



Operationalising communication rights: the case of a “digital welfare state”

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Abstract: Academic debates tend focus on attempts to codify and promote communication rights at the global level. This article provides a model to analyse communication rights at a national level by operationalising four rights: access, availability, dialogical rights, and privacy. It highlights specific cases of digitalisation in Finland, a country with an impressive record as a promoter of internet access and digitalised public services. The article shows how national policy decisions may support economic goals rather than communication rights, and how measures to realise rights by digital means may not always translate into desired outcomes, such as inclusive participation in decision-making.

Keywords: Communication rights, Access, Availability, Dialogical rights

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INTRODUCTION

The rampant spread of disinformation and hate speech online, the so-called surveillance capitalism of the internet giants and related violations of privacy (Zuboff, 2019), persisting digital divides (International Telecommunication Union, 2018), and inequalities created by algorithms (Eubanks, 2018): these issues and many other current internet-related phenomena challenge us as individuals and members of the society. These challenges have sparked renewed discussion about the idea and ideal of citizens’ communication rights.

Either as a legal approach or as a moral discursive strategy, the rights-based approach is typically presented in a general sense as a counterforce that protects individuals against illegitimate forms of power, including both state and corporate domination (Horten, 2016). The notion of communication rights can not only refer to existing legally binding norms, but also more broadly to normative principles against which real-world developments are assessed. However, there is no consensus on what kinds of institutions are needed to uphold and enforce communication rights in the non-territorial, regulation-averse and rapidly changing media environment. Besides the actions of states, the realisation of communication rights is now increasingly impacted by the actions of global multinational corporations, activists, and users themselves.

While much of the academic debate has focused on transnational attempts to codify and promote communication rights at the global level, in this article, we examined a national approach to communication rights. Despite the obvious transnational nature of the challenges, we argued for the continued relevance of analysing communication rights in the context of national media systems and policy traditions. We provided a model to analyse communication rights in a framework that has its foundation in a specific normative, but also empirically grounded understanding of the role of communication in a democracy. In addition, we discussed the relevance of single country analyses to global or regional considerations of rights-

based governance.

COMMUNICATION RIGHTS AND THE CASE OF FINLAND

The concept of communication rights has a varied history, starting with the attempts of the Global South in the 1970s to counter the Westernisation of communication (Hamelink, 1994; McIver et al., 2003). The connections between human rights and media policy have also been addressed, especially in international contexts and in the United Nations (Jørgensen, 2013; Mansell & Nordenstreng, 2006). Communication rights have also been invoked in more specific contexts to promote, for instance, the rights of disabled persons and cultural and sexual minorities in today’s communication environment (Padovani & Calabrese, 2014; McLeod, 2018). Currently, these rights are most often employed for the use of civil society manifestos and international declarations focused on digital or internet-related rights (Karppinen, 2017; Redeker, Gill, & Gasser, 2018).

Today, heated policy debates have surrounded the role of global platforms in realising or violating principles, such as freedom of expression or privacy, which are already stipulated in the United Nations Universal Declaration of Human Rights (MacKinnon, 2013; Zuboff, 2019). Various groups have made efforts to monitor and influence the global policy landscape, including the United Nations, its Special Rapporteurs, and the Internet Governance Forum; voluntary multi-stakeholder coalitions, such as the Global Network Initiative; and civil society actors, such as the Electronic Frontier Foundation, Freedom House, or Ranking Digital Rights (MacKinnon et al., 2016). At the same time, nation states are still powerful actors whose choices can make a difference in the realisation of rights (Flew, Iosifides, & Steemers, 2016). This influence is made evident through monitoring efforts that track internet freedom and the increased efforts by national governments to control citizens’ data and internet access (Shahbaz, 2018).

