The Internet and Freedom of Expression in Iraq

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Summary

Access to the Internet is growing in Iraq, fuelled by burgeoning mobile and social media usage—particularly among the youth. However, the country still has one of the lowest Internet penetration rates in the world. Development is challenged by a limited communications infrastructure, a historic lack of media and information literacy and proposed cyber regulations that would severely hinder civil liberties by focusing almost exclusively on security.

The objective of this study is to examine Internet development and on-going challenges to freedom of expression and access to information in Iraq. Article 38 of Iraq's constitution upholds freedom of expression,[1] but the pattern of restrictions on those liberties is worrisome and will profoundly affect Internet development.

The Internet and social media were introduced only recently in Iraq. As a result, key questions remain about the industry's future, including how the medium will be regulated. Examining the current Internet landscape—and the challenges facing traditional media and the country as a whole—helps to determine the best path

for regulations and policies that respect the constitution and human rights. As was evidenced during the Arab Spring,[2] the Internet and social media play vital roles in influencing politics, fostering political participation and shaping public discourse. Understanding the digital landscape is especially important as Iraq struggles to uphold democracy and prepares for provincial elections in early 2013.

Iraq's Internet sector is currently unregulated, making it among the freest in the world. However, cyber development is hindered by the country's dilapidated and neglected communications infrastructure, which was badly damaged by decades of war. The infrastructure is slowly being developed and the industry is progressing. In order to support democratic development, Iraqi lawmakers need to address the reasons behind Iraq's weak infrastructure and low Internet penetration rates. Policies to enhance infrastructure and online access would not only enhance Iraq's democracy, but would also foster a digital economy.

Unfortunately, the first legislation to address the sector, the proposed Informatics Crimes Law, does not tackle infrastructure and development. The legislation instead restricts digital freedoms and mandates life sentences for vaguely worded offenses. This restrictive approach to regulation is certain to impede Internet development in Iraq. International and national criticisms of the harsh restrictions[3] have compelled Iraq's Parliament to review the bill, which was first introduced in the fall of 2011. While this examination is welcomed, the draft law is a stark indication of the lack of a coherent strategy to foster Iraq's digital growth. It also raises serious questions as to how well Iraqi policy makers understand

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1   **Article 38 of Iraq's Constitution states:**
    The State shall guarantee in a way that does not violate public order and morality:

    A. **Freedom of expression using all means.**

    B. **Freedom of press, printing, advertisement, media and publication.**

    C. **Freedom of assembly and peaceful demonstration.**

    And this shall be regulated by law.
    Iraq is a signatory to the International Covenant on Civil and Political Rights of 1966 (ICCPR)

2   **Albany Associates, "The Arab Spring and the Impact of Social Media."**

3   **NGO Coordination Committee in Iraq, "Draft Law on Freedom of Expression and Assembly: Gaps and Opportunities." Article 19, "Iraq: Letter on Information Technology Crimes." UNAMI/OHCHR, "Report on Human Rights in Iraq: 2011."**

the structure and development of the medium. It is essential that any regulation balance competing priorities including privacy, security, digital freedoms and economic development.

If Iraq does not want to be left behind by the digital revolution, it needs to seriously reconsider its approach to Internet development by making drastic amendments to the Informatics Crimes Law so that it complies with international standards. Leaders need to create comprehensive policies to support democratic development by addressing weak infrastructure and boosting Internet penetration rates while ensuring free and unfettered access to information in all media. Policies to enhance infrastructure and online access would not only enhance Iraq's democracy, but would also introduce a digital economy.

The Arab world faces common development challenges, including poor infrastructure, government-controlled regulators and state controls over Internet service providers. In Iraq, the Communications and Media Commission plays a critical role in the industry's development as an independent body facilitating private enterprise. It is essential that this commission remains independent. The industry also needs clear regulations that comply with the Constitution and international standards on freedom of expression.

This report addresses these issues in depth, and provides recommendations for leaders and industry experts. The study is based on interviews[4] conducted in April and May 2012 with dozens of international experts, Iraqi policy makers, government officials, journalists and social media users. Existing research, literature and news reports on both Iraq's Internet and traditional media are critical to this report. While accurate statistics on Iraq are limited, some data from reputable sources are referenced. A regional legal expert and two Iraqi lawyers contributed to the legal analysis.

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4   The following experts were interviewed during a mission to Erbil in May 2012: Fateh Esmael Ahmad, public relations director at Newroz Telecom Kurdistan; Karwan Raza Ahmad, general-director of the Kurdistan Regional Government's (KRG) Ministry of Transportation and Communication; Maysoon Al Damaluji, Baghdad MP; Wahid Salih Abo, director-general for technical affairs at the KRG's General Directorate of Communication; Azad L. Kaka Hama, project manager for the KRG's General Directorate of Communication Regulations; Botan Osman, head of the KRG's IT Department; Adnan Mufti, former Kurdistan Region Parliament speaker; Hogir Ch. Shikha, Public Aid Organisation general-director; Smko Anwar, journalist; Zuhair Al Jazairi, chief of Aswat Al-Iraq news agency; Buland Baban, regional manager and director of Zain Iraq; Ali Zahid, Zain Iraq customer care director; Judit Neurink, director of the Independent Media Centre in Kurdistan. Phone interviews were also conducted with Zaid Safdar, operations officer at the World Bank Group's ICT sector unit; Monroe Price, director of center for global communication studies and adjunct full professor at the University of Pennsylvania's Annenberg School for Communication; Aisha Williams, special assistant to the vice-president for Southern Europe, Central Asia, Middle East & North Africa at the International Finance Corporation; and Juliette Touma, UNDP Iraq communications specialist. Additional interviews were conducted, but some sources requested anonymity.

Recommendations

Reject the proposed Informatics Crimes Law and create a comprehensive plan to develop Iraq's Internet.

The Iraqi Constitution and the Joint Declaration on Freedom of Expression and the Internet should be the foundations for any proposed legislation regulating the Internet.[5] Internet regulation and governance are key issues that are being discussed at the international and regional levels. The multi-layered and decentralised structure of the Internet calls for innovative approaches in designing and implementing policies, legislation and regulations. Iraq's approach to cyber regulations should be part of the global debate on Internet governance, and the country's leaders need to create policies that are in line with international standards. Iraq is not the only nation addressing issues related to Internet policy and regulation; leaders can look to international standards, models and resources that address online freedom of speech and regulation. These resources include recommendations from the Arab Internet Governance Forum,[6] held in Kuwait from 9-11 October 2012; the UN-sponsored Internet Governance Forum in Baku, held in Azerbaijan from 6-9 November 2012; and the World Conference on International Telecommunications, held in Dubai from 13-14 December 2012.

Host a national Internet Governance Forum.

A national Internet Governance Forum, held with UNAMI's support and modelled after global and regional forums, would facilitate an inclusive debate on Internet governance and development in Iraq.

Design laws specifically for the Internet.

The Internet is inherently unique. Laws that regulate other media cannot be effectively applied to this medium, and attempting to do so risks fundamental rights. Regulatory approaches need to be designed specifically for the Internet and should enhance freedom of expression.

Endorse and apply United Nations provisions on Internet freedoms.

All Internet regulation and laws should comply with United Nations provisions, including the Joint Declaration on Freedom of Expression and the Internet (2011); the Report of the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (2011);[7] and the UN Human Rights Council's Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet (2012).[8] The UN Special Rapporteurs' Joint Declaration on Freedom of Expression and the Internet is especially relevant for Iraq in that it addresses both freedom of expression and security, which is the

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5   Organisation of American States, "Joint Declaration on Freedom of Expression and the Internet." The joint declaration was issued by the Special Rapporteurs for Freedom of Expression from the United Nations, the Inter-American Commission on Human Rights at the Organisation of American States (OAS), the Organisation for Security and Co-operation in Europe (OSCE) and the African Commission on Human and Peoples Rights.

6   In 2008, the United Nations Economic and Social Commission for Western Asia (ESCWA) launched the Arab Dialogue (ArabDIG) on Internet Governance Initiative. In 2009, a study was published: "Arab Regional Roadmap for Internet Governance: Framework, Principles and Objectives." In 2010, stakeholders met in Beirut and issued the "Call of Arab Stakeholders – Towards Promoting Arab Cooperation for Internet Governance Regionally and Internationally" which states the need for a regional Internet Governance Forum.

