



## Introduction

Spain is a highly developed country, ranked sixteenth on the Human Development Index in 2008,<sup>1</sup> with more than 46 million inhabitants. The level of access to information and communications technologies (ICTs) is high. For instance, 63.6 % of households have at least one computer, and 51 % of the population are internet users.<sup>2</sup> The educational sector is particularly well connected: all universities have Wi-Fi internet access on their campuses, and 99.3 % of schools have ICT equipment and internet access.

The growth of the ICT sector has accelerated in the last years, particularly in the period 2004-2007. As with similarly developed countries, there are more mobile lines than inhabitants, with 1.1 million people considered intensive users of mobile broadband. There is also a very high level of access to information and content on the internet – even though access to languages besides Castilian is low.

Recently, Spain has suffered the effects of the ongoing global economic crisis, aggravated by a strong dependency on construction and other traditional industries. This situation has refocused political attention on the knowledge society – the internet and the digital industry – as areas for future employment and opportunities for development.

However, this potential is being hobbled by the entertainment industry, which continues to attempt to introduce restrictions to preserve traditional dissemination models instead of creating new business models. A lack of understanding is also creating a “content divide” between traditional digital media (i.e., CDs, DVDs) and online media. The population is spending less time watching television and more time online, on the computer or the mobile phone. Faster internet connections – 20 to 100 megabytes per second (Mbps) – lead to more and more people interacting and exchanging text, audio and video files with their social networks, and watching digital content over the internet.

## Policy environment

The key policy concerning access to online information held by the public administration involves a plan for the development of the information society and convergence with other countries in Europe, known as *Plan Avanza* (2006-2012).<sup>3</sup>

The intensive and popular use of ICTs is seen as a way to contribute to the recovery of the Spanish economy and

as a source of employment, particularly regarding small and medium enterprises. The policy and plan focus on five key areas: supporting industry in the development of new content, services and applications; ICT training; online public services; infrastructure (including a large portion dedicated to the transition to digital television); and trust and security.

The local governments in autonomous regions have additional policies, and also have their own data protection agencies. These include policies on the provision of ICTs, digital educational content and educational software for schools.

## Legislative environment

The Spanish Constitution (1978) outlines legislative responsibilities regarding ICTs in Article 18.4: “The law shall restrict the use of data processing in order to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights.”

The national laws that regulate online information and communication implement European Commission directives at the national level. The main laws are:

- The Data Protection Law<sup>4</sup> (LOPD, 1999), regulating the procedures used to manage databases with personal information, and privacy in general. It complies with European Directive 95/46 CE.
- The E-Commerce Law<sup>5</sup> (LSSI, 2002), implementing Directive 2000/31/CE, and partially Directive 98/27/CE; and Law 56/2007,<sup>6</sup> dealing with the promotion of the information society. These laws address e-communications generally, and also regulate the provision of e-services, including the obligations around holding customer data. Amongst other things, they define universal service, the kinds of public information that must be published, e-government obligations, the obligations of service providers regarding customer support, as well as website requirements such as accessibility.
- The E-Administration Law<sup>7</sup> (LAECSP, 2007), which recognises the right of citizens to online interaction with the public administration and obliges the government to guarantee that right.

1 UNDP (2008) *Human Development Indices: A statistical update 2008*. hdr. undp.org/en/statistics/data/hdi2008/

2 Instituto Nacional de Estadística (2008) *Encuesta sobre Equipamiento y Uso de Tecnologías de Información y Comunicación en los Hogares*. www.ine.es/prensa/np517.pdf

3 www.planavanza.es

4 Boletín Oficial del Estado (1999) *Ley Orgánica de Protección de Datos*. www.boe.es/boe/dias/1999/12/14/pdfs/A43088-43099.pdf

5 Boletín Oficial del Estado (2002) *Ley de Servicios de la Sociedad de la Información*. www.boe.es/boe/dias/2002/07/12/pdfs/A25388-25403.pdf

6 Boletín Oficial del Estado (2007) *Ley de Medidas de Impulso de la Sociedad de la Información*. www.boe.es/boe/dias/2007/12/29/pdfs/A53701-53719.pdf

7 Boletín Oficial del Estado (2007) *Acceso Electrónico de los Ciudadanos a los Servicios Públicos*. www.boe.es/boe/dias/2007/06/23/pdfs/A27150-27166.pdf

## Filtering the net

There is a growing perception among numerous social sectors that the internet revolution was initially positive, but now that citizens use it in sometimes unplanned ways to access, produce and disseminate digital data, the online world is becoming a wild territory that needs to be drastically limited to protect everyone.

In many cases, surveillance and censorship are viewed as a recipe to protect people, especially children and youth, from unethical actions and dangerous content. This is being promoted as technological advances enable monitoring and filtering in very detailed ways (so-called “deep packet inspection”), albeit at a very high financial cost and with a consequent lack of privacy.

In the mobile communications world, anonymous mobile accounts (prepaid mobile cards with unregistered owners) will be eliminated before the end of the year. The justification used for this measure is the war against terrorism, but as a consequence it is feeding a growing market for stolen mobile phones, or phones acquired using fraudulent identity documents.

