

Icelandic Modern Media Initiative

See the Status of the Icelandic Modern Media Initiative

I am proud to advise the Icelandic Modern Media Initiative's proposal to create a global safe haven for investigative journalism. I believe this proposal is a strong way of encouraging integrity and responsive government around the world, including in Iceland. In my work investigating corruption I have seen how important it is to have robust mechanisms to get information out to the public. Iceland, with its fresh perspectives and courageous, independent people seems to be the perfect place to initiate such an effort towards global transparency and justice.

—Eva Joly MEP

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ICELAND TO BECOME INTERNATIONAL TRANSPARENCY HAVEN

On June 16th 2010 the Icelandic Parliament passed a proposal for a parliamentary resolution tasking the government to introduce a new legislative regime to protect and strengthen modern freedom of expression. The proposal was passed by 90 votes from parliament members of all parties.

Birgitta Jonsdottir, the chief sponsor in parliament of the IMMI proposal said: "Iceland will become the inverse of a tax haven; by offering journalists and publishers some of the most powerful protections for free speech and investigative journalism in the world. Tax havens aim is to make everything opaque. Our aim is to make everything transparent."

Highlights from the resolution:

- the Icelandic Prize for Freedom of Expression
- Protection from "libel tourism" and other extrajudicial abuses
- Protection of intermediaries (internet service providers)
- Statute of limitations on publishing liabilities
- Virtual limited liability companies
- Whistleblower Protection
- Source Protection
- Communications Protection
- Prior Restraint Limitations
- Judicial process protections
- Ultra-modern Freedom of Information Act

Because of the complexity of the legislative changes required, the final legislation will not pass through Parliament at the same date, at least 13 laws need to be changed and improved in 4 ministries. The Ministry of Education, Science and Culture will have an over all responsibility of implementing the laws.

Estimated time for the entire IMMI package to be completed is about a year. The creators of the IMMI hope by Iceland's bold steps in the direction of creating a haven for freedom of information, speech and expression, that it will inspire other nations to follow suit by strengthening their own laws in favor of the fundamental cornerstones that are the base of democracies and thwart the trending of gagging, legal harassment and destruction of historical records.

This proposal was created by international collaboration of lawyers and organizations such as Wikileaks, who have a comprehensive understanding about how the current status of affairs are in our world in regard of serious attacks on freedom of information and expression.

The Icelandic Modern Media Initiative is based on turning the tax-haven concept on its head. Instead of pulling together asset hiding and secrecy laws from around the world in order to shelter corruption and financial crime, the IMMI pulls together the best transparency enabling legislation, to create a stronghold for investigative journalists, internet publishers, transparency watchdogs and the public.

The global support for the IMMI underlines the need for a robust environment that supports the world's best journalism and the activities of transparency groups. The flow of information has no borders and most of the media is moving to the internet. That is why the time has come for a modern legislative regime that can promote and defend global freedom of expression, in principle and in practice.

Translated text of the resolution

This translation is not normative. In the case of discrepancy between the English and Icelandic versions, the Icelandic version is authoritative.

Proposal for a parliamentary resolution

for Iceland to strongly position itself legally with regard to the protection of freedoms of expression and information. Parliament resolves to task the government with finding ways to strengthen freedoms of expression and information freedom in Iceland, as well as providing strong protections for sources and whistleblowers.

In this work, the international team of experts that assisted in the creation of this proposal should be utilized. To this end,

1. the legal environment should be explored such that the goals can be defined and changes to law or new law proposals can be prepared.
2. the legal environments of other countries should be considered, with the view to assemble the best laws to make Iceland leading in freedoms of expression and information.
3. the first Icelandic international prize should be established, The Icelandic Freedom of Expression Award.

With the goal of improving democracy, as firm grounding will be made for publishing, whilst improving Iceland's standing in the international community.

This parliamentary resolution proposal is written with the support of parliamentarians from all parties. Numerous respected specialists, both foreign and local, have consulted on the work and have promised continued support for the Icelandic government if this proposal is accepted.

