección de los procesos de comunicación ha sido un elemento esencial hasta el punto que la libertad de información (freedom of speech) se constituye en un derecho prevalente –ocupa una posición preferente en el conjunto de los derechos fundamentales- imprescindible para que exista una opinión pública libre, garantía de una auténtica democracia.

La aparición de nuevas posibilidades tecnológicas han trastocado el concepto de derecho de la información. Por ejemplo, la limitación técnica de canales en la televisión por ondas hercianas y la consiguiente regulación jurídica, se ha visto desbordada por las nuevas tecnologías de la Televisión Digital Terrestre (TDT) y por protocolos de compresión de información. La accesibilidad técnica de los ficheros y archivos públicos posibilita su control por parte de los ciudadanos. Las telecomunicaciones permite una relación más fluida y rápida entre administrados y poderes públicos. La capacidad de procesamientos permite conocer perfiles de las personas, incluso de hechos olvidados por el propio protagonista. Estos son solo ejemplos en los cuales se hace imprescindible una nueva regulación jurídica de los procesos informativos para proteger a las personas y potenciar sus capacidades.

La reflexión que se realiza en esta comunicación tiene que ver con el poder que se ha desarrollado desde los medios de comunicación como actores de un negocio de la información que en algunos casos es en realidad el negocio de la influencia. Dos líneas argumentales se desarrollan al respecto. En primer lugar la necesaria transparencia de los medios de comunicación derivada de sus función pública y, también de las normas de

buen gobierno corporativo cuando se trata de empresas con cotización en Bolsa. La segunda reflexión deriva del análisis de los procesos de concentración mediática y de la necesidad y posibilidad de ser controlados. Existe un problema añadido y es que es difícil atribuir a los poderes públicos el control de las fusiones y adquisiciones de medios de comunicación, porque precisamente una de las funciones de los medios es controlar al poder.

Transparencia de los mass media y agrupación de empresas deben ser contempladas desde la perspectiva de las nuevas tecnologías y el riesgo de la concentración de poder y, por tanto, reguladas desde el Derecho de la Información.

Id: 13977

Title: Media policy from the perspective of the publishers. Contentions about the formation of the media policy field in the Federal Republic of Germany in the 1970s

Session Type: Individual submission

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Abstract: This paper addresses West German media policy history from the perspective of the press. The paper asks how the press reacted to the fact that it became object of media policy in the 1970s in the Federal Republic of Germany. It is a contribution to the historiography of media policy as a policy field.

Media policy became a policy field in West Germany around 1970 when the Social Democratic Party adopted media policy resolutions on its party congresses, soon followed by the other two parties represented in the German Federal Parliament. Moreover, the two Social Democratic chancellors in the 1970s made media policy to one of the top issues in Federal domestic policy. Although the media policy debates of these years did not only revolve around the development of the press but also public service television, the Social Democrats and the Liberals focused on press issues in their regulatory initiatives: on press concentration, editorial by-laws and the relations between journalists and publishers (“internal freedom of the press”) as well as the capitalistic organization of the press – issues that were raised by the “1968ers”, young left politicians and intellectuals, some of the publishers and journalists (Schütz 1999; von Hodenberg 2006).

For the press, the difference to the years before was not only or not so much the fact that the press became object of regulatory efforts. Rather, a policy field seemed to start an institutionalization that did not exist before and that, despite constitutional law barriers, in the view of some newspapers, provoked the fear of state infringement into press freedom (Schatz/Habig/Immer 1990). How did the press react when it became object of regulatory efforts? What were the perceptions and evaluations that press newsrooms and publishers developed concerning the emerging media policy field? Which strategies did the press develop to secure their own (diverse) interests? In order to answer these questions, this paper draws on Giddens' structuration theory and analyzes press coverage, policy papers of publishers' and journalists' associations, reflections by publishers and leading journalists as well as documents that provide insights into lobbying structures and research assignments suited to reply to legislators' concerns.

Even if central regulatory efforts regarding the press in the 1970s were not successful, this analysis contributes to the role of public discourse about media policy and about the way the “objects of regulation” in media policy use coverage to determine decisions in media policy

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Id: 14079

Title: Policing Broken Ratchets: Information Policy and Criminal Enforcement of Digital Copyrights

