

Colombia

	2015	2016		
Internet Freedom Status	Partly Free	Partly Free	Population:	44.3 million
Obstacles to Access (0-25)	8	8	Internet Penetration 2015 (ITU):	56 percent
Limits on Content (0-35)	8	8	Social Media/ICT Apps Blocked:	No
Violations of User Rights (0-40)	16	16	Political/Social Content Blocked:	No
TOTAL* (0-100)	32	32	Bloggers/ICT Users Arrested:	No
			Press Freedom 2016 Status:	Partly Free

* 0=most free, 100=least free

Key Developments: June 2015 – May 2016

- In March 2016, a website critical of the student loans system was taken down by the hosting provider, after the government entity in charge of student loans filed a complaint for trademark infringement. Civil society organizations demanded that the entity cease abusing the complaints system to take the website down (see **Content Removal**).
- The director of the government's child protection entity filed a writ for the protection of constitutional rights requesting a journalist to remove several critical tweets, and for Twitter to delete the journalist's account. Attracting widespread backlash on social media, the petition was withdrawn (see **Content Removal**).
- Illegal and excessive surveillance by certain sectors of the government and military continued to raise concerns. In December 2015, anonymous informants warned that investigative journalists had their communications intercepted illegally in retaliation for a news story on a possible prostitution network tied to the national police (see **Surveillance, Privacy, and Anonymity**).

Introduction

Colombia's internet freedom climate over the last year has been marked by persisting concerns over excessive and illegal surveillance, paired with criminal penalties for defamation and minor copyright violations.

Despite steady improvements over the last five years, challenges such as poor infrastructure, low digital literacy, and high costs still hamper widespread access to the internet in Colombia. Issues surrounding net neutrality have also emerged at the forefront of debate in Colombia, prompted by the expansion of zero-rating programs. When users manage to overcome access and affordability issues, however, they are able to view and disseminate content relatively freely.

Although there are occasional cases of content removal, takedowns are isolated rather than systematic and mostly stem from muddy legislation rather than onerous governmental policies. In a recent case, the official entity in charge of student loans exploited the trademark infringement notice mechanism made available by the registrar and hosting provider in order to take down a Colombian website that publicly denounced what its authors perceived as an abusive student loans system. On the other hand, while courts have ruled that search engines should not be held liable for links in their search results, a May 2015 ruling could place more burden on media to update articles online regarding the status of individuals in criminal investigations.

While prosecutions for dissemination of content online are still rare, harsh penalties for minor copyright violations and criminal penalties for defamation constitute serious violations of users' rights. This is the case of Diego Gómez, a biology student who could face four to eight years in prison and substantial fines after sharing a thesis of another person on Scribd, even though he did not claim any profit or attribution.

Additional challenges to users' rights come in the form of violence and impunity. For the past five decades, the Colombian government, various paramilitary groups, and guerrilla groups have been engaged in armed conflict. Despite peace talks between the government and the FARC since 2012, high levels of insecurity persist. At least sixteen journalists have been murdered and many more have been threatened since 2005, with little response from the judiciary. Self-censorship both online and offline has become a prophylactic measure against such threats, particularly in rural areas where violence and impunity are more pervasive than in cities.

Illegal surveillance continues to be an issue, as journalists have been followed both online and offline because of their work exposing corruption and irregularities at the core of institutions such as the National Police. Further reducing any chance of this situation changing, the legal commission for oversight of intelligence activities has not been able to fulfill its duties because of bureaucratic obstacles. In recent years, Colombian nongovernmental organizations—namely the Foundation for Freedom of the Press in Colombia (FLIP), Fundación Karisma, Dejustica, Colnodo, and, lately, the Colombian Jurists Commission (CCJ)—have made calls for more information regarding the scope of government surveillance and threats to users' privacy, issues that will likely gain greater traction in Colombia as internet usage increases.

Obstacles to Access

Although internet penetration has steadily increased, Colombia still faces obstacles to access primarily stemming from socioeconomic factors. The lack of basic utilities and affordable internet access constitutes an informal barrier to information and communications technologies (ICTs). The implementation of zero-rating programs such as Facebook's Free Basics will increase access to a selection of online platforms, but critics worry that it may weaken the application of the net neutrality principle and potentially determine or limit users' experience of the internet.

Availability and Ease of Access

Internet access has increased steadily in Colombia over the past decade. According to the most recent figures from the International Telecommunication Union (ITU), Colombia's internet penetration rate reached 56 percent by the end of 2015, compared to 53 percent in 2014 and 30 percent in 2009.¹ Nevertheless, with nearly half of the population still without internet, significant obstacles to access remain. Lack of infrastructure in rural areas, low levels of digital literacy, and high prices all stand in the way of widespread access.

Internet access is facilitated primarily by DSL and cable connections.² Colombia's average internet connection speed is 4.5 Mbps—a figure that places it between Peru and Ecuador, and in the same level as Argentina, in a regional comparison.³ Many Colombian users access the internet outside of their homes, and cybercafes and education centers play a key role in expanding access. Almost 18 percent of internet users accessed the internet through cybercafes and 25 percent through education centers, while free public access points served a negligible percentage of internet users.⁴

Colombia's mobile penetration rate reached 116 percent at the end of 2015, and mobile phones are increasingly used to access the internet.⁵ Mobile connections range from basic data plans to full access,⁶ but it is not clear if official mobile internet penetration figures count zero-rated data plans as mobile internet connections.

There is significant geographical disparity in internet penetration rates in Colombia. While the capital, Bogotá, has a fixed-internet subscription rate of 20 percent, the southern rural departments of Amazonas, Vaupés, Vichada, Guainía, and Guaviare range between 0.2 and 0.7 percent.⁷ Only 0.7 percent of Colombia's population lives in this region; however, the land accounts for approximately 55 percent of the country's geographical area.⁸ Although many indigenous languages are spoken in Colombia, there do not appear to be significant efforts to offer online content in these languages. Even the official websites of Amazonas, Vichada, and Guajira—each of which lays claim to a large indigenous population—are in Spanish, with no option to display them in any of the indigenous languages

1 International Telecommunication Union (ITU), "Percentage of Individuals Using the Internet 2000-2015," accessed September 7, 2016, <http://bit.ly/1L0r3mK>.

2 Ministry of ICT, ICT Quarterly Bulletin, Q1 2016, accessed September 7, 2016, <http://bit.ly/2bbfb6D>.

3 For comparison, Argentina had an average internet speed of 4.7 and Ecuador had an average speed of 4.4 at the end of fourth quarter of 2015. The global average speed was 5.6 Mbps. Akamai, State of the Internet, Q4 2015 Report, accessed September 7, 2016, <http://akamai.me/1UthiDG>.

4 DANE, Basic Indicators in ICT in Colombia 2015, April 7, 2016, <http://bit.ly/1VBwOxH>.

5 International Telecommunication Union, "Mobile-cellular subscriptions 2000-2015," <http://bit.ly/1L0r3mK>.

6 Ministry of ICT, ICT Quarterly Bulletin, Q1 2016, accessed September 7, 2016, <http://bit.ly/2bbfb6D>.

7 Ministry of ICT, ICT Quarterly Bulletin, Q1 2016, accessed September 7, 2016, <http://bit.ly/2bbfb6D>.

8 DANE population projection for 2016 and the geographic area of the departments.

present in those territories although they offer the display option for English, French, or Italian.⁹

High internet prices and low levels of digital literacy also present substantial obstacles to internet access in Colombia. A 2015 Digital Consumers Survey revealed that 45 percent of people without internet in their homes cite high prices as the reason why they do not acquire the service, while 32 percent state that they do not think the internet is necessary.¹⁰ The ITU's scale of fixed-broadband prices lists Colombia as the 76th most affordable country out of 181 countries, placing it around the global median, with an average price of US\$18.48 per month.¹¹ For comparison, Colombia's minimum legal monthly wage was set as COP 689.455 (US\$206.5) in 2016.¹² However, the latest report of the Affordability Drivers Index (ADI), which measures the conditions that determine the likelihood that broadband prices will be reduced, ranked Colombia in first place.¹³

