

Access Now and Digital Republic Joint Submission to the United Nations Human Rights Council, on the Universal Periodic Review 2020 Third Cycle for Bulgaria

About Access Now and Digital Republic

1. Access Now (www.accessnow.org) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 14 countries around the world, including engagement with stakeholders and policymakers in the European Union, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights. We engage with an action focused global community, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. Access Now advocates an approach to digital security that promotes good security policies that protect user rights, including privacy and freedom of expression. Access Now has worked extensively on digital rights including on free expression and web blocking, regulation of Net Neutrality, and data protection.
3. Digital Republic is a Bulgarian non-governmental organization (association), established in the beginning of 2018. Our members have expertise in different areas of knowledge, related to digital rights (as IT specialists/Lawyers/Political & Social researchers etc.). The mission of Digital Republic is to advocate/develop policies and provide expert opinions in relation to digital rights and digital environment.
4. Digital Republic is currently working on three main projects: i) [A2K] Access to Knowledge Bulgaria, 2018; ii) The transposition of the new Copyright Directive (Copyright Reform in Europe); iii) Legal Clinic on Intellectual Property aimed at advising independent creators and tech entrepreneurs. We as well develop collaborations with Bulgarian libraries (National Library, Sofia Library), institutions (universities in Bulgaria), organizations (Blind' Association) etc. We are aiming to establish our association as the major source of expertise in the sphere of digital rights and digital freedom in Bulgaria. We partner with Wikimedia Community in Bulgaria, Creative Commons (Bulgaria and Europe), Communia association etc. and attempt to establish further collaborations in the said direction.

Introduction

5. The Universal Periodic Review (UPR) is an important United Nations (U.N.) process aimed at addressing human rights issues all across the globe. Access Now and Digital

Republic welcome this opportunity to contribute to Bulgaria's third review cycle. This submission examines the following human rights priorities, particularly as they relate to the digital age:

- Freedom of expression
 - Access to information, and
 - The right to privacy.
6. Bulgaria was last reviewed in May 2015. In 2015, Bulgaria received 182 recommendations in the area of human rights, of which 174 recommendations were accepted and 8 noted. Bulgaria specifically supported the recommendation to “counter harassment, threats and wiretapping of investigating journalists, bloggers and NGO representatives.”¹

International and domestic human rights obligations

7. Bulgaria has signed onto and ratified various international human rights treaties including: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).²
8. The Constitution of Bulgaria (the Constitution) provides for judicially enforceable fundamental rights under Chapter 3. Of these, Article 26 establishes the right to equality, Article 28 provides for the right to life and Article 30 establishes the right to liberty. Article 32 establishes the right to privacy. Article 39 of the Constitution establishes a fundamental right to freedom of speech and expression and Article 41 establishes the right to information and right to know. Article 40 establishes the press' freedom from censorship.

The state of digital rights in Bulgaria

9. Bulgarian authorities have reportedly issued export licenses to the NSO Group (recently purchased by Novalpina Capital) – a firm whose technology has been repeatedly linked to violations of the human rights of individuals around the world.³ NSO Group's Pegasus spyware appears to have played an instrumental role in government attempts around the world to deploy cyber-surveillance as a means to subvert political dissidents, surveil journalists and human rights defenders, and further marginalize at risk populations.⁴

¹ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Bulgaria, U.N. Doc. A/HRC/30/10/Add.1 available online <https://undocs.org/A/HRC/30/10/Add.1>

² U.N. OHCHR, Status of Ratification Interactive Dashboard, available online <http://indicators.ohchr.org/>

³ [Access Now Is NSO Group's infamous Pegasus spyware being traded through the EU?](#) 12 September 2019.