A vision for Iceland

Freedom of expression, in particular, freedom of the press, guarantees popular participation in the decisions and actions of government, and popular participation is the essence of our democracy.

- Corazón Aquino
democratic President of the Philippines (1986-1992)

The nation is at a crossroad that call for legislative change. At such times we should not only address our past, but also adopt positive plans for our future.

The legislative initiative outlined here is intended to make Iceland an attractive environment for the registration and operation of international press organizations, new media start-ups, human rights groups and internet data centers. It promises to strengthen our democracy through the power of transparency and to promote the nation's international standing and economy. It also proposes to draw attention to these changes through the creation of Iceland's first internationally visible prize: the Icelandic Prize for Freedom of Expression.

The world's media is moving to the Internet, allowing publishing from any location. Whether a newspaper like The Guardian is published online out of Reykjavik or New York is indistinguishable to its readers. At the same time, there is a recognized crisis in quality journalism.

Where to publish is now decided by factors such as distance and communications capacity, server costs and legal environment. Iceland has the first two covered: it has fast undersea cables to some of the world's largest consumers of information, and its clean green power and cool temperatures are attractive to those running internet services.

We can create a comprehensive policy and legal framework to protect the free expression needed for investigative journalism and other politically important publishing. While some countries provide basic measures, Iceland now has an opportunity to build an internationally attractive legislative package built from the best laws of other nations.

Examples of successful laws include the following: recent legislation from the state of New York to block the enforcement of U.K. judgments constricting freedom of the press, a 2005 Belgian law to provide strong protection for the communications of journalists with their sources; and the Swedish constitution's Press Freedom Act.

A legislative package based on these and other protections would attract a wide range of media and human rights organizations that routinely face unjust sanction. For example, British press agencies are currently forced to redact an increasing amount of information from the historical record in a futile attempt to ward off secret gag orders and other abusive legal actions taken by litigious billionaires and corporations trying to conceal corrupt behavior. Similarly Transparency International and other human rights groups are routinely sued for exposing corruption on their web-sites.

These influential groups would be inclined to promote and protect the proposed legislation, and through it, the long term strength of our own democracy. It is not only other countries that need access to such supportive laws-let us not forget that RUV nightly news was gagged by the Kaupthing bank on Aug 2, 2009.

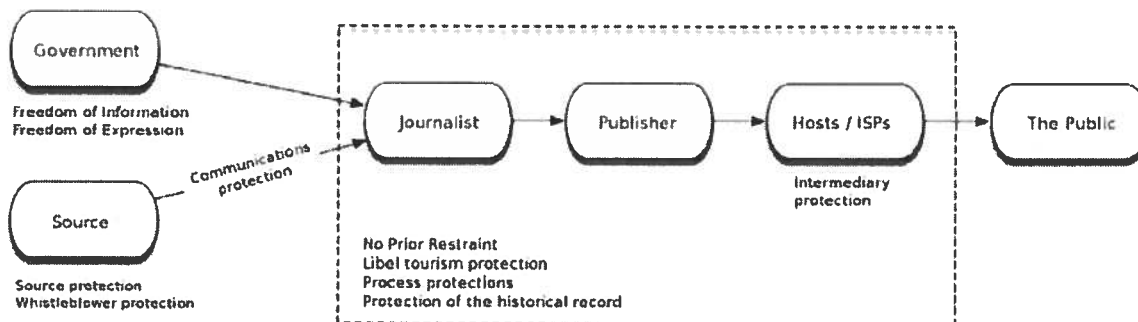
The potential is already clear. Many important newswires and human rights organizations have moved to Stockholm on the strength of the existing Swedish Press Freedom Act. Similarly, Malaysia Today relocated to the United States after having been persecuted in its own country. As legal costs for participants in the information economy have begun to spiral out of control, the world is looking for an internally consistent set of rules that place clear limits on the risks faced by publishers.