The ICT ministry claims that internet access has increased by 16 percent since 2010 thanks to official programs such as Vive Digital, with more than two million tablets and laptops delivered to public schools all around Colombia.¹⁴ Administered by the ICT ministry, Vive Digital aims to expand infrastructure, services, internet applications, and the number of Colombian internet users.¹⁵ Colombia Aprende, the Education Ministry's platform for the promotion of literacy launched in 2004, also aims to expand the use of digital applications and devices, training some 16,000 teachers of digital literacy across the nation.¹⁶ However, the delivery of tablets has received some criticism for not properly training teachers on how to handle them.¹⁷

Colombia signed the Marrakech VIP Treaty in 2013 but its ratification is still pending.¹⁸ This has delayed reforms to current laws that seek to promote access to published works for people who are blind, visually impaired or print disabled.¹⁹

Restrictions on Connectivity

No legal provisions impose connectivity restrictions in Colombia. The government does not place limits on bandwidth, nor does it impose control over infrastructure, except in emergency situations when internet service providers (ISPs) are required to make their infrastructure available for official response.²⁰ In keeping with this lack of restriction, the government has not centralized telecommunications infrastructure, nor has it established tools to filter or block social media applications or communications apps.

9 Official Website of the Department of Amazonas, accessed February 19, 2016, <http://bit.ly/1JtV75d>; Official Website of the Department of Vichada, accessed February 19, 2016, <http://bit.ly/1KzLbeu>; Official Website of the Department of La Guajira, accessed February 19, 2016, <http://bit.ly/O9WQZ8>.

10 DANE, Basic Indicators in ICT in Colombia 2015, April 7, 2016, pg. 6, <http://bit.ly/1VBwOxH>.

11 ITU, Measuring the Information Society Report 2015, 31, <http://bit.ly/1oGaDJs>.

12 Decree 2552, December 30, 2015, <http://bit.ly/1oGaDJs>.

13 Alliance for Affordable Internet, The 2015-16 Affordability Report, accessed September 7, 2016, <http://bit.ly/1XRxJbE>.

14 "El Gobierno Cumple lo que Promete El plan Vive Digital es una Realidad," [The government fulfills what it promises – the plan Vive Digital is a reality], MinTIC Colombia, accessed September 7, 2016, <http://bit.ly/1Ty5kXw>. The figures shown by the government on this website have no studies or evidence to support them.

15 ICT Ministry, "Vive Digital," accessed September 7, 2016, <http://bit.ly/1lbnQBQ>.

16 Education Ministry, "Crea-TIC," accessed September 7, 2016, <http://bit.ly/2e3XWVu>.

17 "Reto para profesores públicos: aprender a usar las Tabletas para educar," *Publimetro*, February 20, 2015, <http://bit.ly/1oONtAE>.

18 WIPO, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. List of contracting parties. <http://bit.ly/1gusl6x>.

19 Law 1680 of 2013, <http://bit.ly/21zwaBa>.

20 Law 1341, Art. 8, July 30, 2009, <http://bit.ly/1WQOuL7>.

Colombia only has one internet exchange point (IXP), called "NAP Colombia" (operating since 1999), through which ISPs exchange traffic to improve efficiency and speed. Located in Bogotá, the IXP is managed by the Colombian Chamber for Informatics and Telecommunications.²¹ Eighteen telecommunication enterprises have a direct connection with the IXP, most of which are privately owned.

ICT Market

Colombia is home to 56 ISPs, and while 87 percent of the market is concentrated in the hands of four companies, there are nonetheless multiple market options from which to choose.²² Market entry is straightforward, and it is possible for anyone to establish an ISP by following the general requirements of the ICT Law, which establishes free competition and prioritizes efficient use of infrastructure and access to ICTs.²³

Registration requirements are neither excessive nor onerous. Business owners must provide personal and tax identification as well as a description of services, but no fee is required. This information is published in an open registry, and the ICT ministry then has 10 days to verify the data, after which the business may begin operating. Based on the required criteria, registration can be denied when information is incomplete or false, or when an ISP does not have the proper commercial status to offer such services.²⁴ Service providers are obligated to pay a contribution of 0.01 percent of their annual income to an ICT Ministry Fund (Fontic) devoted to the development of nationwide ICT projects.²⁵ ISPs must also apply for licenses to utilize the radioelectric spectrum, although there have been no complaints of difficulties or bias with this process.

The mobile landscape is more concentrated than the ISP market. Although there are nine providers, more than 70 percent of the market is in the hands of two companies, Claro and Movistar, which also dominate the mobile internet market.²⁶ In 2013 the Superintendency of Industry and Commerce sanctioned Claro for abusing its dominant position. As a result, the company was sentenced to pay a fine estimated at COP 87,000 million (approximately US\$ 26 million).²⁷ As with ISPs, mobile service providers must also contribute 0.01 percent of their annual income to Fontic.

The ICT ministry establishes public selection mechanisms for mobile service providers.²⁸ A 2013 spectrum auction resulted in two new players entering the market. While this is a step in the right direction, diminished market concentration has not yet been seen.²⁹ In March 2013, the ministry renewed the spectrum licenses of Claro and Movistar for a new 10-year term without major alterations, suggesting that little is likely to change in terms of market dominance in the next decade.³⁰

21 NAP Colombia, "FAQ" <http://bit.ly/24ul175>.

22 Telmex Colombia S.A., UNE EPM Telecomunicaciones S.A., Colombia Telecomunicaciones S.A., and Empresa de Telecomunicaciones de Bogotá, Colombia S.A. are the four dominant providers. Ministry of ICT, ICT Quarterly Bulletin, Q1 2016, accessed September 7, 2016, <http://bit.ly/2bbfb6D>.

23 Law 1341 of 2009, <http://bit.ly/1WQQuL7>.

24 Decree 4948, December 18, 2009, <http://bit.ly/1gVegGu>.

25 Law 1341 of 2009, <http://bit.ly/1WQQuL7>.

26 Ministry of ICT, ICT Quarterly Bulletin, Q1 2016, accessed September 7, 2016, <http://bit.ly/2bbfb6D>.

27 Administrative decisions 53403 and 66934, 2013, <http://bit.ly/1S8qTOy>.

28 Law 1341 of 2009, Art. 11, <http://bit.ly/1Qb3RnE>.

29 Ministry of ICT, ICT Quarterly Bulletin, Q1 2016, accessed September 7, 2016, <http://bit.ly/2bbfb6D>.

30 Resolution 597, 2014, ICT Ministry.

Regulatory Bodies

Colombia's ICT sector is subject to numerous regulatory bodies with varying but limited degrees of independence from the government. The three main regulatory bodies are the ICT ministry, the Communication Regulation Commission (CRC), and the National Spectrum Agency (NSA). The Superintendency of Industry and Commerce also has some control duties as part of its consumer protection obligations.

The president appoints the ICT minister, who oversees the telecommunications sector through the ICT ministry. The ICT minister also chairs the CRC, which is responsible for ensuring efficient service and promoting competition in the telecommunications sector and is formed by the minister and three commissioners who are also appointed by the president. The ICT minister designates the head of the NSA, which is the agency in charge of planning, management and supervision of the use of the radioelectric spectrum. While some have suggested that such an executive-driven design prevents objective oversight of the sector, affording the president a great deal of influence in its operation, to date, there are no clear examples of executive bias in rulings.³¹

A 2014 report by the Organisation for Economic Co-operation and Development (OECD) recommended that the CRC develop more independence from Colombia's central government, as the board cannot deliberate without the presence of the ICT minister, and the ministry of finance fixes the agency's budget. In line with this recommendation, the prohibition to the CRC to session without a ministry representative was recently eliminated.³² The OECD also advised the ICT ministry to refrain from regulating the sector, and focus solely on promoting the development and use of ICTs.³³

Since 2010, a government-appointed concessionaire has been responsible for allocating the .co domain. For the domains org.co, edu.co, mil.co, and gov.co, applicants must comply with specific requirements; for edu.co, for example, the applicant must be an educational institution.³⁴

Limits on Content

While no content is systematically blocked under Colombian law besides child pornography, the presence of guerrilla groups online has been subject to different forms of restriction over the past years. In February 2016, Twitter decided to suspend the Twitter account of the National Liberation Army (ELN) after it called for an "armed strike." Censorship of FARC websites does not appear to be systematic, and FARC members have functional social media accounts. Over the past few years, several court cases have exempted intermediaries from liability for content posted by third parties. After becoming the first South American country to launch Facebook's Free Basics in January 2015, net neutrality continues to generate debate among Colombian digital rights activists.