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7   Frank La Rue, "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression."

8   U.N. Human Rights Council, "The Promotion, Protection and Enjoyment of Human Rights on the Internet."

heart of the Informatics Crimes Law. For example, the declaration sets forth:

> States have the obligation to promote universal access to the Internet, and cannot justify for any reason the interruption of that service to the public, not even for public safety or national security reasons. In principle, any measure that limits access to the network is unlawful, unless it meets the strict requirements established by international standards for such actions.[9]

Develop a knowledge-based economy.

Iraq should invest 1% of oil revenues in developing an inclusive, knowledge-based economy. The Internet and social media should be considered drivers for growth in establishing a digital economy and information society. Social networking and the Internet are central to e-government programs, education reforms, entrepreneurship initiatives and social inclusion.

Protect the independence of the Communications and Media Commission.

The Communications and Media Commission currently lacks the impartiality and independence required of a regulator. It is also in dire need of a chief executive, a post that has been vacant since 2008.[10] Parliament needs to select a qualified chief executive and ensure that the commission acts as neutral regulator. The

Communications and Media Commission needs to promote a broad-based discussion on Internet development in Iraq and develop policies for the Internet and election coverage that respect the Constitution and comply with international standards on freedom of expression. This includes ethics guidelines for using social media. The Ministry of Communications is currently making regulatory decisions. This is far from ideal, as the ministry also oversees the state-owned Post and Telecom Corporation, which provides Internet services.

Support market competition among Internet providers

The government (the Ministry of Communications or the Communications and Media Commission) should encourage competition among private Internet service providers and provide them with a minimum standard of service. In addition, the authorities should establish clear regulations to prevent wholesalers that deliver bandwidth from operating Internet service providers, which gives them an unfair competitive advantage. Licenses should not be restricted by region or area, and Internet service providers should be allowed to operate throughout the country.

Issue 3G licenses and support the mobile broadband market.

The government's delay in issuing 3G licenses to mobile operators is hindering Iraq's Internet development. The country's Internet access will skyrocket when 3G mobile connectivity becomes available. Any decision about licensing fees should be made in the interest of users. Mobile operators can make inroads in the broadband market given the reach of their networks as well as their existing brand recognition, product distribution channels and strong customer bases.

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9 **"Joint Declaration on Freedom of Expression and the Internet." The declaration states that "limitations on freedom of expression must pass a strict, three-part test, and that any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application."**

10 **Dr. Safaa Al-Deen Rabee, chairman of the CMC Board of Commissioners, is the acting CEO.**

Introduction

On 23 April 2010, Halmat Goran, a Kurd residing in Norway, uploaded a video on YouTube[11] that showed him ripping and burning a chapter of the Koran called Al-Anfal. Meaning "spoils of war," Al-Anfal calls for purging Muslim lands of non-believers. Iraq's former dictator, Saddam Hussein, was believed to have used the verses as religious justification for the Anfal campaign, which claimed the lives of as many as 180,000 Kurds in northern Iraq. A week later, Goran posted an imaginary conversation he had with God on his Facebook page. The post went viral among the Kurdish community in Norway, and within a few hours Halmat received threats on his Facebook page.

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11 YouTube, "Burning Quran in Norway – Oslo." **http://www.youtube.com/watch?v=wIqRbVvQ8x8&bpctr=1343859161**

Two years later, on 2 May 2012, the controversy over Goran's views, freedom of speech and Islam[12] erupted once again after the Kurdish and Arabic monthly magazine Chirpa republished Halmat's Facebook post. Demonstrators called on the Kurdistan Regional Government to add a clause to the region's constitution to prevent stories deemed offensive to Islam from appearing in media outlets. Rioting ensued. Dozens of protesters threw stones near Kurdistan's Parliament, set alight a social centre and an alcohol store and targeted a local TV station.[13] The Kurdish government arrested the editor-in-chief and shut down the magazine.[14] While seemingly minor compared with the violence that permeates Iraq, the case is emblematic of the country's on-going struggles with freedom of expression, which is further tested in the Internet age.

The advent of the Internet and social media as vehicles for communication and political discourse present both opportunities and challenges for Iraq's fledgling democracy. Iraq's Internet development is a critical component of its future democracy and economy.

Saddam Hussein's regime severely restricted access to the Internet. Today Iraq's Internet penetration rate is among the lowest in the world[15]—roughly estimated at just 5%—but access to websites is unrestricted and the penetration rate is rising. Penetration of social networking platforms is higher than that of fixed broadband, suggesting that mobile phones, shared Internet connections and Internet cafés are used to access the Web. As in other nations, the Internet and social media in particular are popular with young people, who make up about half of the country's population according to the United Nations Development Programme.[16]

Access to the Internet and social media has the potential to foster change, create a free and unfettered flow of information and positively impact Iraq. The uprisings that swept the Arab world in 2011, forcing regime changes in Tunisia, Egypt and Libya, have highlighted the pivotal roles the Internet and social media play in mobilising protests and revolutions. However, in Iraq, technology could also be used to further exacerbate sectarian, ethnic and economic divisions. There is the risk that new media will follow in the footsteps of Iraq's traditional media, which is incredibly diverse but faces enormous pressure and threats. Stakeholders are moving quickly to study and understand these new dynamics, including the interplay between new, networked communications platforms and more established forms of media such as broadcasting.

As evidenced by this study and other recent analyses,[17] Iraq's new media landscape needs investment, support and independence if the country's fledgling democracy is to flourish. This report examines Iraq's media and security concerns, which are driving troubling legislation that curbs liberties, and provides an analysis of the Internet and social media landscapes. Infrastructure is a key challenge in Iraq and is essential to the development of the Internet. While progress is being made on that front, the industry still needs a strong regulator to keep the Internet free of government control. The lack of an independent regulator is not unique to Iraq; it is an issue throughout the region.

This report also analyses proposed Internet legislation, along with other bills and a law that curb freedoms. Freedom of expression and Internet development in the semi-autonomous Kurdistan Region, which has slightly better access to the Internet and social media, is examined as well. Finally, we look ahead to how social media and the Internet may be used in the future—specifically, during Iraq's upcoming provincial elections.

12 Rudaw, "Protest Over Magazine Article Wreaks Havoc in Erbil," 8 May 2012, http://www.rudaw.net/english/kurds/4715.html. There has also been speculation that the attack on Zagros was due to a local cleric denouncing an entertainment show on the channel called "Dice and Game" two weeks before.

13 Ibid.

14 AKNews, "Media Freedom NGO Demands Release of Chirpa Magazine Editor," 8 May 2012, http://new.aknews.com/en/aknews/3/307395/

15 International Telecommunication Union, "The World in 2011: ICT Facts and Figures."

16 United Nations Development Programme in Iraq: About Iraq. http://www.iq.undp.org/AboutIraq.aspx

17 IREX, "The Role of Journalism and Social Media in the Consumption of News in Iraq: 2011 Iraq Media Study." Al Mir'at Center for Monitoring & Developing Media Performance, "Attitudes of Iraqi Media in 2011 Media Monitoring Period April - December 2011." Access, "Iraq's Information Technology Crimes Act of 2011: Vague, Overbroad, and Overly Harsh."

Background: Threats to Media, Security and Rights

The Iraqi Constitution guarantees freedom of the press, freedom of expression and a legislative framework with some of the most progressive provisions in the region. The development of a free and fair media has been a top priority in creating a strong democratic foundation in post-Baathist Iraq. The United States has invested an estimated $500 million in Iraqi media,[18] yet the situation on the ground is far from ideal. According to the Committee to Protect Journalists,[19] Iraq has been one of the world's most dangerous places for journalists since 2003. The situation has not improved since U.S. forces withdrew from the country in 2011; that year, Freedom House ranked the nation among the least free.[20]

The Informatics Crimes Law,[21] currently before Iraq's Parliament, proposes severe limitations on freedom of expression in the name of security. As these issues have become central to Iraq's Internet development, it is essential that we examine the overall pattern of restrictions on freedoms—best illustrated by the

fledgling media—along with democratic development and security. Analysing the broader conditions helps shed light on the challenges and prospects of the Internet and social media, which could flourish or fall victim to the same restrictions, controls and abuse the authorities have used against traditional media.

