

Colombia

	2013	2014		
Internet Freedom Status	N/A	Free	Population:	48 million
Obstacles to Access (0-25)	n/a	8	Internet Penetration 2013:	52 percent
Limits on Content (0-35)	n/a	8	Social Media/ICT Apps Blocked:	No
Violations of User Rights (0-40)	n/a	14	Political/Social Content Blocked:	No
TOTAL* (0-100)	N/A	30	Bloggers/ICT Users Arrested:	No
			Press Freedom 2014 Status:	Partly Free

* 0=most free, 100=least free

Key Developments: May 2013 – May 2014

- In September 2013, the government announced that it would install internet connections in 100,000 houses for low income families as a means of expanding internet access (see **Obstacles to Access**).
- In a 2013 court case against Google, a judge ruled that the search engine was not liable for the third-party content to which it linked, establishing a positive precedent for intermediary liability in Colombia (see **Limits on Content**).
- In June 2013, revelations came to light of a large government investment in a new, real-time surveillance apparatus for monitoring and analysis known as PUMA (see **Violations of User Rights**).
- In February 2014, allegations surfaced that the Colombian army had engaged in secret surveillance of the FARC peace talks in Havana, Cuba, under Operation Andromeda (see **Violations of User Rights**).
- In February 2014, the Supreme Court issued its first libel conviction for a comment posted by an anonymous user on a newspaper's website (see **Violations of User Rights**).

Introduction

The internet first came to Colombia in June 1994, when a connection was established between Los Andes University and the United States, enabling connectivity to a handful of universities, institutions, and corporations.¹ For the first fifteen years, internet connection in Colombia was primarily limited to these bodies; however, access has been expanding and improving steadily since 2010. Despite this improvement, significant challenges still hamper widespread internet access in Colombia. The main obstacles are poor infrastructure, lack of development, and high costs. When users manage to surmount access and affordability issues, however, they are able to view and disseminate content freely on the internet. While there are occasional cases of content removal, takedowns are isolated rather than systematic and stem mostly from muddled legislation rather than onerous governmental policies.

Although Colombia's internet atmosphere is largely unrestricted, the country is plagued by violence and impunity, and it is in this environment that internet freedom is exercised. Since 1977, 142 journalists have been murdered and hundreds have been threatened, with little response from the judiciary. In this context, self-censorship both online and offline becomes a prophylactic measure for self-protection, particularly in rural areas where violence and impunity are more pervasive than in cities.

In late 2013 and early 2014, internet freedom issues in Colombia were primarily related to intermediary liability and surveillance scandals. In an instance of the former, the judiciary addressed a case regarding Google's threshold of responsibility and found that the company was not liable for providing links to third-party content. This stands as a positive decision from a freedom of expression standpoint, especially as there are no set laws governing intermediary liability in Colombia. The media also exposed evidence of irregular surveillance carried out by the military against public officials and political leaders. The most recent scandal concerned unauthorized surveillance of the highly-sensitive peace talks in Havana, which were organized to negotiate an end to the longstanding armed conflict between the government and the Revolutionary Armed Forces of Colombia (FARC). Revelations of illegal surveillance activity during such heightened negotiations revitalized a conversation about ongoing misconduct in the surveillance sector and rekindled concerns about governmental regulation of intelligence.

In recent years, Colombian NGOs—namely the Foundation for Freedom of the Press in Colombia (FLIP), Karisma, Dejusticia, and Colinodo—have begun campaigning about internet-related issues unfolding in the public debate, such as online privacy, net neutrality, the quality of mobile internet, and online copyright enforcement. NGOs have also begun calling for more information regarding the scope of government surveillance and threats to user privacy, issues that will likely gain greater traction in Colombia as internet use becomes more widespread.

1 Tania Lu (blog), "Historia de Internet en el Mundo y Su Llegada a Colombia," [History of the Internet in the World and Its Arrival in Colombia] January 12, 2010, <http://tanialu.co/2010/01/12/historia-de-internet-en-el-mundo-y-su-llegada-a-colombia/>; See also: Diego Molano Vega, "Infografía, Historia de Internet en Colombia," [Infograph, History of the Internet in Colombia] May 17, 2012, Slideshare (website), <http://www.slideshare.net/DiegoMolanoVega/infografia-historia-de-internet-en-colombia>