31 Carlos Cortés, "Mobile Internet in Colombia - Challenges and Opportunities for Civil Society: The 2013 Spectrum Auction," Open Society Foundation, December 13, 2015, <http://bit.ly/1QDvnJ1>.

32 Law 1753, Art. 207, <http://bit.ly/1sbO3tQ>.

33 OECD, Review of Telecommunications Policy and Regulation in Colombia, April 2014, <http://bit.ly/1MOiNZP>.

34 Dominio, "Historia del Dominio Co," [History of the Domain .Co], Cointernet, <http://bit.ly/1iQywea>.

Blocking and Filtering

Blocking or filtering of political, religious, or social content is not common in Colombia.³⁵ YouTube, Facebook, Twitter and international blog-hosting services are freely available.

Although there are no legal restrictions on publishing materials about the decade old conflict between the government, the FARC guerrilla group, and other paramilitary and guerrilla groups, there have been reports of censorship of content disseminated by the FARC in recent years.³⁶ Content on FARC's online accounts often consists of political or organizational propaganda rather than active recruitment or direct incitement to violence, which is illegal under international law. Despite instances such as the shutdown of FARC's website during the initiation of peace talks with the Colombian government in 2012,³⁷ censorship does not appear to be systematic, and FARC members have functional social media accounts. Media coverage about censorship of FARC websites is scarce and the government has not commented on shutdowns of FARC websites or social media pages; therefore, it is not clear whether shutdowns of FARC websites were caused by technical blockings, cyberattacks, or decisions made by the organization itself, which operates in secrecy.

According to the ICT Ministry, the only content that is subject to blocking measures is child pornography, which is illegal under international law.³⁸ Decree 1524 (2002) requires ISPs to undertake technical measures to prevent the online availability of child pornography.³⁹ In response to an information request, the ICT ministry stated that the criteria used to determine which content should be blocked are set every two years by a commission that includes the Colombian Child Care Office (ICBF), the Ombudsman, the National Prosecutor, and UNICEF. The Cybernetic Police Center of the Office for Criminal Investigation and the National Police's Directorate of Criminal Investigation and Intelligence (DIJIN) evaluate requests to block content and, if the content qualifies, send the URLs to the ICT ministry, which in turn notifies the ISPs who ultimately block access to the sites. Individuals who feel adversely affected by the blocking measure may submit a complaint before DIJIN, which studies the case and decides to maintain or remove the blocking. Although it is an important protection mechanism, the legal basis of the blocking procedure and the appeal process is murky at best, since neither of the laws restricting child pornography (Law 679 and Decree 1524) specify the process outlined by the ICT ministry. The possibility for civil or judicial oversight is limited because information about which websites are blocked is classified, possibly out of fear that individuals would use circumvention tools to access child pornography sites if a list were made public.⁴⁰ The scope of issues upon which the police and other institutions exert control in order to protect minors are very broad and range from sexual abuse to "inappropriate content", and "other issues."⁴¹ In July 2015, some profiles on the social network Ask.FM, popular amongst young people, were taken down because they were being used to incite children to harm themselves.⁴² It is not clear, however, if the police asked

35 Communication from ICT Ministry in response to Request of Information N° 661596, February 24, 2015.

36 "Tentáculos de las FARC en Internet," [FARC's tentacles on Internet], *El Espectador*, May 10, 2012, <http://bit.ly/1jiDekV>.

37 "Jefe máximo de las FARC dice que van a La Habana sin rencores," [FARC's top leader says they go to Havana without resentment], *El Universal*, September 3, 2012, <http://bit.ly/1JiYLn9>; See also "Colombia: Guerrilla Group's Peace Negotiation Rap Video," *Global Voices*, September 3, 2012, <http://bit.ly/1QXlcz7>.

38 Communication from ICT Ministry in response to Request of Information N° 661596, February 24, 2015.

39 Law 679 of 2001, <http://bit.ly/1RanTw8>; Decree 1524, July 24, 2002, <http://bit.ly/1NRSVKZ>.

40 Communication 5245, ICT Ministry to Foundation for Press Freedom; See also: Law 679, Decree 1524, July 24, 2002, <http://bit.ly/1NRSVKZ>.

41 "Te Protejo" website, <http://bit.ly/1n56U6s>.

42 "Ask.FM, la red que obsesiona a los adolescentes, cierra en Colombia," [Ask.FM, the network that obsesses teenagers, closes in Colombia], *W Radio*, July 23, 2015, <http://bit.ly/1Rardr5>.

the social network to remove the profiles or if they the accounts were blocked in line with the legal procedure outlined above.

Since the arrival of Uber, the government has been trying to regulate the service with little success. In May 2016, after the release of yet another order by the ministry of transportation regarding the matter, traditional cab drivers and owners demanded the blocking of the Uber app. Invoking the net neutrality principle, the ICT ministry stated that there are no legal grounds for such blocking and that the app itself is not illegal.⁴³

Content Removal

The Colombian government does not regularly order the removal of content, although periodic court cases have resulted in judicial orders requiring the removal of specific information deemed to violate fundamental rights. During this period however, a critical site was repeatedly targeted by a government entity for trademark infringement. In March 2016, the website icetextearruina.com was taken down twice by hosting provider GoDaddy on grounds of trademark infringement. The complaint was presented by ICETEX, an official entity in charge of student loans. The website is owned by the Association of Users of Student Loans (ACUPE), a legally recognized organization created by a small group of citizens set to denounce what they perceive as an abusive system of student loans. Civil society organizations have denounced ICETEX for engaging in censorship, and demanded that the entity cease abusing the complaints system to take the website down.⁴⁴

In another case in January 2016, the director of the Colombian Institute of Family Welfare (ICBF), a government entity, filed a petition for a writ of protection of fundamental rights (*acción de tutela*) against a journalist, requesting him to remove several posts on Twitter, where she was accused of being negligent and corrupt. The director also asked Twitter to delete the journalist's account.⁴⁵ However, the petition had to be withdrawn because it did not fulfill legal requirements.⁴⁶ The complaint was criticized on social media as disproportionate.⁴⁷

Meanwhile in February 2016, former mayor of Bogotá Gustavo Petro publicly denounced that more than 200 videos recorded during his administration were no longer available through the official YouTube account for the Mayor's Office, which according to Petro, was motivated by political interests of the recently elected mayor. Civil society organizations expressed concerns about its negative impact on the right to access public information.⁴⁸ The new administration alleged that YouTube sent

43 "Por qué el Mintic no puede bloquear Uber" [Why the ICT Ministry cannot block Uber], *El Espectador*, June 28, 2016, <http://bit.ly/2aeM5DE>.

44 "Bloqueo de página web por solicitud del ICETEX es una forma de censura" [Website blocking as per ICETEX demand is a form of censorship], Joint statement by Fundación Karisma and Fundación para la Libertad de Prensa, March 23, 2016, <http://bit.ly/22Z1YQR>.

45 "Sigue Polémica por Tutela de Cristina Plazas Contra Gonzalo Guillen," [Controversy continues over petition by Cristina Plazas against Gonzalo Guillen], *El Universal*, January 23, 2016, <http://bit.ly/1QCP08V>.

46 "Cristina Plazas retiró tutela en contra de Gonzalo Guillen," [Cristina Plazas withdraws petition against Gonzalo Guillen], *El Espectador*, January 26, 2016, <http://bit.ly/1nOJlKE>.