Not all the benefits of this proposal can be counted in kronas: like the Reagan-Gorbachev summit, the indirect effects of weaving together the interests of the Icelandic people with the interests of the world media should not be underestimated. The proposal that has been described above would make Iceland unique in the global discussion and would engender the goodwill and respect of other nations.

It is hard to imagine a better resurrection for a country that has been devastated by financial corruption than to turn facilitating transparency and justice into a business model.

Transforming vision into law

Below we trace some outlines of the laws that would have to be carefully evaluated and adapted for this protective legal framework to emerge. In some cases the need for legislative change is clear, in other cases more study is needed and we merely point to potential problems and offer possible solutions for consideration. Given the number of different laws affected and the required consistency between the various measures, we call for further study to be initiated as soon as possible.



Source Protection

Current protection of a journalist's sources is defined in the law on the treatment of criminal cases no. 88/2008 and the law on the treatment of private cases no. 91/1991. The current media bill contains articles protecting a journalist's sources. It however states that journalists have a right to refuse to expose their sources except when a court ruling states otherwise, as per art. 119 of the law on the treatment of criminal cases no. 88/2008. This seems an overly broad exception to such an important principle and it may contradict principle 3 of Council of Europe recommendation R (2000)7, upon which the media bill's source protection statutes are based. Given the consensus nature of CoE recommendations we should strengthen source protection to far exceed this

consensus nature of our recommendations, we should strengthen source protection to far exceed this recommendation.

Whistleblower Protection

Where statistics have been collected, internal whistleblowers account for most revelations of corporate and government corruption. The rights of the people to benefit from these disclosures should not be abridged and just like in many other countries, specific mechanisms to encourage the reporting of unethical practices should be considered. One could envision, for example, an absolute right to communicate information to a member of the Icelandic Parliament.

The USA Federal False Claims Act (31 U.S.C. §§3729-3733) provides model protections and incentives for those who report frauds made against the government. According to the Government Accounting Office (2006), \$9.6 billion was recovered for the government under this act, which protects and encourages the reporting of frauds against the government in a number of ways. For instance, by providing employment guarantees that preserve seniority status and salary, as well as providing 15 to 30% of the monies recovered as a compensation and reporting incentive.

The proposers suggest that changes be made to laws regarding the rights and duties of official employees (no. 70/1996) such that official employees be allowed to break their duty of silence in the case of extreme circumstances of public interest. Similar changes could be made to municipal governance law (no. 45/1996) regarding employees of municipal governments. Suggestions for such changes have been made in three proposed bills, parliamentary documents 41 from the 130th legislative assembly, 994 from the 132nd legislative assembly and 330 from the 133rd legislative assembly. It may also be appropriate to make changes to article 136 of the general criminal code (no. 19/1940), such that the interest of the public must always be weighed in procedures against public servants who have disclosed classified information.

Communications Protection

Belgian law since 2005 was designed to explicitly protect all communication between sources and journalists, with both groups defined broadly. But such protections may have limited effect if protected communication records between journalists and sources are automatically stored by third parties.

Currently Icelandic telecommunications law no. 81/2003 implements EEA mandated data retention. It applies to telecommunication providers and its current implementation mandates the retention of records of all connection data for 6 months. It states that communications companies may only deliver information on telecommunications in criminal cases or on matters of public safety. It also states that such information may not be given to others than police and public prosecution.

The European directive that caused this law to come into effect, 2002/58/EB from 12. July 2002 regarding privacy and electronic communication, is up for review in the autumn of 2010 and the German constitutional court is expected to rule whether or not data retention is at odds with the European Human Rights Treaty. Given these developments and a general trend towards more privacy awareness, the Icelandic data retention laws may need updating to address these concerns.

Another aspect of communications protection comes from chapter V of the currently implemented law 30/2002 on e-commerce and electronic services, which provides indemnity for "mere conduits", such as telecommunications networks and Internet hosting providers. There are few and mostly well defined exceptions to this indemnity, but the exception for general court orders without further definition is worrying. This should probably be improved by clarifying which exact circumstances can trigger such exceptions.