Communication rights in Finland are particularly worth exploring and analysing. Although the Finnish communication policy solutions are now intertwined with the broader European Union initiatives, the country has an idiosyncratic historical legacy in communication policy. Year after year, it remains as one of the top countries in press freedom rankings (Reporters without Borders, 2018). In the 1990s, Finland was a frontrunner in shaping information society policies, gaining notice for technological development and global competitiveness, especially in the mobile communications sector (Castells & Himanen, 2002). Finland was also among the first nations to make affordable broadband access a legal right (Nieminen, 2013). On the EU Digital Economy and Society Index, Finland scores high in almost all categories, partly due to its forward-looking strategies for artificial intelligence and extensive, highly developed digital public services (Ministry of Finance, 2018). According to the think tank Center for Data Innovation, Finland’s availability of official information is the best in the EU (Wallace & Castro, 2017). Not only are Finns among the most frequent users of the internet in the European Union, they also report feeling well-informed about risks of cybercrime and trust public authorities with their online data more than citizens of any other EU country (European Union, 2017, pp. 58-60).

While national competitiveness in the global marketplace has informed many of Finland’s policy approaches (Halme et al., 2014), they also reflect the Nordic tradition of the so-called “epistemic commons”, that is the ideals of knowledge and culture as a joint and shared domain, free of restrictions (Nieminen, 2014 1). Aspects such as civic education, universal literacy, and mass

media are at the heart of this ideal (Nieminen, 2014). This ideal has been central to what Syvertsen, Enli, Mjøs, and Moe (2014) called the “Nordic Media Welfare State”: Nordic countries are characterised by universal media and communications services, strong and institutionalised editorial freedom, a cultural policy for the media, and policy solutions that are consensual and durable, based on consultation with both public and private stakeholders.

OPERATIONALISING RIGHTS

How does Finland, a country with such unique policy traditions, fare as a “Digital Welfare State”? In this article, we employed a basic model that divides the notion of communication rights into four distinct operational categories (Nieminen, 2010; 2016; 2019; Horowitz & Nieminen, 2016). These divisions differ from other recent categorisations (Couldry et al., 2016; Goggin et al., 2017) in that they specifically reflect the ideal of the epistemic commons of shared knowledge and culture. Communication rights, then, should preserve and remove restrictions on the epistemic commons. We understand the following rights as central to those tasks:

1. **Access:** citizens’ equal access to information, orientation, entertainment, and other contents serving their rights.
2. **Availability:** equal availability of various types of content (information, orientation, entertainment, or other) for citizens.
3. **Dialogical rights:** the existence of public spaces that allow citizens to publicly share information, experiences, views, and opinions on common matters.
4. **Privacy:** protection of every citizen’s private life from unwanted publicity, unless such exposure is clearly in the public interest or if the person decides to expose it to the public, as well as protection of personal data (processing, by authorities or businesses alike, must have legal grounds and abide by principles, such as data minimisation and purpose limitation, while individuals’ rights must be safeguarded).

To discuss each category of rights, we deployed them in three levels: the level of the Finnish regulatory-normative framework; the level of implementation by the public sector, as manifested in the level of activity by commercial media and communications technology providers; and in the level of activity by citizen-consumers. This multi-level analysis aims at depicting the complex nature of the rights and the often contested and contradictory realisations at different levels. For each category, we also highlighted one example: for access, telecommunications; for availability, extended collective licencing in the context of online video recording services; for dialogical rights, e-participation; and for privacy, monitoring communications metadata within organisations.

ACCESS

Access as a communication right well illustrates the development of media forms, the expansion of the Finnish media ecosystem, and the increasing complexity of rights as realised in regulatory decisions by the public sector, commercial media, and communications technology providers. After 100 years of independence, Finland is still short of domestic capital and heavily dependent on exports, which makes it vulnerable to economic downturns (OECD, 2018). Interestingly, despite changes to the national borders, policies, and technologies over time, it is these geopolitical, demographic, and socioeconomic conditions that have remained relatively unchanged and, in turn, have shaped most of the current challenges towards securing access to information and media.

While the right to access in Finland also relates to institutions, such as libraries and schools, the operationalisation here is illustrated by the case of telecommunications. Telecommunications

are perhaps the most illustrative cases of access. They were originally introduced in Finland by the Russian Empire; however, the Finnish Senate managed to obtain an imperial mandate for licensing private telephone operations. As a result, the Finnish telephone system formed a competitive market based on several regional private companies. There was no direct state involvement in the telecommunications business before Finland became independent (Kuusela, 2007).