47 "Espaldarazo de la FLIP a Gonzalo Guillen en su Pleito con Cristina Plazas," [Gonzalo Guillen backed by Flip in his dispute with Cristina Plazas], *Las Dos Orillas*, January 22, 2016, <http://bit.ly/1TEWrwG>.

48 "Actuaciones dudosas por parte de la Alcaldía de Bogotá y Canal Capital en YouTube," [Dubious decisions taken by Bogotá Mayor's office and Canal Capital], *Fundación para la Libertad de Prensa*, February 29, 2016, <http://bit.ly/2a1wxQv>.

a copyright violation notice and that all the videos were hidden to prevent sanctions on the platform.⁴⁹

Some unconfirmed reports suggest that content produced by the FARC guerrilla group has been subject to removal or restriction in the past.⁵⁰ On February 13, 2016, Twitter decided to directly suspend two accounts belonging to the leftist guerrilla movement ELN. The decision came after the ELN called for an “armed strike” via Twitter. The social network argued that this decision followed its global policy prohibiting threats of violence, and explained that, in contrast, FARC accounts were not suspended because their profiles did not promote acts of violence.⁵¹

Several court cases pertaining to content disputes have exempted search engines from liability for posting links to content in their search results.⁵² In May 2015, a court ruling strengthened the precedent that search engines should not be held liable for links in their search results.⁵³ The dispute involved a citizen requesting online newspaper *El Tiempo* and Google to “erase any negative information” regarding her involvement in a human trafficking investigation in 2000, a crime for which she had been prosecuted but never convicted. The Court ruled that *El Tiempo* must update the original note about the case and must use “robots.txt” and “metatags” to make the information harder to find in an online search, but did not order Google to de-index the information from its search results. Reception to the ruling was mixed among free speech and digital rights advocates. Although many praised the fact that it exempted intermediaries from liability,⁵⁴ some worried that the ruling might place an excessive burden on the media.⁵⁵

Media, Diversity, and Content Manipulation

Colombia has a vibrant media environment with a number of digital media outlets and online spaces for political debate. Many professional media enterprises thrive in Colombia’s largest cities and, in general, the government does not interfere with operations. Authorities do not issue official guidelines or directives to online media outlets or blogs, nor does the government employ or encourage individuals to defend official actions in online forums. Free or low-cost blogging services are available and are very popular. Along with Google, Facebook, YouTube, Yahoo, and Twitter, the Alexa ranking features BlogSpot and WordPress among the top 20 websites in Colombia.⁵⁶

Nevertheless, self-censorship is a notable problem for journalists in the realm of traditional me-

49 “Petro, Peñalosa y el choque por ocultar videos en Youtube” [Petro, Peñalosa and the conflict that followed the concealment of YouTube videos], *El Espectador*, February 24, 2016, <http://bit.ly/2a1yv3j>.

50 “Continúa La Censura - Bloquearon la página en Facebook de la delegación de paz Farc-Ep,” [Censorship Continues – Farc-Ep Peace delegation Facebook page is blocked], *Diálogos de Paz*, June 13, 2013, <http://bit.ly/2c4KGgg>; “About Cyberwar against Farc-Ep,” Farc-EP Peace Delegation, October 2, 2013, <http://bit.ly/2cIn6xJ>.

51 “Por promover paro armado Twitter suspende cuentas del ELN,” [Twitter suspends ELN accounts for promoting armed strike], *El Espectador*, February 13, 2016, <http://bit.ly/1TZyL5e>; See also: “Twitter le cierra las puertas al ELN” [Twitter closes its doors on ELN], *Semana*, February 13, 2016, <http://bit.ly/1SOAGuz>.

52 Constitutional Court, Judgement T-040/13, January 28, 2013, <http://bit.ly/1FyIMlk>; Constitutional Court, Judgement T-453/13, July 15, 2013, <http://bit.ly/1R6lHaO>; Constitutional Court, Judgement T-634/13, September 13, 2013, <http://bit.ly/1OyMApE>.

53 Constitutional Court, Judgement T-277/15, May 12, 2015, <http://bit.ly/1iQCR1b>.

54 Electronic Frontier Foundation, “Google to France: We Won’t Forget It for You Wholesale,” August 3, 2015, <http://bit.ly/1P2iyYL>.

55 Fundación Karisma, “Corte Constitucional colombiana decide sobre caso de derecho al olvido en Internet,” [Colombian Constitutional Court decides on right to be forgotten on internet], July 6, 2015, <http://bit.ly/1FmskVr>.

56 Alexa, “Top Sites in Colombia,” accessed February 26, 2016, <http://bit.ly/1n5rG5V>.

dia—and likely spills over into online media as well.⁵⁷ According to a national survey of journalists conducted in 2015 by Proyecto Antonio Nariño (PAN), an alliance of organizations focused on freedom of expression and access to information, 36 percent of respondents stated that they avoided publishing information due to fear of aggression; 30 percent feared losing their jobs or having their media outlets closed; 16 percent feared pressure from state actors; 15 percent believed that media outlets in their region modify their editorial positions; 25 percent feared the presence of illegal actors; 27 percent stated that they did not publish information because they feared affronts from state actors; and 8 percent because they feared lawsuits for defamation.⁵⁸

Given that financing is often extremely difficult, government advertising can make a significant difference in an outlet's long-term existence. PAN's survey revealed that 66 percent of respondents believed that some media in their department avoid publishing on sensitive issues because they fear loss of advertising, closure, or administrative sanctions, while 62 percent stated they knew cases where journalists changed their position in exchange for advertising or political favors.⁵⁹ Although funding from the government, partisan, or corporate interests may manipulate online reporting, online media appear to have more independence from these funding sources, whereas official advertisement and favorable government relations are often a necessary condition for the continued operations of many offline outlets, especially in rural Colombian provinces.⁶⁰

Zero-rating programs such as Facebook's Free Basics have recently generated substantial debate among Colombian digital rights activists. Law 1450 (2011) and Resolution 3502 (2011) stipulate that ISPs may offer internet plans according to "the needs of market segments or of their users," which in practice allows them to offer plans in which the data consumption on certain applications (such as WhatsApp or Facebook) does not affect the contracted data limit. Mobile service providers offer several kinds of data plans, many of them obscure in terms of the network management being applied, as well as which kind of content and applications may affect data consumption and charges.⁶¹ Fixed internet service is subject to the same transparency and regulation issues. CRC has presented drafts on how to evaluate zero-rating plans,⁶² and opened a blog to post information about regulatory matters to allow anyone interested to debate with the authority.⁶³

Colombia was the first country in South America to launch Facebook's Free Basics⁶⁴ in January 2015, in partnership with the mobile carrier Tigo. Offering users access to 16 applications for free for two months, it was welcomed by the government as a catalyst for expanding internet access across the

57 Although there are studies concerning self-censorship among journalists, to date, there are none concerning self-censorship among ordinary internet users.

58 Survey results on Freedom of Expression and Access to Information in Colombia, September 2015, pg. 35-42, <http://bit.ly/1VDzisl>.

59 Survey results on Freedom of Expression and Access to Information in Colombia, September 2015, pg. 38, <http://bit.ly/1VDzisl>.

60 Censura Indirecta, "Indirect Censorship Project," Press Release, <http://bit.ly/1NZ6ZUM>.

61 Fundación Karisma, "¿Cómo se contrata en América Latina el acceso a Internet? ¿Qué tiene que ver esto con la neutralidad de la red?" [How does Latin America engage on Internet Access? What that has to do with Net Neutrality?], June 15, 2016, <http://bit.ly/1OQxgWZ>.

62 Proceedings of the Colombian Board for Internet Governance, April 14, 2016, <http://bit.ly/23ZXOqo>.

63 "Regulador de comunicaciones lanza blog para hablar sobre TIC" [Communications regulator launches blog to discuss ICTs], *El Espectador*, May 17, 2016, <http://bit.ly/1WGEYwW>; See also first post addressing the matter of zero rating plans: "¿Qué es la oferta Zero Rating?" [What is Zero Rating?], May 16, 2016, <http://bit.ly/1VeeYJT>.