The legacy of Iraq's 30-year dictatorship continues to linger, with many officials and dignitaries perceiving criticisms as challenging their honour.[22] While key political leaders are demanding a stronger democracy,[23] the situation on the ground is worrisome. Media workers fear reprisals by the government, political parties, criminal gangs, insurgents, armed sectarian groups and tribes.[24] Ethnic and sectarian divisions have contributed to the dramatic rise in the killings of media workers— including journalists working for online news organisations—and forced many to practice self-censorship. The legal framework does little to address these concerns. Crimes against journalists are often committed with impunity,[25] while the government's interpretation of lawful restrictions on violations of public order and morality limit freedom of expression.[26]

The threats to media freedom and to the security of media professionals have intensified against a backdrop of a rapid growth in the number of media outlets since 2003, according to IREX.[27] While over 80% of the

18 IREX, "2011 Iraq Media Study."

19 Aswat Al Iraq, "CPJ Says Iraq 'Second' Most Dangerous Place for Journalists."

20 Freedom House, "Iraq Freedom of the Press."

21 Due to variations in translation, the legislation is also commonly referred to as the Draft Informatics Crimes Law.

22 U.S. Department of State, "2011 Human Rights Reports: Iraq," 17.

23 Abdel Hamid Zebari, "Top Iraq Politicians Demand Greater Democracy," Agence France-Presse, 28 April 2012, http://www.dailystar.com.lb/News/Middle-East/2012/Apr-28/171751-top-iraq-politicians-demand-greater-democracy.ashx#axzz2CWK5dM11.

24 U.S. Department of State, "2011 Human Rights Reports: Iraq," 16.

25 Iraq topped the Committee to Protect Journalists' 2009, 2010 and 2011 Impunity Indexes, which ranks countries based on the failure of authorities to arrest or prosecute suspects in the murder of journalists. Of the 94 journalists murdered in Iraq since 2003, the government has not brought a single perpetrator to justice. Aswat Al Iraq, "CPJ Says Iraq 'Second' Most Dangerous Place for Journalists." CPJ reported that Iraq's rating for impunity "dwarfs that of every other nation" with a rating of 2.906 unsolved cases per million inhabitants.

26 U.S. Department of State, "2011 Human Rights Reports: Iraq," 17.

27 "2011 Iraq Media Study."

population now accesses one or more TV or radio broadcast outlets, public trust in programming is extremely low. The credibility of print media, which has both low levels of trust and readership,[28] is even worse. The cynicism toward media is not surprising given that political parties directly or indirectly control most of Iraq's thousands of print, television, radio and online news media outlets. While the news media are diverse and active, they largely reflect the positions of the political parties that fund them. The media is part of the power struggle, and is used as a means of confrontation and exploitation of divisions among identity groups.

It is important to note that the rapid growth in media outlets stems in part from a concerted effort by the United States and the international community to transform, through the Constitution, Iraq's once state-controlled media into the most diverse and free media in the region. Advertising is not a major source of revenue. Some outlets such as Radio Sawa and Radio Nawa—two of the most popular radio stations in Iraq[29]—and the satellite channel Al-Hurra Iraq are funded by the United States, while state-run media like the Iraqiya satellite channel are widely viewed as government mouthpieces.

In 2003, international organisations and Arab and Western media experts came together in Athens[30] to design a new framework for Iraq's media. Iraq's industry regulator, the Communications and Media Commission, was conceived at the conference as an independent body to oversee the allocation of broadcast frequencies. The Athens plan also included Internet policy recommendations for Iraq,[31] laying out the basic legal framework for free and unfettered Internet access and content. However, in light of the rapid growth of Arab satellite television channels, the focus turned to broadcast media development. To this day, the recommendations have not been implemented, and Internet policy has not been made a top priority.

Iraq's complex and rapidly shifting media landscape is further compromised by its on-going security concerns. While violence has eased since its peak in 2006 and 2007, terrorist attacks continue to weaken the government. Its inability to guarantee basic security has undermined public trust in institutions. There are genuine concerns that the country has been pushed to the brink, and is trapped in an unending crisis. In a recent report, the Centre for Strategic and International Studies warned that "Iraq is not yet on the edge of civil war, but the threat is growing."[32]

Despite the unstable security situation, a recent national survey registered a "significant positive shift in the country's general mood," largely because of the perception that the economy was improving.[33] Jobs, unemployment, and the provision of basic services were the main concerns of Iraqis, followed by security and corruption. Engagement in national politics is high, with many citizens closely following major issues and looking forward to new elections.[34]

Other reports[35] highlight deteriorating human rights conditions, including continuing violence, abuses by armed sectarian and ethnic militias and violations by government forces. Corruption, unemployment and the lack of basic services such as electricity[36] fuel the mistrust of the authorities. Deep-seated discrimination and violence against religious and ethnic minorities, women and the LGBT community continue to be tolerated. Crimes against these groups go unpunished. The legacy of a culture of impunity for members of the security services and public officials is alive and well, and contributes to undermining constitutional rights.

These on-going problems have seriously undermined the government's protection of human rights, and are key concerns for international observers and the donor community. The constitutional guarantees of fundamental human rights are often overshadowed by a fragile power-sharing agreement, as well as by ethnic and sectarian divisions.

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28 Ibid.

29 Ibid.

30 Stanhope Centre for Communication Policy and Research, "Middle East Media Research."

31 George Sadowsky, "Draft Internet Policy Guidance for Iraq I. Conceptual Framework."

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32 "Iraq After US Withdrawal."

33 National Democratic Institute, "A Major Shift in the Political Landscape: Report on the April 2012 National Survey," 14.

34 Although the official date is not set yet, parliamentary elections are expected to be held in 2013.

35 UNAMI/OCHA, "Report on Human Rights in Iraq: 2011." U.S. Department of State, "2011 Human Rights Reports: Iraq." Human Rights Watch, "At a Crossroads: Human Rights in Iraq Eight Years After the U.S.-led Invasion."

36 Hadeel al Sayeh, "Iraq Pays High Price for Lack of Electricity," The National, 13 July 2012, http://www.thenational.ae/business/energy/iraq-pays-high-price-for-lack-of-electricity. Iraq's economic development has been held back by a critical shortage of electricity, with businesses and homes across the country forced to endure blackouts of as long as 15 hours a day.

The Internet and Social Media

The Internet and social media have expanded dramatically over the last decade. In the last five years, the number of global Internet users has doubled to 2.27 billion.[37] Today there are more people on Facebook than there were Internet users in 2004, the year the world's largest social network was founded.[38]

37 Pingdom, "World Internet Population Has Doubled in the Last 5 Years."
38 Ibid.

These global trends are mirrored in Iraq, where, despite low Internet penetration,[39] there are over 2.3 million Facebook users. This represents nearly 8% of the population, which is higher than Iraq's Internet penetration estimates but includes Iraqis logging on abroad and at public sites like Internet cafes.[40] The figures climb when mobile usage is taken into account: one 2011 nationwide survey of 2,900 Iraqis found that 16% used their phone to send a status update to a social network.[41] Facebook's growth curve in Iraq is particularly steep, with more than 700,000 users joining the site in 2012. Over 40% of Iraq's Facebook users are between 18 and 24 years old. Iraqis between the ages of 25 and 34 are the second-largest age group to access the social networking site, and nearly three-quarters of all Iraqi users are men.[42]

Another sign of digital growth came in March 2012 with the launch of the local version of Google, **google.iq**, which enables users in Iraq to obtain search results that are locally relevant.[43] Internet penetration is expected to grow further as the government invests in rebuilding and upgrading the communications infrastructure, which was neglected due to conflicts and international sanctions.