Session Type: Individual submission

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Abstract: This paper analyzes the problem of copyright law becoming increasingly governed by information policy and prohibition regimes that criminalize intellectual property [IP] infringement. I argue that policies promoting criminal enforcement of IP law, by design, overlook the public value of creative works and access to knowledge and instead focus on property to be protected and crimes to be punished. These policies are often rejected at the state level due to popular protest, political opposition and democratic processes, and so policy is forced through at the international level or through lateral pressures. Information policy studies, represented by Braman (2007), guide the theoretical discussion of policy and are met here with criminological theory on prohibition regimes in order to identify the role of criminal enforcement in copyright law. First, I critique information policy as a domain within the political economy of communication that favors the market and security interests of intergovernmental organizations [IGOs], elite states and industries over interests of civil liberties, freedom of expression and privacy. Among the elite actors, the United States pressures other states to adopt stringent intellectual property standards through multilateral trade negotiations and threats of trade sanctions. The European Union constrains the policy options of member states through its harmonization directives, and various intellectual property organizations operate side-by-side with states and IGOs and politicians to insist on stronger IP. Policies to strengthen IP, such as the E.U.'s Copyright Directive, the U.K.'s Digital Britain, Spain's Ley Sinde and the U.S.'s Stop Online Piracy Act [S.O.P.A.], were the subject of popular protest and become stalled or abandoned, but their measures were uniformly reintroduced through multilateral negotiations or industry demands.

Secondly, I discuss how prohibition regimes, which are defined in criminology studies as international standards that ban social norms (Andreas & Nadelmann, 2006, p. 22), entrench criminalization into information policy. Police organizations work internationally to raid file sharing servers and arrest and extradite hackers and hacktivists. I overview the earliest police raids from 2001 to enforce digital IPR, and examine international calls to expand police cooperation such as the Budapest Convention on Cybercrime. Analyzing criminological theory of prohibition regimes alongside information policy theory illuminates the role that enforcement mechanisms take in shaping communication policy and commodifying access to knowledge.

I conclude with a discussion of the implications of opaque trade negotiations, lateral pressures and criminal enforcement on efforts to increase and preserve access to knowledge, creativity and scientific works. IP law becomes entrenched in not only trade agreements and domestic law, but also in the strategies and logic of law enforcement. The constant strengthening of copyright online is entrenched in a system that overrules democratic initiatives and utilizes the force of the state to combat widely defined categories of cybercrime. These realities make IPR reform to de-commodify or open information networks complex, and create democratic deficits and public dependency on alternative, global networks of file-sharers and hacktivists.

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Id: 14091

Title: HACIA LA CONSTRUCCIÓN DEL DERECHO A LA COMUNICACIÓN.
HISTORIA Y EVOLUCIÓN EN LA CONSTITUCIÓN MEXICANA

Session Type: Individual submission

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Abstract: La Constitución mexicana está a punto de cumplir 100 años de vigencia y con ello es pertinente la reflexión del texto fundamental en la consolidación de libertades, de manera particular en aquellas relacionadas con la libertad de expresión. El modelo mexicano fue ensanchando derechos fundamentales como el derecho a la información, derecho de acceso a la información pública, derecho de réplica, derecho a las tecnologías de la información y comunicación (TICs), derecho de las audiencias, entre otros, los cuales son necesarios para interpretar el nuevo panorama de los derechos fundamentales de los mexicanos, su reconocimiento y retos en la interpretación de sus alcances en un nuevo entorno mediático.

El análisis histórico de las fuentes formales y reales del derecho nos dan cuenta de la construcción de lo que podría denominarse como una nueva rama del Derecho, o bien de la consolidación del Derecho de la Información, el cual ha tocado de manera transversal múltiples disciplinas y que hoy nos lleva al lenguaje técnico de las nuevas tecnologías.

Para entender este entramado de conceptos, Antonio Pasquali teoriza sobre el derecho a comunicar y bajo esta visión es posible construir las dimensiones que nos ayudarán a identificar los derechos fundamentales reconocidos en la Constitución mexicana.

Id: 14149

Title: Internet governance in China : Emerging regulatory models'issues and implications

Session Type: Individual submission

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Abstract: With the development of the internet and the growing popularity of social media services like Weibo -- a microblogging service that is China's version of Twitter -- and instant messaging site WeChat, a popular mobile app developed by Internet technology giant Tencent, Chinese government has issued a series of new measures to regulate the internet. For instance, the establishment of the State Internet Information Office (SIIO), “Ten rules for Wechat” and cyber account name regulation.

This paper examines the existing regulatory framework and the ways in which it applies to the internet use in China, highlighting China’s emerging internet regulatory models and challenges agencies face in implementing them, as well as implications for the development of internet in China.

In general, this paper illustrates the following points.

1. Traditional Chinese internet regulations, ranging from licensing and registration, to data retention requirements and content filtering, are theoretically applied to the emerging social media.
2. Chinese traditional internet policies regulate internet portal more than individual users, the many-to-many interactions allowed by social media and the user-generated content challenges traditional regulatory model.
3. Since the establishment of the State Internet Information Office (SIIO), Chinese government has issued a series of tough regulations; the implication of these regulations will be discussed.
4. Much of research on China’s censorship and governmental internet regulation draws from Western perspectives of technology, socio-economics, and freedom of speech, this paper will investigate the internet regulation from cultural context as well as political-economic perspectives.