64 In September 2015, Internet.org changed its name to Free Basics.

country.⁶⁵ While favorable media coverage argues that the program is better than no access at all,⁶⁶ critics have raised concerns about user privacy and net neutrality, as it also risks limiting users to a narrow range of services provided for free.

Digital Activism

Colombian social movements have increasingly used online platforms to campaign and investigate issues.⁶⁷ Colombia's intellectual property law enforces harsh penalties for violations, and online campaigns such as #CompartirNoEsDelito ("Sharing is not a crime") have sought to promote open access to scientific and literary knowledge (See Prosecutions and Detentions for Online Activities). Since 2011, there have been four failed attempts to address Colombia's obligations under the Free Trade Agreement signed with United States regarding intellectual property, one of which sought to impose a notice-and-takedown system for copyright infringement.⁶⁸ Negative reactions from civil society, copyright experts and the academic community, and pressure from social media may have motivated lawmakers to put these initiatives on hold.⁶⁹

Social media channels promoted a number of political and social protests during this coverage period. In August 2015, some 30,000 people rallied in major cities to pay tribute to Colombia's soldiers and policemen, to criticize the government's handling of the peace process and to express opposition to the bilateral ceasefire. There was also considerable social media activity surrounding a rally promoted by Centro Democrático on April 2, 2016. Using the hashtags #Abril2ALaCalle and #eshoradesaliralacalle, promoters encouraged people to mobilize against the peace process and government corruption scandals. Pro-ceasefire users, including the top leader of the FARC (Rodrigo Londoño Echeverry—a.k.a. "Timochenko"), voiced their counterarguments using the hashtags #HagámosleConejoALaGuerra and #YoDefiendoLosDialogos.⁷⁰

Violations of User Rights

Although prosecutions for online expression are rare in Colombia, harsh penalties for minor copyright violations and criminal penalties for defamation continue to pose a serious threat to users' rights. In an ongoing trial, one user still faced up to eight years in prison under Colombia's excessively harsh copyright laws, after he posted an academic article on the website Scribd. Although the government has taken some positive steps to prosecute illegal surveillance in recent years, concerns remain over widespread surveillance and violations of privacy.

65 Ministry of ICT, "Mark Zuckerberg llega este miércoles a Colombia para sellar alianza con el Gobierno," [Zuckerberg arrives in Colombia to seal Alliance with government], January 13, 2015, <http://bit.ly/1CePl69>.

66 José Carlos García, ¿Por qué se critica tan duro a Internet.org? Análisis," [Why the hard critique to Internet.org? Analysis], *El Tiempo*, January 20, 2015, <http://bit.ly/1EVQjtQ>; Álvaro Montes, "Mucho más que Facebook" [More than Facebook], *Semana*, January 17, 2015, <http://bit.ly/1DPrh9K>.

67 Somos Defensores, "Una Puerta hacia la Paz," *Revista Revelando*, 2013, 87, <http://bit.ly/1jO7wfu>.

68 The first was rejected in Congress; the second, although it became law, was declared unconstitutional by the Constitutional Court; the third project lost the support of the national government, and was removed immediately; the last one was introduced, but not enough to be subjected to the first debate in Congress, it was withdrawn.

69 "Manifestación virtual contra la llamada Ley Lleras 2" [Virtual protest against the so-called Lleras 2 Law], *El Colombiano*, <http://bit.ly/1QnK069>; "La nueva ley Lleras recarga el ciberespacio de protestas," [The new Lleras law fills cyberspace with protests], *El Colombiano*, March 28, 2012, <http://bit.ly/1QnPYnn>.

70 "Sin respaldo masivo, uribistas marcharon contra el proceso de paz," [Without massive support, uribistas marched against the peace process], *El Universal*, August 7, 2015, <http://bit.ly/1OtL9Dp>; "Uribismo saldrá a las calles el 2 de abril," *El Espectador*, February 22, 2016 <http://bit.ly/1T4elJB>.

Legal Environment

Article 20 of Colombia's National Constitution guarantees freedom of information and expression and prohibits prior restraint. This article was developed by the Constitutional Court in accordance with the standards of the Inter-American Court of Human Rights. Article 73 further provides for the protection of "the liberty and professional independence" of "journalistic activity." Although there are no specific provisions protecting freedom of expression online, a blogger has the same liberties and protections as a print or broadcast journalist.⁷¹ The Constitutional Court confirmed the application of such protections to the internet in a 2012 ruling.⁷² In its decision, the court stressed the Joint Declaration on Freedom of Expression and the Internet, which states that "freedom of expression applies to the internet, as it does to all means of communication," and that "restrictions on freedom of expression on the internet are only acceptable if they comply with established international standards... are provided for by law, and...are necessary to protect an interest which is recognized under international law [the "three-part" test]."⁷³

Despite the protections for free expression established in Colombian law, Colombia still has criminal penalties for defamation, which have been applied to online speech. According to the Colombian penal code, individuals accused of insult can face between 1.3 and 6 years in jail and a fine of US\$3,000 to US\$345,000, while individuals accused of libel can face between 1.3 and 4.5 years in jail, with the same possible fines.⁷⁴ Although there are no penalties in place for libel, defamation, irresponsible journalism, or rumor mongering that are specific to online content, cases pertaining to online defamation have occasionally been brought before the court with varying outcomes.

The courts have not applied the penal code's provisions on libel and slander to third party intermediaries; however, the penal code includes a concerning provision regarding online publication or reproduction of insults against others. According to Article 222 of the penal code, "whoever publishes, reproduces, or repeats insult or libel" may also be subject to punishment. This article raises concerns as it leaves open the possibility for charges of indirect insult and libel. The following article in the penal code establishes the use of "social mediums of communication or of other collective divulgence" as an aggravating circumstance that can increase the penalty for insult or libel. The use of the internet was considered an aggravating circumstance in the case against Gonzalo Hernán López (See Prosecutions and Detentions for Online Activities).⁷⁵

In July 2015, two bombings in the capital city of Bogotá injured ten people.⁷⁶ In the wake of the attacks, the Prosecutor General declared that anyone who shares photos or videos of possible terrorist attacks in publications or on social networks instead of surrendering the material directly to the authorities is subject to prosecution.⁷⁷ The statement received widespread criticism since such prosecutions would lack legal basis and would entail a serious violation of the right to expression and

71 Several decisions of the Constitutional Court state that Freedom of Expression is a universal right. See for example: Constitutional Court, Judgement C-442/11, May 25, 2011, <http://bit.ly/1YG6pic>.

72 Constitutional Court, Judgement T550/12, January 18, 2012, <http://bit.ly/1VfPNt8>.

73 UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, et al, "Joint Declaration on Freedom of Expression and the Internet," Organization of American States, 2011, <http://bit.ly/1LSySYx>.

74 Art. 220-222 of the Penal Code, <http://bit.ly/1LC0FAz>.

75 Law 599 of 2000, Criminal Code, Title V, <http://bit.ly/1ZcoeFG>.

76 "Diez lesionados dejaron las dos explosiones en Bogotá" [Ten injured left after explosions in Bogotá], *El Tiempo*, July 2, 2015, <http://bit.ly/1NAhhao>.

77 Adriaan Alsema, "Colombia government threatens to imprison citizens who publish photos or videos of attacks," *Colombia Reports*, July 6, 2015, <http://bit.ly/1G5cCqT>.

information.⁷⁸ However, no one has yet been prosecuted under this edict.