According to a recent report by the Open Net Initiative,[44] there have been no overt government efforts to restrict access to the Internet, nor official acknowledgement that the government monitors e-mail or Internet chat rooms. As of May 2012, there were no known cases of online censorship. However, there were reports that individuals and groups were not able to freely engage in expressing views via the Internet, including sending e-mails.[45] As with journalists in traditional media, there were well-documented cases of threats to activists via social networks, particularly during anti-government protests in Baghdad and Sulaimaniyah in the spring of 2011. Frustrations over corruption, poor services and limited freedoms drove Arab Spring-inspired street protests in Baghdad and in Kurdistan that were largely mobilised via social media. These demonstrations were suppressed and turned bloody, but shifted attention to the role of social media in public discourse. They also put pressure on Iraq policy makers to safeguard cyber liberties.

While the Internet is officially unregulated, the government has declared plans to block "immoral" online content, and asked Internet cafes to register with the Ministry of Communications. The authorities justify these measures by claiming that certain websites encourage violence and negatively influence Iraqi youth.[46] The government has responded to the uncertainties raised by the growth of the Internet and social media by prioritising security concerns and proposing restrictions that clamp down on basic rights and freedoms. The attempts to regulate the Internet through harsh punishments, control and filtering will further weaken the Iraqi democratic process and could create a public backlash over threats to freedoms.

39   "The World in 2011: ICT Facts and Figures."

40   **Socialbakers.com,** "Iraq Facebook Statistics."

41   "2011 Iraq Media Study," 24.

42   "Iraq Facebook Statistics."

43   Official Google Blog, "Two New Google Domains: Iraq and Tunisia." 31 March 2011, **http://googleblog.blogspot.com/2011/03/two-new-google-domains-iraq-and-tunisia.html.**

44   "Internet Filtering in Iraq."

45   U.S. Department of State, "2011 Human Rights Reports: Iraq," 20.

46   Tav Pavel, "The Internet in post-Saddam Iraq," Global Voices Online, 3 January 2010, **http://advocacy.globalvoicesonline.org/2010/01/03/the**-internet-in-post-saddam-iraq/.

Infrastructural Challenges

Iraq's already weak telecommunications infrastructure was further damaged in the aftermath of the 2003 war. Most Internet users have depended on costly VSAT, microwave links and Wifi hotspots from private companies, most of which are unlicensed. The US military deployed its own fibre optic cables, which were later transferred to the Iraqi government. Fixed-wireless services are offered by wireless local loop (WLL) and worldwide interoperability for microwave access (WiMAX) licensed operators.[47] Moreover, some private companies provide Internet services through cables leased from other private firms, but subscriptions are very limited due to the high price of these services. As a result, broadband penetration in the country was negligible in 2010.

In 2011, the Iraq Telecommunications and Post Company, the incumbent fixed operator, announced two fibre-to-the-home (FTTH) access network projects in Iraq. There is no detailed data or recent population census, but according to estimates Internet penetration is around just 5%.[48] Internet penetration is largely concentrated in urban areas and varies substantially

based on the region. It is believed to be higher in Iraqi Kurdistan, where services are slightly better.

Among the key reasons for Iraq's lack of high-speed Internet connectivity is the absence of a reliable backbone connecting the country to the outside world. But that is quickly changing. In January 2012, Gulf Bridge International (GBI), a regional communication infrastructure company, announced that it had laid the first subsea fibre-optic cable with the Iraqi Telecommunication and Post Company providing

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47   **"Kalimat Telecom Company Profile." http://www.kalimattelecom.com/en/ company_profile/profile.aspx. Kalimat Telecom was the winner of Iraq's first national Wireless Local Loop (WLL) license to provide a full-scale fixed wireless network.**

48   **"The World in 2011: ICT Facts and Figures." According to GBI, broadband penetration stands at less than 3 per cent.**
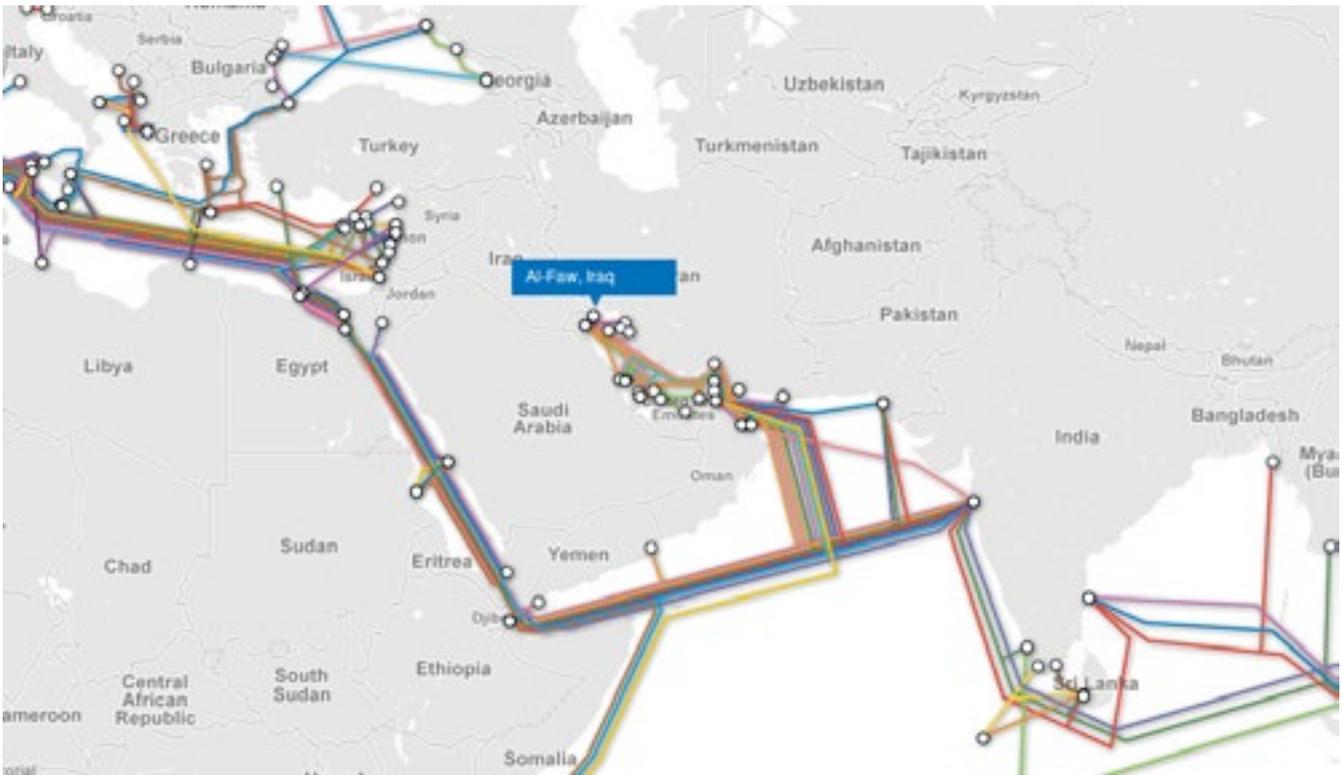
A new fibre-optic cable network extending from the Indian Ocean to the Mediterranean is expected to boost Iraq's Internet connectivity.

connectivity to Iraq[49] in Basra's Al-Faw port. The project is a major investment that is expected to boost the development of the country's ICT infrastructure. In May 2012, Iraq's Investment and Technology Group of Companies (via its ITC Communications division)[50] signed a strategic alliance agreement with Hong Kong-based international carrier PCCW Global after the Iraqi company won a 15-year investment license from the Iraq Telecommunications and Post Company to market

transmission capacity over Gulf Bridge International's fibre-optic cable.[51] ITC Communications was previously licensed as a VSAT operator, providing international connectivity to Iraqis.[52]

The cable is part of a regional cable system that will connect all of the countries in the Gulf—Qatar, the UAE, Iran, Iraq, Kuwait, Bahrain, Oman and Saudi Arabia—with Europe and Asia. Outside the Gulf, the cable connects eastward to Mumbai and westward to Sicily, with routes to Milan and onward to London, Frankfurt, Amsterdam, Paris and Marseilles.[53] The cable will be developed and owned by Gulf investors who are building this strategic infrastructure to serve the entire region. Iraq could become an important regional hub by

49 GBI, Inc. "Historic Milestone as GBI Lands First Ever Subsea Cable in Iraq." 18 January 2012. http://www.telegeography.com/products/commsupdate/articles/2012/01/18/gbi-lands-submarine-cable-in-iraq/.