The licenses of the private telephone operators required them to arrange the telephone services in their area to meet the telephone customers’ needs for reasonable and equal prices. In practice, every company had a universal service obligation (USO) in its licensing area. However, as the recession of the 1930s stopped the development of private telephone companies in the most sparsely inhabited areas, the state of Finland had to step in. The national Post and Telecommunication service eventually played a pivotal role in providing telephone services to the most northern and eastern parts of Finland (Moisala, Rahko, & Turpeinen, 1977).

Access to a fixed telephone network improved gradually until the early 1990s, when about 95% of households had at least one telephone in their use. However, the number of mobile phone subscriptions surpassed the number of fixed line telephone subscriptions as early as 1999, and an increasing share of households gave up the traditional telephone completely. As a substitute to the fixed telephone, in the late 1990s, mobile phones were seen in Finland as the best way to bring communication “into every pocket” (Silberman, 1999). Contrary to the ideal of the epistemic commons, the official government broadband strategy was based much more on market-led development and mobile networks than, for example, in Sweden, where the government made more public investments in building fixed fibre-optic connections (Eskelinen, Frank, & Hirvonen, 2008). Finland also gave indirect public subsidies to mobile broadband networks (Haaparanta & Puhakka, 2002). While the rest of Europe had started to auction their mobile spectrum (Sims, Youell, & Womersley, 2015); in Finland, the operators received all mobile frequencies for free until 2013.

The European regulations of USOs in telecommunication have been designed to set a relatively modest minimum level of telephone services at an affordable price, which could be implemented in a traditional fixed telephone network. Any extensions for mobile or broadband services have been deliberately omitted (Wavre, 2018). However, the universal services directive (2002/22/EC) lets the member states use both fixed and wireless mobile network solutions for USO provision. In addition, while the directive suggests that users should be able to access the internet via the USO connection, it does not set any minimum bitrate for connections in the common market.

Finland amended its national legislation in 2007 to let the telecom operators meet their universal service obligations using mobile networks. The results were dramatic, as operators quickly replaced large parts of the fixed telephone network with a mobile network, especially in eastern and northern parts of Finland. Today, less than 10% of households have fixed telephones. At the same time, there are almost 10 million mobile subscriptions in use in a country with 5.5 million inhabitants. Less than 1% of households do not have any mobile phones at all (Statistic Finland, 2017). Thanks to the 3G networks using frequencies the operators had obtained for free, Finland became a pioneer in making affordable broadband a legal right. Reasonably priced access to broadband internet from home has been part of the universal service obligation in Finland since 2010. However, the USO broadband speed requirement (2 Mbps) is rather modest by contemporary standards.

It is obvious that since the 1990s, Finland has not systematically addressed access as a basic

right, but rather as a tool to reach political and economic goals. Although about 90% of households already have internet access, only 51% of them have access to ultra-fast fixed connections. Almost one-third of Finnish households are totally dependent on mobile broadband, which is the highest share in the EU. To guarantee access to 4G mobile broadband throughout the country, the Finnish government licensed two operators, Finnish DNA and Swedish Telia, to build and operate a new, shared mobile (broadband) network in the northern and eastern half of Finland. Despite recent government efforts to also develop ultra-fast fixed broadband, Finland is currently lagging other EU countries. A report monitoring the EU initiative “A Digital Agenda for Europe” (European Court of Auditors, 2018) found that Finland is only 22nd in the ranking in terms of progress towards universal coverage with fast broadband (> 30 Mbps) by 2020. In contrast, another Nordic Media Welfare State, Sweden, with its ongoing investments in citizens’ access to fast broadband, expects all households have access to at least 100 Mbps by 2020 (European Court of Auditors, 2018).

AVAILABILITY

As a communication right, availability is the counterpart to access, but also dialogical rights and privacy. Availability refers to the abundance, plurality, and diversity of factual and cultural content to which citizens may equally expose themselves. Importantly, despite an apparent abundance of available content in the current media landscape, digitalisation does not translate into limitless availability, but rather implies new restrictions and conditions thereof as well as challenges stemming from disinformation. Availability both overcomes many traditional boundaries and faces new ones, many pertaining to ownership and control over content. For instance, public service broadcasting no longer self-evidently caters for availability, and media concentration may affect availability. In Finland, one specific question of availability and communication pertains to linguistic rights. Finland has two official languages, which implies additional demands for availability both in Finnish and in Swedish, alongside Sami and other minority languages. These are guaranteed in a special Language Act, but are also included in several other laws, including the law on public service broadcasting.