Obstacles to Access

Colombia's main obstacles to internet access stem primarily from socioeconomic factors. Lack of basic utilities and affordable internet access are the chief challenges, and amount to informal barriers to information and communications technologies (ICTs). According to the National Department of Statistics (DANE), 98 percent of Colombian homes have electricity, 96 percent have sanitary service, and 36 percent have local phone connections.² In contrast to these figures, the 2013 Human Development Report states that only 11 percent have personal computers.³

According to the most recent statistics from the International Telecommunications Union (ITU) Colombia's internet penetration was measured at 51.7 percent in 2013, compared to 49 percent in 2012 and just 26 percent in 2008.⁴ Although broadband service is offered in Colombia, internet access is facilitated primarily by DSL and cable connections. According to a 2014 study from Akamai, Colombia's average internet speed is 3 Mbps—a figure that places it between Brazil and Argentina in terms of speed.⁵ Apart from household use, Colombians access the internet through cybercafes and other public access points, such as libraries, schools, and universities, none of which require identification for use.⁶ Local municipalities have also begun offering internet access in public squares and buildings.⁷ In 2010, 29 percent of those using the internet outside their homes did so through cybercafes, although the number had dropped to 20 percent by 2012, evidence of an increase in home and mobile connections. Approximately four percent of Colombians still utilize the web from public access points such as libraries and schools.⁸

According to DANE, approximately 38 percent of the population has mobile internet service of some kind, ranging from basic data plans to full access, although official numbers do not specify the proportions. Mobile internet is divided between subscription plans, with roughly 4 million users, and on-demand (or pay-as-you-go) plans, with almost 14 million users. High-speed mobile broadband penetration (3G and above), however, is measured at a rate of only 9 percent.⁹

As in many Latin American nations, there is significant geographical disparity in internet penetration rates in Colombia. While the capital, Bogotá, has a rate of 17 percent, the southern rural departments of Amazonas, Vaupés, Vichada, Guainía, and Guaviare have a penetration rate

2 DANE, *Quality of Life Survey: 2012*, <http://190.25.231.249/metadatos/index.php/catalog/313>, accessed February 24, 2014

3 UNDP, "Human Development Report 2013 - The Rise of the South: Human Progress in a Diverse World," p 199.

4 ITU, Time Series by Country—Individuals Using the Internet, 2000-2013, accessed June 15, 2014, <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>; Editor's note: It is worth noting that Colombia's Ministry of Information and Communications Technology (MinTIC) measures internet penetration at significantly lower rates, coming in at 9.5 percent in 2013. The reason behind such disparity in measurement between the ITU and MinTIC, however, remains unclear. For more on this issue, please see: ICT Ministry sector statics as compared to Colombia's most recent population census, <http://colombiatic.mintic.gov.co/estadisticas/stats.php?id=48>

5 Akamai, State of the Internet Visualization, 2014, <http://www.akamai.com/stateoftheinternet/soti-visualizations.html>, accessed July 15, 2014

6 DANE, *Basic Indicators on ICT in Colombia*, 2011, Press release, July 2012.

7 Alta Consejería Distrital de TIC, "Zona Wi-Fi en Bogota," [Wi-Fi in Bogota], accessed February 24, 2014, <http://tic.bogota.gov.co/index.php/k2-component-2/item/43-zonas-wifi-bogota>

8 ICT Ministry, Digital Consumers Survey, 2012, <http://www.slideshare.net/DiegoMolanoVega/encuesta-de-consumo-digital>, accessed February 24, 2014

9 ICT Ministry, *ICT Trimestral Bulletin: December 2013*, <http://colombiatic.mintic.gov.co/602/w3-article-4992.html>, accessed February 24, 2014

Colombia

of less than 1 percent combined.¹⁰ Only four to five percent of Colombia's population lives in this region; however, the land accounts for approximately 55 percent of the country's geographical area.¹¹ Although many indigenous languages are spoken here, there do not appear to be any 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 rather than Quechua or other local languages.