According to the press release, Amir Al-Bayati, deputy of the Iraqi Telecommunications and Post Company, said, "The GBI cable is a crucial strategic initiative in the industry of subsea cables today, using its impressive infrastructure to directly facilitate the development of all the countries connected to it. This project is especially important to us as it will feed the ever-growing hunger for capacity and connect the country to the rest of the world through the Gulf gateway. As an emerging market, Iraq has great development potential that comes as a result of the country's strategic location. In parallel with other projects the country is embarking on, this cable will facilitate Iraq's ability to realize its potential, contributing not only to the development of the telecommunications sector in Iraq, but to the region as a whole."

50 "Investment and Technology Group," http://www.itc-grp.com/aboutus.htm, The company's "About Us" page states that ITC Communication "was established to achieve scientific and technical investment, in the field of telecommunication developing strategic partnership with leading telecommunication companies like Tyco, Nortel Networks, Lucent, Perrilli, Tellabs, and LG for providing equipment, network management and providing training to local Iraqis through our certified engineers."

51 AMEinfo.com, "PCCW Global and ITC Sign Strategic Alliance Agreement," 9 May 2012, http://www.ameinfo.com/pccw-global-itc-sign-strategic-alliance-299896.

52 Telegeography.com, "Trio of GBI Developments Reported," 10 May 2012, http://www.telegeography.com/products/commsupdate/articles/2012/05/10/trio-of-gbi-developments-reported/ International Telecommunication Union, "ICT Statistics Newslog - Trio of GBI Developments Reported, (Iraq, Kuwait)," 22 June 2012, http://www.itu.int/ITU-D/ict/newslog/Trio+Of+GBI+Developments+Reported+Iraq+Kuwait.aspx

53 "Historic Milestone as GBI Lands First Ever Subsea Cable in Iraq."

hosting Web sites focused on neighbouring countries where communications freedoms are more restricted.[54]

Another regional player—the eMarine division of Etisalat, a UAE-based communications provider specialising in subsea fibre-optic cables—recently expressed interest in working on a project linking the southern Iraqi port city of Basra to Fujairah in the UAE.[55] Iraq's main mobile operators (Zain, Korek and Asiacell) are also preparing to invest in fibre optics and infrastructure.[56]

The Iraqi Telecommunication and Post Company and the Communications and Media and Commission's ambiguous procedures made it difficult for mobile operators and Internet service providers to develop state-of-the-art infrastructure. It is also important to note that, as elsewhere in the region, infrastructure companies such as GBI are planning to boost revenue by selling Internet services.[57] This vertical integration model could lead to unfair competition and enable more content filtering by putting too much power in the hands of a single company. Iraq needs to create a strong regulatory framework to guarantee network neutrality, fair competition and the respect of user rights.

Throughout the region, mobile broadband has become a preferred alternative to fixed broadband.[58] Many are opting to access the Internet via their mobile phones and other mobile broadband devices such as wireless USB adaptors. Mobile 3G has proven an efficient way to boost Internet connections, and Iraq's biggest mobile operators say they are ready to introduce the technology. Yet the mobile 3G launch is stalled because of delays and uncertainties over wireless spectrum

licensing.[59] Mobile operators claim Iraq's Communications and Media Commission has been slow to issue licenses for spectrum rights, which would boost broadband capabilities and enable the companies to offer 3G services.

A key question is whether the government will charge a fee for the 3G spectrum.[60] Mobile network operators paid a total of almost US$4 billion to acquire mobile licenses in 2007. They claim the fees were inclusive of all technologies and therefore should cover 3G. There are other disputes as well: the government has fined mobile operators millions of dollars for not meeting minimum quality standards,[61] and is actively jamming mobile phone frequencies to stop insurgents from remotely detonating bombs.

The absence of 3G licences is not the only example of slow progress within the Iraqi telecom sector. Telecom legislation has not been implemented since it was approved in 2004, and long-running attempts to introduce a fourth national mobile company have also proven futile.[62] In addition, the industry's independent regulatory body, the Communications and Media Commission, does not have a chief executive. The commission is an independent body tasked with overseeing the country's communications sector (including its infrastructure) and promoting a free and independent media. Its mandate includes issuing licenses to broadcasters, connecting and setting prices for networks and services, allocating spectrum frequencies and creating ethics and media codes during elections. Yet the Ministry of Communications and the Iraqi government have tried to create policies regulating the media and telecommunication sectors that encroach on the Communications and Media Commission's mandate and independence.

54 Eric Pfanner, "Iraq Emerges From Isolation as Telecommunications Hub," The New York Times, 15 April 2012, http://www.nytimes.com/2012/04/16/technology/iraq-emerges-from-isolation-as-telecommunications-hub.html?pagewanted=all.

55 Tom Gara, "Iraq Hopeful of High-speed Internet," The National, 1 June 2009, http://www.thenational.ae/news/world/middle-east/iraq-hopeful-of-high-speed-internet

56 Ibid. Mohammed Serieh, Asiacell's marketing manager, stated, "We're ready to invest in fibre, and ready to invest in infrastructure, once the government gives us the green light. We have the plans, we have the resources, we can invest in the infrastructure tomorrow."

57 Roger Field, "Mekky's Making," CommsMEA, 9 April 2012, http://www.commsmea.com/12135-mekkys-making/#.UKessIV0Gdw Interview with Ahmed Mekky, CEO of GBI.

58 Dubai Press Club and Deloitte, "Arab Media Outlook 2011-2015."

59 TeleGeography, "Korek Anxious for 3G Frequencies." 16 March 2012, http://www.telegeography.com/products/commsupdate/articles/2012/03/16/korek-anxious-for-3g-frequencies/.
    Matt Smith, "Iraq Telco Korek Awaits Frequency to Launch 3G," Reuters, 14 March 2012, http://www.reuters.com/article/2012/03/14/iraq-korek-3g-idUSL5E8EE3W820120314

60 "Korek Anxious for 3G Frequencies." Korek's CEO warned that delays would raise tariffs and hurt investments. "The more money you pay, it's the customer that will pay."

61 "Iraq Hopeful of High-speed Internet."

62 "Korek Anxious for 3G Frequencies."

Internet Access and Infrastructure: The Regional Landscape

I n 2011, the Middle East and North Africa faced political turmoil and economic challenges that deeply impacted the media sector. As traditional media struggled with declining state and private investments because of economic difficulties, the online and mobile space continued to grow at a rapid pace across the region. The Arab Spring in particular boosted the amount of time people spent online and the popularity of social networking platforms.[63]

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63 "Arab Media Outlook 2011-2015."

Smartphone penetration in the Middle East is among the highest in the world. An estimated 18% of mobile phone owners in the region use smartphones, and the rates are significantly higher in Gulf countries.[64] In Iraq, smartphones are becoming more popular and affordable; roughly 40% of mobile phones are Internet-enabled phones.[65]

Across the region, there is a stark divide between mobile broadband and still-negligible fixed broadband penetration. At the same time, commercial deployment of 4G LTE technology is already available in several Gulf countries and is being introduced to other nations such as Egypt.[66] According to the Arab Social Media Report, social networking is the most common online activity after "getting information." In Egypt, 30% of users named social networking their most common activity in 2012, a substantial increase from just 10% in 2009. During the demonstrations, Facebook use skyrocketed; Egypt added close to 2 million new Facebook users in the first quarter of 2011 alone. The number of Facebook users in the first quarter of 2011 was 30% in majority-Arab nations, compared to just 18% in the same period the previous year.[67]

Facebook and Twitter continue to be the most popular social networking platforms, followed by YouTube. The region had more than 1.5 million active Twitter users at the end of 2011. Even in countries with low fixed-broadband penetration such as Iraq, Tunisia, Libya and Morocco, there are a large number of active Twitter users, suggesting that mobile Internet is not a constraint in using social networking platforms.