Limiting prior restraint

Prior restraint is any legal mechanism that can be used to forcibly prevent publication. Such restraints have a significant negative impact on freedom of expression. Most democracies place strong and in some cases absolute limitations on prior restraint. Methods for guaranteeing that existing laws not be abused in the attempt to limit the freedom of expression should be explored.

Process protection

Equal access to justice is an important part of democracy. Even in countries with strong constitutional protections for the press, such as the United States, there is weak process protection, and as a result it may be financially infeasible for publications to participate in legal battles. Even in the cases where the publications have the capacity to defend themselves, it may be against their economic interests. An example of this is the case where Time Magazine was litigated in the United States for running a cover story on financial corruption in the Scientology cult. Although Time magazine eventually won the case, it had to spend \$7 million in legal fees taking the matter all the way to the Supreme Court--effectively a multi-million dollar "fine" against Time magazine for engaging in quality, research based journalism. It would have been impossible for a smaller publication to mount such a defense, and it

research based journalism. It would have been impossible for a smaller publication to mount such a defence, and it would be impossible for Time Magazine to take on many such battles, creating a "chilling effect" on quality journalism and interfering with the democratic process.

It should always be cost effective for a small publisher to stand up against a well financed litigant whose goal is to cover up the truth, and, in general, it should be possible for small entities to defend against large entities. One way to accomplish this is through a measure similar to California's anti-SLAPP (Strategic Litigation against Public Participation) statutes. Under such a system, a defendant may request the presiding judge to view the case as a freedom of speech issue. If the move is granted, a number of protections are activated during the case itself, and should the case be successfully defended, the plaintiff must pay all legal costs associated with it.

History protection

On the 9th of March, 2009, the European Court of Human Rights in Strasbourg issued a ruling against the Times of London which has generated great uncertainty for European publishers. The Court confirmed that, for the purposes of the law of libel, an Internet publication should be considered to be 'published' afresh every time a reader views it. The ruling also found that libel proceedings brought against a publisher after a significant lapse of time may well, in the absence of exceptional circumstances, give rise to a disproportionate interference with press freedom...'. The court left open to member states what, if any, limiting period may be applied to archives.

The view that an electronic archive is 'published' every time it is viewed has been extensively abused to remove important articles on corruption from online newspaper archives long after they were published. For example, The Guardian, in order to avoid unending legal costs, removed several such articles in 2008, originally published in 2003, which reported, the conviction for corruption of a billionaire involved in the Elf-Acquitaine scandal.

To protect the historical archive and give certainty to publishers, we propose that, following the model used in France, that lawsuits related to publishing must be filed within two months of publication and that a ceiling for damages be set to 10,000 Euro (France: three months, 15,000).

Libel tourism protection

The abuse of British libel law has been much discussed in recent years and has recently been counteracted in New York with the New York Libel Terrorism Protection Act. A law with the same intent took force in the state of Florida on the first of July 2009 (Act relating to grounds for nonrecognition of foreign defamation judgments). A similar proposal has been made on a federal level, but has not passed into law yet. The method used in the United States is, on the one hand, to refuse to honour any court verdict that contradicts the first amendment of the US constitution, and on the other hand provides a framework for retaliatory cases against such lawsuits.

Chapter XXV of the Icelandic general criminal code, law 19/1940 ("Almenn hegningarlög") contains the implementation of libel law. Problems have arisen when courts in other countries have claimed jurisdiction over publications or remarks that have been published or made in Iceland. A libel suit against Hannes Hólmsteinn Gissurarson in the United Kingdom received considerable attention, partly because of the jurisdiction claims and the strict libel law in the United Kingdom.

The supporters of this proposal wish to implement a law similar to those in place in New York and Florida. The rules of the Lugano Treaty on jurisdiction and enforcements of judgment must be carefully considered in this relation. They also believe that Icelandic defendants should be enabled to sue the original plaintiff for reparations in cases where the judgment is considered to be in breach of the general rule of law.