⁴ [Access Now to Bulgaria and Cyprus: don't give NSO Group license to profit from human rights violations](#), Access Now, 2019; [A New Age of Warfare: How Internet Mercenaries Do Battle for Authoritarian Governments](#), The New York Times, 2019

10. Governments must act to protect human rights and prevent abuse of these rights by industry, especially in sectors with a record of abuse of human rights such as surveillance technology. In 2019, Access Now sent letters to the International Trade Control in Bulgaria (the public authority which oversees applicable export controls and relevant licensing), to request additional information and an investigation into export licenses that have reportedly been issued by Bulgarian authorities to NSO Group – as Novalpina Capital’s founding partner, Stephen Peel suggested in his March 2019 letter to Access Now and other civil society groups.⁵

Media Freedom and Pluralism

11. A 2019 report done by IREX displayed a troubling development in online media standards in Bulgaria. Specifically, a proliferation of websites are being used for propaganda, discrimination against minority groups, and violations of privacy. A similar, and growing, problem is reporters’ use of social media posts as unverified information sources.⁶
12. In 2015 and 2016, with two decisions, the Sofia Administrative Court (the court of last instance in these proceedings) upheld fines on a major Bulgarian news outlet for refusing to give up information to financial investigation authority that would allow sources of journalistic information to be identified. Decisions were claimed in conflict with ECHR case-law (*Sanoma Uitgevers BV v. Netherlands*). The confidentiality of sources should be protected.
13. At the end of 2018 a controversial amendment to The Law on the Compulsory Deposition of Printed and Other Works was made, by which all media service providers (not only printed media as per the original scope of the law) were subjected to extensive obligations to disclose in detail their ownership and the origins of their financing. While generally justified by the need for transparency, the new requirements practically made it impossible for small media service providers, using micro funding and crowdfunding through platforms such as PayPal, Patreon, ePay etc. to comply. The lack of a minimum amount for a donation to fall under the reporting obligations as per the new amendments and the unproportional fines in case of non-compliance were perceived as an attack to small and independent media and an attempt at limiting innovative models of media financing, thus impacting media pluralism.
14. In the beginning of 2019, the majority of shares in the Bulgarian “Nova Broadcasting Group”, owner of one of the biggest TV broadcasters in Bulgaria and numerous other news outlets and websites, was sold to Bulgarian “Advance Media Group.”⁷ The

⁵[Access Now Letter to Director of Controlled Trade and Security Directorate, Bulgaria](#) Access Now, 2019; [Response to Open Letter to Novalpina Capital on 18 February 2019](#), Amnesty International et al. 2019.

⁶ [IREX Media Sustainability Index Bulgaria 2019](#), IREX 2019.

⁷ [MTG announces sale of Nova to Advance Media Group](#) MTG, 22 February 2019.

change in ownership was followed by the removal of a number of prominent reporters, including investigative journalists, from related media throughout the year, which raised concerns about concentration of ownership in media, interference with editorial content and influence-peddling.

15. In 2018 and 2019 there were some controversial arrests of reporters. The case of Dimitar Stoyanov and Attila Biro who were arrested in 2018 was widely reflected in international media.⁸ In September 2019 a photoreporter, who has taken photos of police officers during a protest, was arrested for criminal mischief and then released, which caused a public uproar.
16. In September 2019, there was another case of violation of freedom of expression by the suspension of a programme host on Bulgaria's state-owned national radio broadcaster BNR due to political pressure.⁹

Surveillance and Privacy

17. In early 2019, Bulgarian parliament broadened the legal definition of personal data that could be protected from freedom of information requests. The ruling has made media use of personal information subject to regulators' scrutiny. Observers say the intent is to align Bulgarian law with the EU's General Data Protection Regulation (GDPR), but the vague definition may lead to overbroad enforcement, putting journalism at risk. A lawyer for the Access to Information Program, a leading transparency group in Bulgaria, had warned that violations are defined too generally in the law and could lead to censorship¹⁰
18. In June - July 2019 Bulgaria suffered a massive government agency data breach.¹¹ In June 2019 the servers of the Bulgarian National Revenue Agency (NRA) were compromised and a variety of personal data of approximately 6 million Bulgarians and foreigners - illegally obtained by an unknown hacker. The attack was allegedly facilitated by the deficient information security practices and very low level of technical measures of the NRA's infrastructure.
19. The NRA did not react to the breach until 15th July 2019 when the hacker sent out a mass email from an account registered on Yandex' servers to various Bulgarian media (print and broadcast) announcing the fact of the breach and providing a pass-protected link to the personal data which had been unlawfully obtained. One of the recipients made the link publicly available during a news broadcast concerning the breach together with the password and the data was quickly downloaded by an unknown number of persons.