One survey carried out in Egypt, Morocco, Saudi Arabia and the UAE indicated that 87% of the public believed that social media played a central role in the Arab Spring.[68] Social media gave a platform for the political commentary and criticisms that fuelled the protests. Now, governments in the region—including Iraq—are addressing the increasingly important issue of Internet regulation in the hopes of developing their technology sectors. This new push underscores the need for clear regulations that support human rights and Internet freedoms.

Currently there are only a handful of infrastructure operators and Internet services providers in the region, and most have close ties with government authorities. The ties raise concerns about unrestricted Internet access, regardless of laws protecting freedom of expression. It also raises the prospect of the authorities employing an Internet "kill switch"[69] to stop the free flow of information, as occurred in Egypt during the 2011 protests.

Some Arab countries have also developed regulations restricting social media. For example, Saudi Arabia mandates that online publications, blogs, chat rooms and other online sites register with the Ministry of Culture and Information, which imposes severe limits on freedom of expression.[70] [71] Saudi Arabia is also introducing strict new regulations on social media and content licensing.[72] In Lebanon, the government scrapped a draft law that would have required journalists and bloggers to register with the Ministry of Information following a public outcry over the legislation.[73]

64 Ibid.

65 "Iraq Media Study."

66 Ibid, 33.

67 "Arab Social Media Report."

68 Deloitte, "What Is the Economic Impact of Social Media in the Middle East?"

69 Alexis Madrigal, "The Mechanics of Egypt's Internet Kill Switch," The Atlantic, 16 February 2011, **http://www.theatlantic.com/technology/archive/2011/02/the-mechanics-of-egypts-internet-kill-switch/71354/**.

70 Information Policy, "Saudi Arabia Announces New Web Publishing Law," 7 January 2011, **http://www.i-policy.org/2011/01/saudi-arabia-announces-new-web-publishing-law.html**.

71 Arabic Network for Human Rights Information, "Ministry of Culture and Information Adopts Regulation to Restrict E-publishing," 7 January 2011, **http://www.ifex.org/saudi_arabia/2011/01/07/restrictive_regulation/**.

72 Reuters, "Saudi Arabia Considers Law Against Insulting Islam," 17 July 2012, **http://uk.reuters.com/article/2012/07/15/saudi-islam-law-idUKL6E8IF2CY20120715**.

73 Magda Abu-Fadil, "Activists, Bloggers Stop Lebanese Internet Regulation Act, for Now," The Huffington Post, 10 April 2012, **http://www.huffingtonpost.com/magda-abufadil/lebanese-internet-regulation-act_b_1412276.html**.

The Informatics Crimes Law

While the Internet is not widely available in Iraq, it is one of the few countries in the world with nearly free and unfettered online access.[74] Iraq's cyber liberties stand in stark contrast with the pervasive digital censorship in the region. The government has no policies blocking websites or filtering content, and Internet service providers have not faced any restrictions or interference by authorities. There is no evidence that the authorities have accessed data or monitored user-generated content.[75] This unregulated environment has created unprecedented cyber freedoms in the country for nearly a decade, but those freedoms are now under threat.

The draft Informatics Crimes Law, currently before Parliament, was created to fight cyber crime and terrorism but instead threatens basic rights and imposes severe punishments, including life imprisonment, for vague offenses such as compromising the nation's "independence" or "unity." Legal analysts and rights groups have widely criticised[76] the draft law for its vague provisions and harsh punishments, with one expert calling it "the worst kind" of cyber crime legislation.[77] The bill, which was sent to Parliament in the fall of 2011 and is being reviewed following widespread criticism from national and international groups, fails to guarantee basic constitutional rights and ignores international legal standards. If it becomes law, the bill would have far-reaching consequences that would limit freedom of expression and seriously undermine Internet development in the country.

Two central problems with the legislation are its vaguely worded provisions and its harsh sentences – including mandatory life sentences and fines of up to 50 million Iraqi dinars, or about US$43,000.[78] These provisions include Article 3, which states that computers or information networks cannot be used to "compromise the independence of the state or its unity, integrity, safety, or any of its high economic, political, social, military or security interests"; and Article 4, which criminalises creating a website with the intent to "implement programs or ideas which are disruptive to public order or promote or facilitate their implementation." Article 6 mandates "temporary to life imprisonment" and up to 50 million dinars in fines for using computer and information networks to "create chaos in order to weaken the trust of the electronic system of the state; provoke or promote armed

74 Freedom House, "Iraq: Freedom in the World 2012."

75 In 2009, Iraq's communications ministry stated that it had signed a deal with a French company to install a "security system" on online networks. Mvelase Peppetta, "US Web Censorship Tools Sold to Iraq Being Used by Syrian Regime," Memeburn, 31 October 2011. http://memeburn.com/2011/10/us-web-censorship-tools-sold-to-iraq-being-used-by-syrian-regime/ Valentin-Devries, Sonne and N. Malas, "Blue Coat Acknowledges Syria Used Its Gear for Internet Censorship Amid Arab Spring," Wall Street Journal Online, 29 October 2011, http://online.wsj.com/article/SB1000142405297020368750457700191139859632 8.html. According to the Wall Street Journal, "The company says it shipped 14 of its ProxySG 9000 Internet-filtering appliances from Rotterdam to Dubai in late 2010, an order valued at an estimated $700,000. It believes 13 are being used to censor parts of the Syrian Internet. What happened to the 14th is unclear."

76 Agence France-Presse, "Rights Groups and Activists Slam Iraq Internet Law," 12 July 2012, http://english.alarabiya.net/articles/2012/07/12/225891.html.

77 Danny O'Brien, "Iraqi cybercrime bill is the worst kind," 30 March 2012, The Committee to Protect Journhalists, http://cpj.org/internet/2012/03/iraqi-cybercrime-bill-is-the-worst-kind.php

78 The penalty is approximately 11 times per capita GDP, based on World Bank statistics.

disobedience or threaten to do so; provoke religious or sectarian strife; [or] disturb public order or harm the reputation of the country."

In addition to handing down severe punishments for vague offenses, the legislation also validates two Baath-era laws, the 1969 and 1971 penal codes, which courts continue to use to prosecute media workers on charges including defamation, moral principles, copyright and libel. The 1968 publications law, which imposes prison sentences for publicly insulting the government,[79] has been used in draft media laws as well.

As several legal experts and international organisations have concluded,[80] the legislation is the most recent and most troublesome example of Iraq's problematic approach to media regulation. It has been widely deemed unconstitutional and in violation of international standards. Iraq's formidable security challenges are clearly the rationale behind the Informatics Crimes Law, as well as other laws and legislation that have curbed civil liberties. However, it is difficult to believe that the legislation would effectively counter terrorism and crimes against the state. Aside from rights concerns, the draft law actually fails to identify the genuine threats of cyber attacks and the mechanisms through which they could be carried out online.

No democratic nation has a similarly vague, broad and severe law. The regulation of the Internet is an important matter that should further reinforce Iraq's commitment to protecting human rights. Rather than restricting freedoms and creating a tightly controlled Internet environment, digital legislation should be geared toward promoting social and economic development.

The Informatics Crimes Law fails to capture the unique nature of the Internet and its ability to facilitate content and information sharing. Rather than considering technology and the Internet as mechanisms for development and information, the draft law states that its goal is "to provide legal protection for the legitimate use of computers and information networks, to punish the perpetrators of acts which violate the rights of users whether they may be individuals or legal entities and to prevent the abuse of this law in order to commit computer crimes."[81]

Beyond the civil rights concerns, the legislation would be incredibly difficult to implement and would require substantial financial resources. The transnational nature of Internet severely limits the effectiveness of any national regulations aimed at restricting access. Iraq could also risk isolating itself by placing such severe limitations on online speech and cyber liberties, impeding its goal to raise the quality of life for its citizens. The decentralised nature of the Internet calls for an outward looking approach that is very different from what the Informatics Crimes Law proscribes. Rather than focusing on penalties and restricting the use of the Internet, Iraq would be better off working with international and national experts on strategic digital development. By emphasising regulations instead of a broader policy embracing the assets of the Internet, Iraq's current approach will likely prove ineffective and will stifle the development of the country's Internet sector.