Freedom of Information Act

The Icelandic Freedom of Information law (Upplýsingalög, 50/1996) was enacted in 1996 and has since been amended six times to various degrees. It is mostly modeled after the Danish and Norwegian laws from 1970. The current Icelandic FOI law does not conform to CoE convention, and it does not match the standards set in the Aarhus treaty for environmental information. This presents the opportunity to create maximum transparency by means of a newer, better and more internationally compliant Icelandic FOI law.

Any new framing of Icelandic FOI law should only be done after taking a close look at the 2009 CoE and OAS recommendations as well as particularly good and modern elements in the FOI laws of Estonia, Scotland, the UK and Norway. The standards with regard to speedy response, a limited number of exemption and rapid access to administrative complaint procedures from the environmental Aarhus treaty ought to be the standard for all information.

It may make sense to make sure this law applies to all government bodies and all non government entities operating on behalf of the government, as well as entities that fulfill a public concession/task paid from public funds. The extent to which businesses can prevent the release of documents that concern them should be strictly limited. The current act does not apply to anything covered by the public administration law, international

agreements, etc. The limitation regarding public administration law is by far the most far-reaching of the current limitations, and would likely need to be reconsidered.

There currently exists no central registry of documents held by government bodies, and there is no standardized FOI document request form. One feature that may add greater transparency is an actively internet-published central register of all documents held (as opposed to merely produced) by an institution. At the same time document access should be possible by subject, requesters should not need to know of the existence of a document.

Framers of a new Icelandic FOI law should consider making sure the law applies to classic [paper] and modern [digital] documents in the same way. One might also want to consider raising the level of the administrative complaint to the more internationally compliant form of an information commissioner with binding execution and sanction power. Having such a serious complaint procedure will reduce the workload of the court because it is expected that fewer requesters will go to court after the complaint at the information commissioner.

It would be best if limitations on the release of documents were never absolute and the public interest should always be weighed as well. Privacy-related limitations should not be applicable to any work-related information. Exemptions should expire in as brief a time as is reasonable. One could consider a regime under which the fact that any exemptions were used to successfully prevent release of a document would be published on the internet immediately and where all such exempted documents would automatically published after the expiry of the exemption.

As a general rule documents released should be made available online for all citizens to access. This will increase transparency, prevent requests from being filed more than once and will invite government bodies to disclose documents pro-actively. The law should be based on the notion that government documents are in principle public unless an exceptional reason prevents publication.

The Icelandic Prize for Freedom of Expression

Unlike other Nordic countries, Iceland currently hosts no internationally acclaimed prize. Iceland should create a yearly prize that promotes Iceland and the values represented in this proposal, by giving recognition to those who, through their actions in the past 12 months have most advanced humanity through courageous acts of free expression. It is envisaged that the prize would primarily be awarded to journalists, whistleblowers, human rights activists and publishers.

Endorsements

Principal Endorsers

- Eva Joly (http://en.wikipedia.org/wiki/Eva_Joly) MEP

I am proud to advise the Icelandic Modern Media Initiative's proposal to create a global safe haven for investigative journalism. I believe this proposal is a strong way of encouraging integrity and responsive government around the world, including in Iceland. In my work investigating corruption I have seen how important it is to have have robust mechanisms to get information out to the public. Iceland, with its fresh perspectives and courageous, independent people seems to be the perfect place to initiate such an effort towards global transparency and justice.

- Icelandic Digital Freedoms Society (<http://www.fsfi.is>)

The ideal of achieving freedom in the digital realm can only be reached with the establishment of a solid legal framework that protects the values that are important to our society. Our participation in the Icelandic Modern Media Initiative has been a reflection on this growing need.

- Birgitta Jónsdóttir (<http://this.is/birgitta>) MP, parliamentary leader of *The Movement*

During the financial meltdown it became obvious that we needed fundamental changes in order to never go back down the same track. The crises sharpened our perspective on what really matters. We found out the hard way that we did not have a vibrant free press that could report without fear of those in power. If we had, perhaps

some of the calamities our country now faces could have been prevented. We need to learn from our experiences and create a future for Iceland as a beacon of freedom of expression and information.