Prosecutions and Detentions for Online Activities

Prosecution, imprisonment, or detention for ICT activities is quite rare in Colombia, and writers, commentators, or bloggers are not systematically subject to imprisonment or fines as a result of posting material on the internet.⁷⁹

However, Colombia's first online criminal defamation sentence has set a concerning precedent for violations of user rights. In November 2015, the Foundation for Press Freedom (FLIP) reported it had submitted a petition to the Inter-American Commission on Human Rights,⁸⁰ after Colombian courts convicted Gonzalo López, an internet user who anonymously posted a comment criticizing a public official on a newspaper's website.⁸¹ Gonzalo López was sentenced in July 2014 to 18 months and 20 days in prison and issued a fine of COP 9,500,000 (US\$4,700), although he did not serve jail time based on provisions in Colombian law that allow certain defendants to avoid imprisonment depending on their sentence and prior record. In October 2014, using a writ of protection of fundamental rights (*acción de tutela*), López again challenged the sentence for violating his right to freedom of expression, but his appeal was denied in February 2015. The Constitutional Court did not select the case for revision, exhausting his options to overturn the conviction.⁸²

Colombia has harsh penalties for copyright violations and currently lacks the flexible fair use standards employed in many countries. An ongoing case involving Colombian student Diego Gómez is at the center of a campaign to promote open access to scientific and literary knowledge (under the hashtag #CompartirNoEsDelito).⁸³ In July 2014, Gómez was charged with violating copyright violations for uploading an academic thesis onto Scribd. The author of the thesis complained and pushed for a criminal prosecution. Different voices in online and offline media criticized the decision to investigate the biologist and pointed out that Gómez did not seek personal attribution and did not profit by sharing the document.⁸⁴ If convicted, Gómez may face up to eight years in prison on top of substantial fines.

In November 2015, the Supreme Court confirmed the decision by the High Court of Bogotá to overturn the conviction of Joaquín Pérez Becerra, director of ANNCOL—a Sweden-based leftist news site that has been highly critical of the Colombian government.⁸⁵ After being arrested while traveling through Venezuela and brought to Colombia, Becerra was sentenced to eight years in prison in 2012

78 "Polémica desata declaración del Fiscal General que restringe el uso de videos y audios de ciudadanos" [General Prosecutor's declarations that restricts use of citizen's videos and audio raise controversy], *RCN Radio*, July 3, 2015, <http://bit.ly/1QFkeWC>.

79 The only documented case of an individual going to jail took place in 2010, well before the timeframe of this report. See: "Crónica del 'Falso Positivo' de Facebook en nueve episodios," *La Silla Vacía*, May 4, 2010, <http://bit.ly/1L6Fv9U>.

80 FLIP, "Caso de Gonzalo López se presenta ante la CIDH," [Case of Gonzalo Lopez presented to IACHR], November 20, 2015, <http://bit.ly/1kLxuRK>.

81 Colombian law does not prohibit anonymity, so the fact that the post was anonymous did not influence the charges against López.

82 Carlos Cortés, "Crónica de una ofensa inofensiva," [Chronicle of an unoffensive offense], *La Silla Vacía*, April 17, 2015, <http://bit.ly/1ODNXEI>.

83 "Diego Gómez y la importancia de los bienes comunes" [Diego Gómez and the importance of common goods], Pillku Amantes de la libertad, December 17, 2015 <http://bit.ly/1oHMK3u>

84 "Compartir no es un delito" [Sharing is not a crime], *El Espectador*, July 16, 2014, <http://bit.ly/1laphQ5>; "Compartir no es un delito," *Las 2 Orillas*, December 26, 2014, <http://bit.ly/WaUTQ6>.

85 "Ratifican absolución al director de Anncol, Joaquín Pérez Becerra" [Absolution ratified for Director of Anncol], Joaquín Pérez Becerra, *El País*, November 9, 2015, <http://bit.ly/1LfFeD2>.

on the charge of criminal conspiracy as an ally of the FARC guerrilla group.⁸⁶ According to the prosecutor's office, his work in the news agency served FARC's interests and connected them with funds from his connections in Europe. After spending three years in prison, the High Court ordered his release, saying that they could not find adequate evidence to support his conviction.⁸⁷

Surveillance, Privacy, and Anonymity

Some steps have been taken to punish perpetrators of illegal surveillance, although it seems unlikely that these efforts have changed the overall environment for surveillance in Colombia, as intelligence agencies continue to operate with minimal oversight. Concerns about illegal surveillance by certain sectors of the government and military persist, with investigative journalists continuing to uncover grave privacy violations by the police and military.

In late 2015, anonymous informants warned that investigative journalists had their communications intercepted illegally by the National Police, notably in retaliation for a news story by journalist Vicky Dávila on a possible prostitution network tied to the police.⁸⁸ In response to reports of surveillance of investigative journalists, a disciplinary investigation against the Director of the National Police was announced in February 2016,⁸⁹ who submitted his resignation the next day, although he stated he was innocent.⁹⁰ The prosecutor in charge of the case has reportedly received death threats.⁹¹ Other leaks have shown that journalists who cover sensitive issues, like the peace process, have been subject to monitoring. In October 2014, reporters revealed that military intelligence services maintained a list of professional and personal e-mail addresses of national and international journalists who had covered the peace talks between the Colombian government and FARC representatives, as well as personal email addresses of NGO members and foreign diplomats. The purpose of the list is unknown.⁹²

Episodes of extralegal surveillance (known in Colombia as "Las Chuzadas"), carried out by intelligence agencies, the army or the police, have constituted an ongoing scandal in Colombia in recent years. In February 2014, the Colombian magazine *Semana* exposed an illegal wiretapping operation carried out by the army under the code name Andrómeda, against government representatives taking part in peace talks with FARC leaders in Havana, Cuba.⁹³ In May 2014, in the midst of presidential election campaigns, *Semana* revealed a video in which Andrés Fernando Sepúlveda, who worked for the presidential campaign of Oscar Iván Zuluaga—a front runner against President Juan Manuel Santos—was seen discussing confidential information about FARC members participating in the peace

86 "Condenado a 8 años de cárcel Joaquín Pérez Becerra, editor de Anncol" [Joaquín Pérez, Anncol's editor sentenced to 8 years of prison], *El Tiempo*, September 7, 2012, <http://bit.ly/1PzU5KE>.

87 "En libertad Joaquín Pérez, director de Anncol" [Joaquín Pérez, director of Anncol, was released], *El Espectador*, July 17, 2014, <http://bit.ly/1KHNI8j>.

88 "El Gobierno nos dejó solos: Claudia Morales," [The government left us alone], *El Espectador*, December 19, 2015, <http://bit.ly/1Yubc3p>.

89 "Detalles de cómo la Procuraduría decidió abrir una investigación contra Palomino," [Details on how the prosecutor decided to open an investigation against Palomino], *El Espectador*, February 16, 2016, <http://bit.ly/1S1eaND>.

90 "Renuncia General Palomino a la Policía Nacional," [General Palomino resigns from National Police], *Caracol Radio*, February 17, 2016, <http://bit.ly/1mHcJqz>.

91 "Fiscal que investiga seguimientos ilegales a periodistas recibió amenazas," [Prosecutor who investigates illegal monitoring of journalists received threats], *El Espectador*, December 24, 2015, <http://bit.ly/1Segsbv>.

92 "La polémica lista de Inteligencia Militar" [The controversial list of Military Intelligence], *Semana*, October 28, 2014, <http://bit.ly/1oXkObe>.

93 "Alguien Espió a los Negociadores de La Habana?" [Who Spied on the Negotiators in Havana?], *Semana*, February 3, 2014, <http://bit.ly/1fVeY0F>. See also: "Las Chuzas-DAS," *Semana*, December 19, 2009, <http://bit.ly/1JYShZ7>.

talks and strategies to use that information during the campaign.⁹⁴

Courts have sought to rein in illegal and excessive surveillance, passing down sentences to former public officials involved wiretapping scandals. On April 29, 2015, the Supreme Court sentenced Maria del Pilar Hurtado, former director of the government Administrative Security Department (DAS), and Bernardo Moreno, former secretary of the president's office, to 14 and 8 years in prison, respectively, on charges of illegal interception of private communications of journalists, politicians, and NGOs.⁹⁵ Some military officials were fired in early 2015 as a result of the Andr6meda wiretapping leaks.⁹⁶ Although it is not clear whether Sep6lveda intercepted communications or paid for information from people participating in Andr6meda,⁹⁷ he signed a plea bargain and was sentenced to 10 years of prison for illegal interception of communications and use of malicious software, amongst other charges.⁹⁸ In this same case, criminal proceedings were initiated against an adviser of the presidential campaign Zuluaga (Luis Alfonso Hoyos), on charges of conspiracy, violation of personal data, abusive access to computer system, and use of malicious software. In February 2016, Hoyos' defense team called for the annulment of the trial because of alleged procedural irregularities.⁹⁹