Here, availability is examined primarily through overall trends in free speech and access to information in Finland, as well as from the perspective of copyright and paywalls in particular. Availability is framed and regulated from an international and supranational level (e.g., the European Union) to the national level. Availability at a national level relies on the constitutionally safeguarded freedom of expression and access to information as well as fundamental cultural and educational rights. Freedom of the press and publicity dates back to 18th-century Sweden-Finland. After periods of censorship and “Finlandization”, the basic tenet has been a ban on prior restraint, notwithstanding measures required to protect children in the audio-visual field (Neuvonen, 2005; 2018). Later, Finland became a contracting party to the European Convention of Human Rights (ECHR) in 1989, linking Finland closely to the European tradition. However, in Finland, privacy and freedom of expression were long balanced in favour of the former, departing somewhat from ECHR standards and affecting media output (Tiilikka, 2007).

Regarding transparency, and publicity in the public sector, research has showed that Finnish municipalities, in general, are not truly active in catering to citizens’ access to information requests, and there is an inequality across the country (Koski & Kuutti, 2016). This is in contrast to the ideals of the Nordic Welfare State (Syvertsen et al., 2014). In response, civil society group, Open Knowledge Finland, has created a website that publishes information requests and guides people to submit their own request.

The digital environment is conducive to restrictions and requirements stemming from copyright and personal data protection—both having an effect on availability. The “right to be forgotten”, for example, enables individual requests to remove links in search results, thus affecting searchability (Alén-Savikko, 2015). To overcome a particular copyright challenge, new provisions were tailored in Finland to enable online video recording services, thereby allowing people to access TV broadcasts at more convenient times in a manner that transcends the traditional private copying practices. The Finnish solution rests partly on the Nordic approach to so called extended collective licensing (ECL), which was originally developed as a solution to serve the public interest in the field of broadcasting. Collective management organizations are able to license such use not only on behalf of their members, with an extended effect (i.e. they are regarded representative of non-members as well), while TV companies license their rights (Alén-Savikko & Knapstad, 2019; Alén-Savikko 2016).

Alongside legal norms, different business models frame and construct the way availability presents itself to citizens. Currently, pay-per-use models and pay walls feature in the digital media sector, although pay TV development in particular has long been moderate in Finland (Ministry of Transport and Communications, 2014a). With new business models, availability transforms into conditional access, while equal opportunity turns into inequality based on financial means. From the perspective of individual members of the public, the one-sided emphasis on consumer status is in direct opposition to the ideals of the epistemic commons and the Nordic Media Welfare State.

DIALOGICAL RIGHTS

Access and availability are prerequisites for dialogical rights. These rights can be operationalised as citizens’ possibilities and realised activities to engage in dialogue that fosters democratic decision-making. Digital technology offers new opportunities of participation: in dialogues between citizens and the government; in dialogues with and via legacy media; and in direct, mediated peer-to-peer communication that can amount to civic engagement.

Finland has a long legacy of providing equal opportunities for participation, for instance as the first country in Europe to establish universal suffrage in 1906, when still under the Russian Empire. After reaching independence in 1917, Finland implemented its constitution in 1919. The constitution secures freedom of expression, while also stipulating that public authorities shall promote opportunities for the individual to participate in societal activity and to influence the decisions that concern him or her.

Currently, a dozen laws support dialogical rights, ranging from the Election Act and Non-Discrimination Act to the Act on Libraries. Several of them address media organisations, including the Finnish Freedom of Expression Act (FEA) that safeguards individuals’ right to report and make a complaint about media content and the Act on Yleisradio (public broadcasting) that stipulates the organization’s role in supporting democratic participation.

Finland seems to do particularly well in providing internet-based opportunities for direct dialogue between citizens and their government. These efforts began, as elsewhere in Europe, in the 1990s (Pelkonen, 2004). The government launched a public engagement programme, followed in the subsequent decade by two other participation-focused programmes (Wilhelmsson, 2017). While Estonia is the forerunner in all types of electronic public services, Finland excels in the Nordic model of combining e-governance and e-participation initiatives: it

currently features a number of online portals for gathering both citizen’s opinions and initiatives, both at the national and municipal levels (Wilhelmsson, 2017).