Schools and homes are using filtering mechanisms to protect children from undesirable content. According to a recent survey, 19.2 % of households use parental filtering tools, and in 21.2 % there is parental supervision of content accessed by children.<sup>8</sup>

## New content models

The debate on the protection of online property rights, the control of the distribution of digital content, and author payment for digital content are still open issues – and the gap between the stakeholders is sadly widening. Despite a campaign against a private copying levy (*canon digital*) collecting more than one million signatures, the levy has not been eliminated. Private organisations that collect this levy argue that there is a need for compensation for the personal copying of a product, as well as in the “war” against the piracy of copyrighted digital content.

The discussion so far has been focused on helping content creators and the distribution industry find viable economic models, without specific attention on defining and protecting the digital rights of citizens. Unfortunately, the discourse is quite outdated, based on ideas such as subsidies and promoting restrictive mechanisms to control distribution in a traditional way, instead of exploring new models for distribution that take advantage of the characteristics of the internet. For instance, the government has pushed internet service providers (ISPs) and authors’ associations to reach an agreement on rules to prevent the distribution of copyrighted contents on the internet with no participation from associations of internet users or other social groups. No agreement has been reached, especially after the “three

strikes” model in France was declared invalid.<sup>9</sup> The option to create a reasonably wide offering of legitimate and paid-for digital content available to internet users is surprisingly not pursued with interest by the entertainment industry.

In contrast to this, a growing number of young artists are exploring alternative open content and open culture models. However, this is being done with no or little support from the government and their efforts are largely unknown to the majority of the population.

The opportunities the internet affords and the applications that allow collaborative contributions (e.g., wikis) and distribution (e.g., BitTorrent) are not fully exploited for the benefit of society. Public libraries, for instance, have only a taste of digitised content compared to the huge potential of their archives.

The digitisation of content for educational purposes is also only at its initial stage. There are big differences in schools across different autonomous regions in Spain, as well.

Traditional publishing companies are keen to hold on to their traditional paper-based market and new initiatives to produce open educational content do not get sufficient support to reach a critical mass.

## New trends

Social networks (such as Facebook or MySpace) and Web 2.0 applications (such as YouTube, Flickr and Twitter) are attracting many people, particularly the youth. These applications create opportunities to share personal information such as photos, audio and video clips. The bright side is how easily people can set up groups of common interest, self-made content can be published, and content can be shared through the social network. The dark side is the loss of control over personal information that is uploaded, exposed and sometimes reused in unexpected and undesirable ways, and exposure to personal attacks such as cyber bullying, internet fraud or other types of harassment.

Lobbies from the traditional local and multinational entertainment industries are exerting growing pressure on the government and large ISPs to protect their commercial interests. They say this should be done through the systematic surveillance of internet communications (deep-packet inspection) and limiting access to the internet through an administrative entity, without judicial intervention, in this way bypassing the legal system. These measures are targeted at the sharing of copyrighted music and video content using peer-to-peer applications (such as eMule or BitTorrent). However, these actions not only widen the gap between the producers and consumers, but also lead to an Orwellian society where the powerful try to impose limits on the individual through widespread monitoring and other invasive measures that affect their privacy. The lack of shared

8 Asociación para la Investigación de Medios de Comunicación (2009) *Navegantes en la Red: 11ª Encuesta AIMC a usuarios de Internet*. download. aimc.es/aimc/03internet/macro2008.pdf

9 This model seeks to enforce compliance with the copyright law by proposing massive mechanisms of internet surveillance and immediate penalties (suspension of internet connection) imposed by an administrative entity instead of a court. This is controversial as it affects privacy, freedom of expression and the presumption of innocence.

values or commercial agreement between the sides leads to a new type of digital divide.

The educational sector is accelerating the take-up of digital content. However, there is a struggle between the business sector and the educational community. This translates into a debate over the pros and cons of open and commercial software, open and closed content (e.g., text books, reference materials, etc.), and whether the content is produced collectively (open) or by a closed list of authors chosen by publishing companies (closed). Different schools and autonomous communities in Spain are taking very different directions.

### **Action steps**

There is a need for coordination. There are several small organisations in Spain working on diverse aspects of ICTs, particularly on issues related to the internet and human rights and democratic participation. Consensus is needed on a common action plan to have a stronger voice. This plan should not only involve online advocacy, but should include traditional social and political forums and protest activities (e.g., demonstrations and addressing consumer rights associations, as well as relevant forums in political parties, in parliament, and in local and central governments). This should help to raise awareness and initiate direct discussion between citizens' organisations and public representatives.

Issues for discussion should include the launch of an information campaign on access to and production of culture (particularly for publicly subsidised works); the right to cultural expression; the criminalisation of file sharing; the remix and redistribution of amateur works; the role of public libraries in access to culture; and fair, accountable and transparent models for paying authors of cultural content beyond the traditional models offered by the cultural and entertainment industry.

The outcome of the discussions should be oriented towards creating new sources of employment beyond the traditional distribution models using content created by an elite of artists. The outcome should also take advantage of the benefits of new digital tools to democratise content creation and use the internet as an efficient distribution platform.

Finally, there is a need to remove the current private copy levy, including its ambiguous definition of "fair use". ■