Although investigative journalists have sought to uncover surveillance practices, the scope of government and military surveillance in Colombia is still unclear. The lack of clarity regarding surveillance is aggravated by the fact that the only body in charge of overseeing surveillance activities has never exercised its faculties because of delays on the fulfillment of operative requirements set by the Intelligence Law. According to the human rights organization Dejusticia in December 2015, the Commission to Monitor the Activities of Intelligence and Counterintelligence has skipped the presentation of three annual reports addressed to the president about the observation of the legitimacy of intelligence activities and its corresponding follow up and the presentation of two legal concepts about audit reports made by the General Comptroller. It has also refrained from asking for information on intelligence expenditures related to the National Intelligence Plans from previous years.¹⁰⁰

In July 2015, a hacker leaked 400GB of documents from the Italian information technology company Hacking Team, which is best known for providing spyware to governments. Among these documents were emails suggesting that the Colombian government had contracts with the company, evidence that supports research published by Citizen Lab at the University of Toronto in early 2014.¹⁰¹ Leaked emails reference the National Police Office's purchase of Hacking Team's Remote Control System (RCS) called "Galileo," which is capable of accessing and hijacking the target devices' keyboard register, microphone and camera. Although National Police have denied any direct relation with Hacking Team and have only admitted to contractual ties with a Colombian company called Robotec, which

94 "El video del 'hacker' y Zuluaga" [The video of the hacker and Zuluaga] *Semana*, May 17, 2014, <http://bit.ly/Tg67l4>.

95 "Condena de 14 a1os para Hurtado y 8 para Bernardo Moreno por chuzadas," [Sentence of 14 years to Hurtado and 8 years to Bernardo Moreno for 'Chuzadas'], *El Tiempo*, April 30, 2015, <http://bit.ly/1biN0yV>.

96 "Purga en inteligencia de las Fuerzas Militares por esc6ndalo de Andr6meda" [Purge in intelligence services and military forces because of Andr6meda scandal], *Blu Radio*, January 23, 2015, <http://bit.ly/1iAIJdW>.

97 "'Hacker' del Proceso de Paz Dice que Compr6 Datos de Andr6meda" [Peace process hacker says he bought information from Andr6meda], *el tiempo*, may 15, 2014, <http://bit.ly/1jy2v2q>.

98 "Condenan a 10 a1os de prisi6n al 'hacker' Andr6s Fernando Sep6lveda" ['Hacker' Andr6s Fernando Sep6lveda sentenced to 10 years of prison], *El Espectador*, April 10, 2015, <http://bit.ly/1afM3qs>.

99 "Fiscalia imputar6 cargos contra Luis Alfonso Hoyos en caso hacker Sep6lveda," *El Colombiano*, May 19, 2016. <http://bit.ly/1Sb6AjC>; "La encrucijada de Luis Alfonso Hoyos," *Semana*, September 26, 2015, <http://bit.ly/1oichcV>; "Defensa de Luis Alfonso Hoyos pidi6 anular proceso sobre nexos con el hacker Sep6lveda," *RCN Radio*, February 26, 2016 <http://bit.ly/24w7gVt>.

100 Dejusticia, FOIA request addressed to the Follow-up Legal Commission of Intelligence and Counter Intelligence Activities and the Joint Intelligence Commission, December 7, 2015, <http://bit.ly/1svsFPU>.

101 Bill Marczak, et al. "Mapping Hacking Team's 'Untraceable' Spyware," Citizen Lab, February 17, 2014, <http://bit.ly/1kPD00Y>.

distributes Hacking Team's services,¹⁰² the leaked documents indicate that the National Police contacted Hacking Team directly to activate spyware.¹⁰³ Another leaked email suggested that the U.S. Drug Enforcement Agency (DEA) may be engaged in surveillance practices in Colombia.¹⁰⁴ Although it is still unclear if Hacking Team software is currently being used by the National Police or U.S. DEA, and, if so, how it is being used, several Colombian civil society organizations criticized the excessive and apparently uncontrolled use of intelligence tools in the country, which they argue has been facilitated by "weak legislation" on intelligence matters.¹⁰⁵

In September 2015, police sources reportedly said that they would start testing a centralized platform for monitoring and analysis, known as PUMA, and that operations would be limited to telephone lines and would not include social networks and chats.¹⁰⁶ At the same time, the General Comptroller of the Republic has launched an investigation against the National Police for alleged irregularities in the acquisition of the system. In August 2014, the Prosecutor General's office had ordered to stop the development of PUMA because of the lack of transparency and guarantees to its lawful use. Details about PUMA initially surfaced in June 2013, when journalists reported that the government was investing upward of US\$100 million in a monitoring platform, which was to become operational by the end of 2014 and would provide the government with the capacity to intercept communications in real-time, extending to social media, email, telephone networks, and internet data traffic.¹⁰⁷

While intercepting personal communications in Colombia is authorized only for criminal investigation purposes and legally requires a judicial order,¹⁰⁸ service providers are required to collaborate with intelligence agencies by providing access to the communications history or technical data of any specific user without a warrant.¹⁰⁹ Retention and treatment of user data by authorities other than the intelligence agencies and departments related to criminal investigation has not yet been regulated in Colombia. Colombian law also allows intelligence agencies to monitor the electromagnetic spectrum without a judicial order.¹¹⁰ An additional threat to user privacy comes in the form of Article 2 of Decree 1704 (2012), which requires that ISPs create backdoor access points for criminal investigation purposes—which can be used under the Prosecutor General's authorization. A service provider that does not comply with these obligations faces fines and could lose its operating license.¹¹¹

Colombia has no general restrictions against anonymous communication, and there are no registration requirements for bloggers, cybercafe owners, or users. However, there are many regulations that can negatively impact anonymity. The police has access to a database that must be maintained

102 "Policía indicó no tener vínculos comerciales con firma Hacking Team" [Police declared that there are no commercial links with Hacking Team], *El Tiempo*, July 8, 2015, <http://bit.ly/1WnPXRJ>.

103 Carolina Botero and Pilar Sáenz, "In Colombia, PUMA is not what it seems," Digital Rights Latin America & The Caribbean, August 24, 2015, <http://bit.ly/1JuchzP>.

104 Ryan Gallagher, "Hacking Team Emails Expose Proposed Death Squad Deal Secret UK Sales Push, and Much More," *The Intercept*, July 8, 2015, <http://bit.ly/1PCTFmi>.

105 FLIP, CCJ, Dejusticia, Fundación Karisma and Colnodo, "Colombian Police Ought to Clarify Their Relationship with 'Hacking Team,'" July 30, 2015, <http://bit.ly/1KzZHD4>.

106 "Plataforma Puma de la Policía entrará en operación, pero limitada," [Puma Platform will enter into operation, but limited], *El Tiempo*, September 30, 2015 <http://bit.ly/1TnbAj>.

107 Daniel Valero, "Policía Podrá Interceptar Facebook, Twitter y Skype en Colombia" [Police will be able to tap Facebook, Twitter y Skype in Colombia], *El Tiempo*, June 23, 2013, <http://bit.ly/1Mv2bmO>.

108 Constitution of 1991, art. 250, <http://bit.ly/1KLrftI>.

109 Statutory Law 1621, art. 44, April 17, 2013, <http://bit.ly/1LDxHQX>.

110 Statutory Law 1621, art. 17, April 17, 2013, <http://bit.ly/1LDxHQX>; See also: Constitutional Court, Judgement C-540/12, 2012, <http://bit.ly/1ldXl2t>.

111 Decree 1704, 2012, art. 7. <http://bit.ly/1YGdzTA>

by telecommunication service providers. This database contains user data, such as name, ID number, place and residence address, mobile phone number and service activation date.¹¹² Users must provide accurate information under penalty of perjury, which is punishable by a minimum of six years in prison.¹¹³ The recently approved Police Act imposes sanctions on the activation of mobile numbers or SIM cards without the appropriate collection of subscriber's personal information.