A longer quote from Birgitta is available [here](#).

- Róbert Marshall (<http://www.marshall.is/>) MP, former head of the Icelandic journalists association and parliamentarian for the *Social Democratic Alliance* (largest governing party).

This is a good project for political change. We have been through a difficult period and this is an initiative that can unite the whole political scene. A haven for free expression will help counter the growing practice of libel tourism.

British courts in particular, have become a favoured destination for complainants seeking to take advantage of the UK's plaintiff-friendly libel laws.

- The Sunshine Press / Wikileaks (<http://www.wikileaks.org>) , leading publisher of censored government and corruption reports

To expose corruption we have had to go to great lengths, including encrypting our communications, distributing our infrastructure around the world and outspending the largest private Swiss bank in court. But we cannot expect every publisher and every civic organization to take on such demands. The largest newspapers and even the BBC are now routinely censored by legal costs, and smaller corruption busting groups, from Global Witness (<http://globalwitness.org/>) to the TCI Journal (<http://tcijournal.com/>) are hounded from one end of the earth to the other. It is time such abuses were stopped. It is time the entire global community said, enough is enough, justice must be seen and history must be preserved. That is why we're proud to have advised the Icelandic Modern Media Initiative. Iceland understands the value of transparency and deserves to be celebrated for its support of the public's right to know.

- Index on Censorship (<http://indexoncensorship.org>) , the UK's leading press-freedom organization.

The Icelandic Modern Media Initiative addresses the key issues for free expression in the digital age, and may yet be the catalyst for the kind of legislative reforms that all 21st Century democracies will need

Proposers of the parliamentary resolution

- Birgitta Jónsdóttir (The Movement)
- Atli Gíslason (Left-Green Party)
- Árni Þór Sigurðsson (Left-Green Party)
- Ásmundur Einar Daðason (Left-Green Party)
- Erla Ósk Ásgeirsdóttir (Independence Party)
- Eygló Harðardóttir (Progressive Party)
- Guðfríður Lilja Grétarsdóttir (Left-Green Party)
- Gunnar Bragi Sveinsson (Progressive Party)
- Lilja Mósesdóttir (Left-Green Party)
- Lilja Rafney Magnúsdóttir (Left-Green Party)
- Margrét Tryggvadóttir (The Movement)
- Róbert Marshall (Social Democratic Party)
- Sigmundur Ernir Rúnarsson (Social Democratic Party)
- Sigurður Ingi Jóhannsson (Progressive Party)
- Vigdís Hauksdóttir (Progressive Party)
- Tryggvi Þór Herbertsson (Independence Party)
- Þór Saari (The Movement)
- Þórunn Sveinbjarnardóttir (Social Democratic Party)
- Ögmundur Jónasson (Left-Green Party)

Additional Public Endorsements

- Global Voices (<http://globalvoices.org>)
- La Quadrature du Net (<http://laquadraturedunet.fr>)
- New Deal of the Mind (<http://www.newdealofthemind.com>)
- eXgae (<http://exgae.net>)
- Free Knowledge Institute (<http://freeknowledge.eu>)
- P2P Foundation (<http://www.p2pfoundation.net>)

Timeline

Wednesday Feb 17, 2010

Proposal is filed with Alþingi Parliament and enters into the Parliamentary record.

Thursday Feb 25, 2010

The proposal is spoken for during debate in Parliament and passed on to Parliamentary committee for review.

June 2010

Proposal is reviewed and discussed, suggestions of amendments if needed and a committee report filed.

June 15th 2010

Proposal processed from the general committee and discussed at Althing.

June 16th 2010

Proposal voted for by all members at Althing and passes through as a parliamentary resolution.

January 27th 2011

Minister of Education, Science and Culture gives a report on the implementation of the parliamentary resolution.