There are clear international standards that benchmark the appropriate way to address Internet regulations.[82] The 2011 Joint Declaration on Freedom of Expression and the Internet maintains that the Internet should be protected and promoted. It sets limitations on how countries should regulate the medium and hails the Internet's role in fostering human development. The declaration provides a set of principles to guide cyber legislation, and cautions that "legislation regulating the Internet should not contain vague and sweeping definitions or disproportionately affect legitimate websites and services."

In addition, the UN Human Rights Council's Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet states:

The same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.[83]

The declaration allows for legitimate restrictions on freedom of expression on the condition that they must comply with international standards; be expressively

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79 U.S. Department of State, "2011 Iraq Human Rights Report," 19.

80 Access, "Iraq's Information Technology Crimes Act of 2011: Vague, Overboard, and Overly Harsh." Human Rights Watch, "Iraq's Informatics Crimes Law." Electronic Frontier Foundation, "Proposed Laws in Lebanon and Iraq Threaten Online Speech." Centre for Law and Democracy, "Freedoms in Iraq: An Increasingly Repressive Legal Net."

81 Article 19, "Iraq: Draft Informatics Crimes Law."

82 Iraq is a signatory to the International Covenant on Civil and Political Rights of 1966 (ICCPR). Article 19.2 of the ICCPR entitles "everyone the freedom of expression" including "the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The text further specifies that any restriction on this right, the "right of peaceful assembly" (Article 21) or "freedom of association" (Article 22.1), must be strictly necessary to preserve the interests of "national security or public safety, public order, the protection of public health or morals" (Articles 19.3.B, 21, 22) or in the case of association and assembly "the protection of the rights and freedoms of others" (Article 21, 22.2). The Iraqi Constitution enshrines the freedom to assemble and peacefully protest, and "freedom of expression", including "freedom of the press, printing, declaration, media and publishing", unless threatening the "public order and morality" (Article 38)

83 "The Promotion, Protection and Enjoyment of Human Rights on the Internet."

established by the law; pursue a legitimate aim; and be proportionate in accomplishing that aim.

While the current proposed law has many pitfalls, cyber legislation drafted in the spirit of the declaration would benefit Iraq. Like other nations, Iraq needs regulations that specifically address the needs of the Internet instead of relying on traditional media laws. It is critical that laws and policies invest in traditional and Internet literacy and promote education. Content and harmful speech need to be regulated by individuals, not the state. In addition, Internet service providers, mobile operators and any other intermediaries should not be held accountable for content generated by users and third parties that are disseminated through these providers.

Internet intermediaries and public authorities should guarantee the network's independence, and data and traffic should be free regardless of the device, content, author, origin and/or destination of the content, service or application. Any law or regulation must protect the "public square" aspect of the Internet. Standards of liability, including civil cases, should take into account the overall public interest in protecting both the expression and the forum.

Iraq is already facing infrastructural challenges that limit its Internet penetration, basic services and economic development. Legislation that sharply curbs rights and freedoms only further hinders Iraq's capacity to develop an Internet economy. Given Iraq's already limited Internet development, any digital legislation will have far-reaching implications on the industry. In its current form, the Informatics Crimes Law would create an environment in which individuals and the private sector are bound by uncertainty and the threat of potential punishment, creating a chilling effect that would spread to the traditional media.

Countering cyber threats involving terrorism, economic fraud and trafficking is a legitimate goal, as is ensuring the security of the state. The Informatics Crimes Law, however, is not the solution. It is clear that law enforcement needs mechanisms to counter security threats and cybercrime. However, any security initiative—legislative or otherwise—must take into consideration the economic and social consequences of restricting freedoms. Iraq's challenge is to strike a balance between safeguarding liberties, improving Internet access, maintaining security and creating a long-range plan to develop the Internet. The country is now a model for Internet freedom in the region and worldwide. Regulations that strengthen the Internet, and promote the free and unfettered flow of information, would not foster terrorism as some might fear. Instead, they are certain to strengthen Iraq's democracy.

Laws Compromising Freedom of Expression

Along with the United States, several international organisations including the World Bank, UNESCO, UNDP and UNAMI helped Iraq draft fairly progressive media regulations. However, there is an evident pattern of regressive legislation that restricts liberties and raises serious concerns about Iraq's democracy.

In addition to the Informatics Crimes Law, the Centre for Law and Democracy identifies three other bills and a law[84] that curb fundamental rights, including freedom of expression. Of these, only one—the Journalist Protection Law—has been approved by Parliament. It is currently being challenged in the Supreme Court.[85] The law has been controversial in part because it does not broadly protect freedom of speech but instead provides legal protections only for "full-time journalists." This narrow definition does not provide legal safeguards for bloggers, part-time journalists or the general public.

The four bills—the draft Communications and Media Commission Law, the draft Political Parties Law,[86] the draft Law of Expression, Assembly, and Peaceful Protest[87] and the draft Informatics Crimes Law—have not yet been adopted. Far from being technical provisions, these laws will define some of the most

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84   Centre for Law and Democracy, "Iraq: Note on the Draft Journalist Protection Law."

85   Niqash, "Journo vs Journo: New Media Law to be Trialled in Iraqi Court," 20 June 2012, **http://www.niqash.org/articles/?id=3073**

86   NGO Coordination Committee in Iraq, "Towards Accountability or Autocracy? The Political Parties Draft Law, Proposed Changes and Gaps."

87   "Draft Law on Freedom of Expression and Assembly: Gaps and Opportunities."

fundamental elements protecting civil liberties in Iraq. A key feature of the four bills and the Journalist Protection Law is the broad restrictions on content published or broadcast through the media, during demonstrations, over the Internet and produced by political parties. These limitations are coupled with the many content restrictions that still exist in the 1969 Penal Code. Iraq's legislation also has a troubling pattern of using vague terms such as "public morals," "moral issues," "incitement," "religious hatred," "sectarianism" and, perhaps not surprisingly, "public order" and "terrorism."

These extraordinarily broad terms fail to meet international legal standards regarding restrictions on freedom of expression and are certain to create even bigger problems than those they are trying to solve by undermining the Constitution and Iraq's democratic foundation. This language could easily be used to silence critics and curb freedom of expression. For example, a demonstration could be considered in violation of "public order." The provisions offer no definitions, details or examples of violations, nor do they explain the due process for the accused. It is also unclear who will interpret the terms.

It should also be noted that a number of measures are still in place that clamp down on freedom of speech. For example, Order 14,[88] issued by the Coalition Provisional Authority following the 2003 invasion, bans the media from inciting violence and is still in place. In addition, legislation guaranteeing constitutional rights is still pending, including a freedom of information law.[89]

Iraq is obliged to respect the right to freedom of expression of all persons under international law and the Constitution. However, its laws and regulations are often inconsistent with these obligations. As Human Rights Watch has asserted,[90] the Iraqi government could use the proposed laws to prohibit the production, importing, publishing, or possession of written material, drawings, photographs or films that violate public integrity or decency. It could also revoke or suspend broadcasting licenses and bring charges against individuals.[91] The penalties for violating public integrity or decency include heavy fines and imprisonment.[92] These draft laws are clear examples of how imposing wide-ranging, unconditional restrictions on content undermine constitutional rights.[93]

88   "Middle East Media Research," http://www.stanhopecentre.org/PDFs/CPAORD14.pdf.

89   "Report on Human Rights in Iraq: 2011."

90   "At a Crossroads." Chapter II Freedom of Expression.

91   Ibid.

92   U.S. Department of State, "2011 Human Rights Reports: Iraq," 19.

93   Ibid, 16.

The Kurdistan Region

As Iraq's only official region, Kurdistan enjoys more autonomy from Baghdad than any other area of the country. Iraq's Constitution allows for the region of Kurdistan to create a government with enormous autonomy, including the power to enact legislation that trumps federal law. This provision has proven extremely delicate, particularly as it pertains to the oil-rich region's sovereignty and the on-going battle between Baghdad and Erbil over control of natural resources.[94]

Iraqi Kurdistan has taken full advantage of its semi-autonomy by establishing its own powerful government, laws and bureaucracy. The region's Parliament is now preparing to debate its own Constitution.[95] The Kurdistan Regional Government's (KRG) Communications Ministry recognises Baghdad's Communications and Media Commission but has its own regulatory power. Iraqi Kurdistan has its own relatively progressive press law,[96] and to a certain extent has been a freer region for media. The law covers only print publications, but guarantees freedom of expression to every citizen "within the framework of respect for personal rights." It states that no journal shall be closed or confiscated.