⁸ [Special prize for IJ4EU investigative reporters from Bulgaria and Romania](#) European Centre for Press and Media Freedom, 03/05/2019.

⁹ [Grave threat to public media independence in Bulgaria](#) Reporters Without Borders, 20 September 2019.

¹⁰ [IREX Media Sustainability Index Bulgaria 2019](#), IREX, pg. 5, 2019

¹¹ [In systemic breach, hackers steal millions of Bulgaria's financial data](#) Reuters, Angel Krasimirov and Tsvetelia Tsoleva, 16 July 2019.

On 17 July 2019 the Bulgarian Data Protection Authority ("DPA") was notified of the breach by the NRA.

20. The DPA initiated an investigation in the NRA on 22 July 2019. The Prosecution office instigated criminal investigation against the allegedly hackers (still ongoing as of 3 October 2019). On 28 August 2019 the NRA imposed an administrative fine on the NRA to the amount of approximately EUR 2 600 000. The NRA announced they will challenge the fine imposed by the DPA. At the time of writing (3 October 2019) neither the exact contents of the DPA's findings nor the administrative act substantiating the fine were made public.
21. On 5 September 2019 the NRA released a web application aimed at informing the affected subjects what kind of personal data has been leaked for each person individually. The application was of a limited usability for data subjects lacking specific digital credentials required by the NRA or those without advanced digital skills.
22. The State Security Agency (SSA) required indiscriminate 24/7 access/tracking of the personal data of minors as young as 4 years old to be provided in an administrative act, a policy that constitutes bulk interception and conflicts with privacy rulings of the CJEU and the highest courts of other member states. Furthermore, the potentially unlimited access of the SSA to the personal data of children is in stark contradiction to recital 31 of the GDPR which prescribes that each request for disclosure by personal authorities must be "reasoned and occasional."

Recommendations

Bulgaria should improve its human rights record and treatment of digital rights in several areas. We accordingly recommend that the government of Bulgaria:

23. Review its export control and licensing procedures to ensure protection for human rights, transparency, and accountability, and specifically to:
 - a. Clarify whether Bulgaria requires NSO Group, its affiliates, or similar surveillance technology exporters to obtain a license for intra-EU exports, and whether such export licenses have been granted, to Bulgaria's knowledge, in the past 5 years;
 - b. Disclose details of any instances where, after consultation with NSO Group or internal deliberation, Bulgaria's authorities decided an export license was not necessary under local or EU law;
 - c. Review surveillance technology licenses which have been issued in the past 5 years, with attention to the procedures followed, and to the actual or potential human rights impacts of any licenses granted;

- d. Share results of any investigation regarding NSO Group, to the extent legally permissible, including information on classification, capabilities, and intended end uses of the controlled technology, and parties to the export;
 - e. Clarify whether and under what circumstances Bulgaria requires assessment of the potential human rights impacts of exports, and if so, how such assessments generally impact license determinations; and clarify, specifically, whether Bulgarian authorities have undertaken or otherwise obtained a human rights impact assessment involving NSO Group, at any point, and how the assessment was used;
 - f. Take further positive action in promoting human rights by carefully scrutinizing any further or renewed technology exports or transfers from NSO Group, its affiliates, or similar surveillance technology exporters to ensure their potential human rights impacts are evaluated and steps are taken to prevent adverse impacts.
24. Join the Freedom Online Coalition, a partnership of 30 governments working to advance Internet freedom;
25. Fund and organise collective and individual judiciary redress actions to defend digital rights, and where appropriate escalate the matter to the CJEU;
26. Ensure regulations comply with European Union law and norms, as well as international human rights frameworks;
27. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now and Digital Republic are grateful to make this submission.
28. For additional information, please contact Access Now General Counsel Peter Micek (peter@accessnow.org).
29. For additional information, please contact Digital Republic Association Chair of the Management Board Ana Lazarova (ana@digrep.bg).