Still, increasing inequality in capability for political participation is one of the main concerns in the National Action Plan 2017–2019 (Ministry of Justice, 2017). The country report on the Sustainable Governance Indicators notes that the weak spot for Finland is public’s evaluative and participatory competencies (Anckar et al., 2018). Some analyses posit that the Finnish civil society is simply not very open for diverse debates, contrary to the culture of public dialogue in Sweden (Pulkkinen, 1996). While Finns are avid news followers, they trust the news, and they are more likely to pay for online news than news consumers in most countries (Reunanen, 2018), participatory possibilities do not entice them very much. Social media are not widely used for political participation, even by young people (Statistics Finland, 2017) and, for example, Twitter remains a forum for dialogues between the political and media elite (Eloranta & Isotalus, 2016).

The most successful Finnish e-participation initiative is based on a 2012 amendment to the constitution that has made it possible for citizens to submit initiatives to the Parliament. One option to do so is via a designated open source online portal. An initiative will proceed to Parliament if it has collected at least 50,000 statements of support within six months. By 2019, the portal had accrued almost 1000 proposals, 24 had proceeded to be discussed in Parliament, and two related laws had been passed. Research shows, however, that many other digital public service portals still remain unknown to Finns (Wilhelmsson, 2017).

As Karlsson (2015) has posited in the case of Sweden, public and political dialogues online can be assessed by their intensity, quality, and inclusiveness. The Finnish case shows that digital solutions do not guarantee participation if they are not actively marketed to citizens, and if they do not entail a direct link to decision-making (Wilhelmsson, 2017). While the Finnish portal for citizen initiatives has mobilized some marginalized groups, the case suggests that e-participation can also alienate others, for example older citizens (Christensen et al., 2017). Valuing each and every voice as well as prioritising ways to do so over economic or political priorities (Couldry, 2010) or the need to govern effectively (Nousiainen, 2016) could be seen as central to dialogical rights between the citizen and those in the government and public administration.

PRIVACY

Privacy brings together all the main strands of changes caused by digitalisation: changes in media systems from mass to multimedia; technological advancements; regulatory challenges of converging sectors; and shifting sociocultural norms and practices. It also highlights a shrinking, rather than expanding, space for the right to privacy.

Recent technical developments and the increased surveillance capacities of both corporations and nation states have raised concerns regarding the fundamental right to privacy. While the trends are arguably global, there is a distinctly national logic to privacy rights. This logic coexists with international legal instruments. In the Nordic case, the strong privacy rules exist alongside access to information laws that require the public disclosure of data that would be regarded as intimate in many parts of the world, such as tax records. Curiously, a few years ago, the majority of Finns did not even consider their name, home address, fingerprints, or mobile phone numbers to be personal information (European Union, 2011), and they are still among the most

trusting citizens in the EU when it comes to the use of their digital data by authorities (European Union, 2017).

In Finland, the right to privacy is a fundamental constitutional right and includes the right to be left alone, a person’s honour and dignity, the physical integrity of a person, the confidentiality of communications, the protection of personal data, and the right to be secure in one’s home (Neuvonen, 2014). The present slander and defamation laws date back to Finland’s first criminal code from 1889, when Finland was still a Grand Duchy of the Russian Empire. In 1919, the Finnish constitution provided for the confidentiality of communications by mail, telegraph, and telephone, as well as the right to be secure in one’s home—important rights for citizens in a country that had lived under the watchful eye of the Russian security services.

In the sphere of privacy protection, new laws are usually preceded by the threat of new technology (Tene & Polonetsky, 2013); however, in Finland, this was not the case. Rather, the need for new laws reflected a change in Finland’s journalistic culture that had previously respected the private lives of politicians, business leaders, and celebrities. The amendments were called “Lex Hymy” (Act 908/1974) after one of Finland’s most popular monthlies had evolved into a magazine increasingly focused on scandals.

Many of the more recent rules on electronic communications and personal data are a result of international policies being codified into national legislation, perhaps most importantly EU legislation’s transposition into national law. What is fairly clear, however, is that the state has been seen as the guarantor of the right to privacy since even before Finland was a sovereign nation. The strong role of the state is consistent with the European social model and increased focus on public service regulation (cf., Venturelli, 2002, p. 80). Nevertheless, the potential weakness of this model is that the privacy rights seldom trump the public interest, and public uses of personal data are not as strictly regulated as their private use.