Yet as reported by Human Rights Watch and the Committee to Protect Journalists, media outlets—particularly those that openly criticise the two ruling

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94   International Crisis Group, "Iraq and the Kurds: The High-Stakes Hydrocarbons Gambit."

95   AKNews, "Return of Kurdistan Constitution to Parliament Will Be Discussed in Conference Today," 27 August 2012, http://www.aknews.com/en/aknews/4/323239/

96   Press Law in the Kurdistan Region. The law was approved in 2008.

parties, the Kurdistan Democratic Party and the Patriotic Union of Kurdistan—have faced legal retribution, including publication closures and defamation lawsuits. Journalists and commentators, including those working for online media, have faced harassment, intimidation, threats and even murder.[97] As in the rest of Iraq, the gap between the law's provisions and the reality on the ground is stark. Libel remains a criminal offense and judges may issue arrest warrants for journalists on this basis. When named in a lawsuit, journalists are typically detained at police stations until they post bail.

In the spring of 2011, the KRG violently cracked down on 60 days of Arab Spring-inspired demonstrations in Sulaimaniyah. At least 10 people died in the unrest. Local and international organisations including UNAMI have voiced concerns about the treatment of protesters, including allegations that the Kurdish security forces used excessive force and abused and mistreated demonstrators at the rallies and while in detention.[98] The public and journalists practice self-censorship on certain topics that are considered "red lines" in Iraqi Kurdistan, including conservative Kurdish traditions, the historic struggle against Saddam Hussein's regime and coverage of political figures and the government.

While the Kurdish press is far from free, the region is making strides in developing the Internet and social media. Iraqi Kurdistan has enjoyed more freedoms since gaining semi-autonomy from Baghdad in 1991. The Internet was accessible in Kurdistan prior to the rest of Iraq. Although regional data are not available, estimates indicate Internet penetration is now slightly higher in the region. Internet and social media experienced significant growth in the recent years, with politicians in Iraq and Kurdistan using Facebook and Twitter. In Iraqi Kurdistan, many political statements are now issued via Facebook.[99]

Along with better Internet access and growing public demand for better online services, Iraqi Kurdistan's relative security has attracted foreign investors. In terms of infrastructure, two broadband cables bringing Internet to Iraq from Iran and Turkey pass through Kurdistan. Korek, one of Iraq's three mobile operators, is based in Erbil and is prepared to launch 3G mobile services in the region. The Kurdish Diaspora community is also driving the use of social media from abroad.

These developments further divide the Kurdistan region from Baghdad, already engulfed in disputes over Erbil's autonomy and oil-revenue sharing. While constitutional, the two sets of laws and regulations (national and regional) could cause discrepancies in media and Internet governance and deepen the rifts between Erbil and Baghdad. The Kurdish bloc in Iraq's Parliament has voiced concerns about the Informatics Crimes Law, and Kurdish leaders are openly critical of the country's direction.[100] Erbil's concerns about Iraq's fledgling democracy and its push to create more autonomous regions in Iraq are likely to shape the debate as the 2013 provincial elections near. Social media could play a prominent role in campaigning in Kurdistan, and in determining the fate of key political issues.

97 Human Rights Watch, "Iraqi Kurdistan: Growing Effort to Silence Media."
    Committee to Protect Journalists, "Veteran Journalists Seek Justice in Iraqi
    Kurdistan," 17 May 2010. http://cpj.org/blog/2010/05/veteran-journalists-seek-
    justice-for-the-press-in.php

98 UNAMI/OCHA, "Report on Human Rights in Iraq: 2011."

99 Interviews with Kurdish officials Botan Osman and Adnan Mufti.

100 "A Major Shift in the Political Landscape: Report on the April 2012 National
    Survey," 51.

Looking Ahead

While the 2005 Constitution created a democratic Iraq, the country's power-sharing arrangements have proven fragile, and sectarian and ethnic divisions continuously challenge its democracy. Although trust in public institutions is low, political participation is high. The 2010 election reaffirmed the willingness of citizens to rebuild the country, but Iraq still faces an uphill battle in creating a safe and economically viable state that embraces human rights. The 2013 provincial poll will be another test of the country's democracy, unity and the viability of its future as a religiously and ethnically diverse state. The role of free media in campaigning and in reinforcing Iraq's democracy is key. The Internet and social media are likely to play an important role in this respect. The Internet is a fundamental enabler of other human rights, and given the growth in Internet access, new and social media can tackle important issues such as freedom of information and corruption, which are undermining the country's democracy.

Social media's impact on democracy is still widely debated,[101] though it has undoubtedly influenced political debates and campaigning. Thus far, Iraq's social media has so far played a minimal role. Still, nearly all leaders are on Facebook or Twitter (not all use the networks frequently), and some even share videos on You Tube. Iraq's low Internet penetration limits the impact that social media has on Iraq's political debate, though the situation is changing quickly. Social media is becoming a source of information for broadcast media, which remain the main source of news and information even though their credibility is weak.

Other issues facing Iraqi society and media are bound to heavily influence the role that social media plays. The elections and social media are likely to exacerbate country's political, ethnic and religious divisions. There is a risk that in an already fragile democracy, sectarian divisions can be politicised via the Internet and social media, where extremist positions tend to gain higher visibility.[102]

Poor media literacy, particularly among youth, raises questions as to how social media can contribute to democratising political debates. In an interview for this report last spring, Iraqi bloggers expressed concern about combative or extremist content and pressed for self-regulation or controls. They emphasised the need for Internet literacy programs both for the public and the government.

It must be noted as well that the Internet and social media cannot solve issues made worse by the decades-long information blackout during Saddam Hussein's regime. Conservative and religious elements also cannot be expected to fully embrace the digital free flow of information. Still, initiatives like the Iraq Social Media Network[103] train instructors to teach social media and mobilise the public against restrictive Internet policies. Coordinated cyber and community initiatives can also promote the Internet as a tool to improve governance, fight corruption, hold leaders accountable and monitor the electoral process.

In terms of Internet development and legislation, Iraq is not alone. Led by the United Nations, the international community and legal experts have extensive resources and guidance on how to best regulate the industry while safeguarding constitutionally guaranteed rights and freedoms. Regional and international conferences can also serve to enhance the country's digital development and understanding of the global and regional landscapes. For example, treaties will be drawn up at the World Conference on International Telecommunications in Dubai this December and the United Nations' International Telecommunications Union may gain more regulatory authority over national and international Internet governance. The United Nations' annual Internet Governance Forum also brought together experts, government officials, civil society, the private sector and international organisations to discuss public policy and regulations. Several regional and national forums have replicated the international conference, including the first Arab Internet Governance Forum. Held in Kuwait in October, the outcomes of this event can be used as a resource to help Iraqi policy makers draft Internet regulations and boost their exposure to global debates on Internet governance.

Legislatively, in a nation where state control exists across sectors, the Iraqi government has a duty to ensure the protection of basic rights and freedoms. The security-driven approach that was used in the draft Informatics Crimes Law has far-reaching implications in stifling Internet development and accentuating censorship and control. Iraq's Internet is in its infancy, and its future may be seriously undermined by ill-conceived, top-down legislation and regulations that prioritise security. The Informatics Crimes Law fails to embrace the unique, decentralised and transformative nature of the Internet that enables individuals to exercise their right to freedom of expression and to foster social and economic development.

The biggest threats to Internet freedoms come from governments that have the institutional mechanisms to regulate, restrict, survey, censor and license Internet suppliers and users. Iraq has the opportunity to uphold its democracy, and to develop policies and regulations that will preserve its distinction as a bastion of Internet freedom. Iraq can serve as a model for Internet development in the region and beyond. The primary goal should be getting the country online.

Iraq's Internet development will require respect for basic human rights and truly independent regulatory bodies. The country will need to strike a balance between the rights and freedoms on the one hand, and the security of the state and its people on the other. However, values such as democracy and freedom of expression must be preserved every step of the way.

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