Since 1993 Colombian law has banned the use of "communication devices that use the electromagnetic spectrum" to send "encrypted messages or messages in unintelligible language."¹¹⁴ In response to an information request, the ICT ministry explained that those provisions apply only "to the content of the communications, not the encryption of the medium." Despite of the ambiguous wording of the law, the ICT ministry further claimed that these provisions only apply to radio-like devices and not to the internet.¹¹⁵ The Intelligence and Counterintelligence Act stipulates that voice encryption service may be implemented "exclusively" for the intelligence agencies and "high government" officials by telecommunications service providers.¹¹⁶

Intimidation and Violence

Corruption, longstanding armed conflict and associated surveillance, and the war against drugs continue to be the greatest threats facing freedom of expression in Colombia, although online journalists have not faced the same level of danger as print journalists. There is no broad trend of retaliation specifically for online content in Colombia, but in general, a high level of intimidation towards media and human rights defenders creates a climate of fear that also affects online journalists.

According to the NGO FLIP, at least 16 journalists have been murdered and many more have been threatened since 2005, and at least 2 were killed in 2015.¹¹⁷ These statistics represent a continuation of violence in a country that has seen at least 142 murders of journalists in the past four decades. Of these, 67 cases have already reached their statute of limitations, meaning that the victims' families will never see justice.¹¹⁸ Impunity for perpetrators of violence—a pervasive problem in Colombia's judicial system—is ranked by the nonprofit PAN's *Freedom of Expression and Access to Information Index* as one of the gravest threats to freedom of expression.¹¹⁹ Colombia has the third highest impunity rate on the Global Impunity Index of the Center for Studies on Impunity and Justice Institute.¹²⁰

Due to the country's high level of violence, it is difficult to isolate deaths that have resulted specifically from online activity. Daniel Mejía, activist and director of the magazine *Senxura*, received a threat against his life and the lives of his family in October 2014, allegedly for his reporting on illegal brick factories in Sogamoso, which he published through traditional and online media.¹²¹ Mejía

112 Law 418 of 1997, art. 99, <http://bit.ly/1Gw5sg9>; and Resolution 0912, 2008 of the National Police, Diario Oficial, Año CXLIV, N° 47.233, January 15, 2009.

113 The penal code outlines penalties for perjury of bearing "false witness." Penal Code, art. 442, <http://bit.ly/1S3N9sT>.

114 Law 418 (1997) art. 102, <http://bit.ly/1PXVz1z>.

115 Communication N° 811811, ICT Ministry to Karisma Foundation, April 27 of 2015.

116 Statutory Law 1621, art. 44, April 17, 2013, <http://bit.ly/1LDxHQX>.

117 Fundación Para La Libertad De Prensa (FLIP), "Periodistas Asesinados" [Journalists killed], <http://bit.ly/1Gbwn7u>.

118 FLIP, 60 AÑOS de espionaje a periodistas en Colombia, <http://bit.ly/1E5ReYu>.

119 Survey results on Freedom of Expression and Access to Information in Colombia, September 2015, pg. 43-46, <http://bit.ly/1VDzisl>.

120 Centro de Estudios sobre Impunidad y Justicia, "Índice Global de Impunidad 2015," [Global Impunity Index 2015], Universidad de las Américas Puebla, April 2015, pg. 39-42, <http://bit.ly/1KPhqdy>.

121 David Gagne, "Journalists Increasingly Under Fire in Colombia," *InSightCrime*, January 21, 2015, <http://bit.ly/1YGf6jt>.

alleges that the threats came from paramilitary organizations with the participation of a member of the military forces.¹²² FLIP has also suggested that the murder of lawyer Edison Molina in September 2013 may have been linked to his online activity, as he denounced acts of corruption in local government.¹²³ Despite the general lack of activity on the case,¹²⁴ in January 2014 it was reassigned to the Human Rights Unit of the Prosecutor General's Office.¹²⁵

A study by Fundación Karisma on violence against female journalists online found that attacks against women are more personal and aim to damage women's self-esteem. Female journalists interviewed explained that the effectiveness of online harassment lies in the uncertainty that comes from not knowing when the attack is going to happen, generating stress and self-censorship. The survey also noted the state's slow or nonexistent response to reports of online threats or intimidation.¹²⁶

Technical Attacks

Various types of cybercrime, including hacking, illegal interception and use of data, and the distribution and use of malware are criminalized under Law 1273, which was passed in 2009. Penalties range from three to four years' imprisonment, along with fines.¹²⁷ While phishing—the stealing of sensitive personal data via malware disguised as legitimate email—appears to be a significant issue in Colombia,¹²⁸ most evidence of hacking and other interception has involved interagency spying and intelligence work carried out primarily by the government, the army, and other official bodies (see Surveillance, Privacy, and Anonymity). Despite the president's recent emphasis on Colombia's vulnerability to cyberattacks, there are few known cases of technical violence perpetrated by private actors.¹²⁹

A report on global security and "cyberwellness" prepared by the ITU in April 2015 ranked Colombia in fifth place in Latin America and ninth globally in terms of commitment and readiness.¹³⁰ However, following the army's Andrómeda hacking scandal in early 2014, President Santos publicly stated that Colombia's cyber defense sector was sorely lacking, and announced the creation of a commission focused on strengthening national cybersecurity.¹³¹ Colombia then partnered with the Organization of American States (OAS) to develop two bodies—the Colombian Cyber Emergency Response Group

122 W Radio, "Señalan a militar de amenazar de muerte a periodista y activista de Boyacá" [Military accused of death threats against journalist and activist in Boyacá], News release, October 10, 2014, <http://bit.ly/1yscrTp>.

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126 Fundación Karisma, "Misoginia en internet: bombardeo a campo abierto contra las periodistas" [Misogyny on the internet: open field bombing against female journalists], February 24, 2016, <http://bit.ly/1Qf9anl>.

127 Rachel Glickhouse, "Explainer: Fighting Cybercrime in Latin America," Americas Society/Council of the Americas Online, November 14, 2013, <http://bit.ly/1FyUXP1>.

128 Mimi Yagoub, "Cyber Crime in Colombia: An Underestimated Threat?" *InSight Crime*, July 11, 2014, <http://bit.ly/1PCXnMS>.

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130 MinTic, "Colombia es fuerte en ciberseguridad" [Colombia is strong in cybersecurity], November 30 2015, <http://bit.ly/1KQFiNN>.

131 "En Ciberseguridad, 'Estamos en Pañales' y Expuestos a Todo Tipo de Ataques: Santos" [In Cybersecurity, 'We are in Diapers' and Exposed to All Kinds of Attacks], *El Espectador*, February 8, 2014, <http://bit.ly/1d6jM4J>.

(coICERT) and the Cyber Police Center (CCP).¹³²

The next digital security policy for Colombia was released by the government on April 2016¹³³ and frames the plans and actions regarding a variety of cyber security issues ranging from national defense and protection of critical infrastructures to cybercrime and digital risk management.¹³⁴ Although broad participation has not always been granted,¹³⁵ civil society groups expressed concerns about the approach in this new policy as it still favors a military perspective.¹³⁶

132 Phillip Acuña, "Colombia to receive cyber-security assistance from international experts," *Colombia Reports*, March 31, 2014, <http://bit.ly/1YGfveW>, and Carolina Botero Cabrera "Intimidación vs Seguridad un año después" [Privacy v. Security one year after], *El Espectador*, April 2, 2015, <http://bit.ly/1DBAHEA>.

133 Document CONPES 3854, National Council for Social and Economic Policy, National Planning Department, April 11, 2016, <http://bit.ly/1SchHow>.

134 Ministry of ICT, "Colombia cuenta con una Política Nacional de Seguridad Digital" [Colombia has a National Digital Security Policy], April 13, 2016, <http://bit.ly/1SACmC0>.

135 Carolina Botero Cabrera, "Intimidación vs Seguridad un año después" [Privacy vs. Security one year later], *El Espectador*, April 2, 2015, <http://bit.ly/1DBAHEA>.

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