Finland has also introduced legislation that weakens the relatively strong right to privacy. After transposing the ePrivacy Directive guaranteeing the confidentiality of electronic communications into national law, the Finnish Government proposed an amending act that granted businesses and organisations the right to monitor communications metadata within their networks. The act was dubbed “Lex Nokia” after Finland’s leading newspaper published an article that alleged that the Finnish mobile giant had pressured politicians and officials to introduce the new law (Sajari, 2009). While it is difficult to assess to what degree Nokia influenced the contents of the legislation, it is clear that Nokia took the initiative and was officially involved in the legislative process (Jääsaari, 2012).

The Lex Nokia act demonstrates how the state’s public interest considerations might coincide with the economic interests of large corporations to the detriment of the right to privacy. Regardless, Finnish citizens remain more trusting of public authorities, health institutions, banks, and telecommunications companies than most of their European compatriots (European Union, 2015). It remains to be seen whether this trust in authority will erode, as more public and private actors aim to capitalise on the promises of big data. Nothing in recent Eurobarometer surveys (European Union, 2018a, pp. 38–56; European Union, 2018b) would indicate that the trust in public authorities would be in crisis or in steep decline—the same cannot be said for trust in political institutions, which seem to decline a few percentage points each year in various studies.

DISCUSSION

The promotion of communication rights based on the ideal of epistemic commons is institutionalized in a variety of ways in Finnish communication policy-making, ranging from traditional public service media arrangements to more recent broadband and open data initiatives. However, understood as equal and effective capabilities, communication rights and the related policy principles of the Nordic Media Welfare State have never been completely or uniformly followed in the Nordic countries.

The analysis of the Finnish case highlights how the ideal of a “Digital Welfare State” falls short in several ways. Policies of access or privacy may focus on economic goals rather than rights. E-participation initiatives promoting dialogical rights do not automatically translate to a capacity or a desire to participate in decision-making. Arguably, the model employed in this article has been built on a specific understanding of which rights and stakeholders are needed to support the ideals of the epistemic commons and the Nordic Media Welfare State. That is why it focuses more on the national specificities and less on the impact on supranational and international influences on the national situation. It is obvious that in the current media landscape, national features are challenged by a number of emergent forces, including not only technological transformations but also general trends of globalisation and the declining capacities of nation states to enforce public interest or rights-based policies (Horten, 2016).

Still, more subtle and local manifestations of global and market-driven trends are worth examining to understand different policy options and interpretations. National mapping and monitoring the state of communication rights with measurement tools and indicators have been developed and employed that target their various components, such as linguistic issues or accessibility. In Finland, this type of approach has been adopted in the field of media and communications policy (Ala-Fossi et al., 2018; Artemjeff & Lunabba, 2018; Ministry of Transport and Communications, 2014b). Recent academic efforts aiming at comparative outlooks (Couldry et al., 2016; Goggin et al., 2017) are indications that communication rights urgently call for a variety of conceptualisations and operationalisations to uncover similarities and differences between countries and regions. As Eubanks (2017) argued, we seem to be at a crossroads: despite our unparalleled capacities for communication, we are witnessing new forms of digitally enabled inequality, and we need to curb these inequalities now—if we want to counter them at all. We may need both the global policy efforts, but we also need to understand their specific national and supranational reiterations to counter these and other inequalities regarding citizens’ communication rights.

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FOOTNOTES

1. The quest for more openness and publicity is a continuation of the long historical development. European modernity is fundamentally based on the assumption that knowledge and culture belong to the common domain and that the process of democratization necessarily means removing restrictions on the epistemic commons. Aspects such as civic education, universal literacy, and mass media (newspapers; public service broadcasting as tool for the daily interpretation of the world) are at the heart of this ideal. The epistemic commons reflects the core ideas and ideals of deliberative democracy: At the centre of this view is democratic will formation that is public and transparent, includes everyone and provides equal opportunities for participation, and results in rational consensus (Habermas, 2006). The epistemic commons is

thought to facilitate such will formation.