Digital literacy also presents a substantial obstacle to internet access in Colombia. A 2012 Digital Consumers Survey revealed that 28 percent of those not using the internet cite their lack of computer knowledge as the primary reason. Although this statistic is high, it is worth noting that the number was 48 percent in 2010, evidence that Colombians' comfort with computers is increasing.¹² Official programs such as Vive Digital (MinTIC) and Colombia Aprende (Education Ministry) have begun breaking down barriers to digital literacy. Vive Digital aims to drive technological progress in Colombia via the encouragement of internet use for job creation and poverty reduction. The project's goals are to expand infrastructure, services, internet applications, and the number of Colombian internet users.¹³ Colombia Aprende, the Education Ministry's platform for the promotion of literacy, also aims to expand the use of digital applications and devices, training some 16,000 teachers across the nation.¹⁴

Despite the success of efforts to increase literacy, high prices still pose a challenge to access. The ITU's scale of fixed-broadband prices lists Colombia in 78th place (first place is most affordable; last is most expensive) with an average price of US\$18.70 per month.¹⁵ For comparison, Colombia's minimum legal monthly wage is US\$320.¹⁶ The Private Council for Competitiveness, a national think tank devoted to exploring competition, recommends reducing internet connection fees by 50 percent in order to make access more affordable.¹⁷

Colombia's population is segmented into six socioeconomic strata. According to the ICT ministry (MinTIC), strata one and two, the lowest income brackets encompassing almost half the population, have an average fixed internet penetration rate of only eight percent.¹⁸ In order to remedy this situation, the government is including internet connections in 100,000 government-subsidized

10 ICT Ministry, *ICT Trimestral Bulletin: December 2013*, accessed February 24, 2014, <http://colombiatic.mintic.gov.co/602/w3-article-4992.html>

11 Based on DANE population projection for 2012 and the geographic area of the departments.

12 ICT Ministry, Digital Consumers Survey, 2012, <http://www.slideshare.net/DiegoMolanoVega/encuesta-de-consumo-digital>, accessed February 24, 2014

13 MinTIC.gov, Vive Digital, <http://www.mintic.gov.co/portal/vivedigital/612/w3-channel.html>, accessed July 14, 2014

14 Education Ministry, Colombia Aprende, <http://www.colombiaaprende.edu.co/html/home/1592/w3-channel.html>, accessed July 14, 2014

15 ITU, World Telecommunications Database, Statistics Page, <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>, accessed June 10, 2014

16 ITU, *Measuring the Information Society 2013*, p. 82, http://www.itu.int/en/ITU-D/Statistics/Documents/publications/mis2013/MIS2013_without_Annex_4.pdf

17 Private Council for Competitiveness, *National Competitiveness Report, 2013-2014*, p 129, <http://www.compite.com.co/site/informe-nacional-de-competitividad-2013-2014/>, accessed February 24, 2014

18 ICT Ministry, *ICT Trimestral Bulletin: December 2013*, accessed February 24, 2014, <http://colombiatic.mintic.gov.co/602/w3-article-4992.html>

houses for low income families.¹⁹ Although this is a positive step, it remains to be seen whether these families will be able to afford monthly service fees, which do not appear to be included with the houses.

While the aforementioned obstacles are significant, there are no legal provisions imposing 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 does not have centralized telecommunications infrastructure, nor has it established blocking protocols for instant, person-to-person communication, or tools to filter or block social media applications or content.

Colombia is home to 58 ISPs, and while 89 percent of the market is concentrated in the hands of four companies, there are nonetheless multiple market options from which to choose.²¹ Market entry is straightforward, and it is possible for anyone to establish an ISP by following the general requirements of the ICT Law (No.1341), which establishes free competition and “technological neutrality,” and prioritizes efficient use of infrastructure and access to the use of ICTs.²² 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 (MinTIC) 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.²³ 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. ISPs must also apply for licenses to utilize the spectrum, though there have been no complaints of difficulties or bias with this process.

With six mobile providers, but only two companies—Claro and Movistar—controlling two-thirds of the mobile internet market, the mobile landscape is characterized by greater concentration than the ISP market. This situation mirrors the mobile phone sector—although there are five providers, 82 percent of the market is in the hands of the two aforementioned companies.²⁴ In 2009, the government declared the dominant position of Claro, subjecting it to *ex ante* (prior) regulation on such issues as pricing and service bundling. The structure of the company, however, remains unchanged.²⁵ As with ISPs, mobile service providers must also contribute 0.01 percent of their annual income to Fontic.

19 Public statement of President Juan Manuel Santos, http://wsp.presidencia.gov.co/Prensa/2013/Septiembre/Paginas/20130927_03-viviendas-gratis-tendran-acceso-internet-ninos-cuenten-igualdad-de-oportunidades-Presidente-Santos.aspx, accessed February 24, 2014

20 Law 1341 of 2009, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=36913>, accessed February 24, 2014

21 ICT Ministry, *ICT Trimestral Bulletin: December 2013*, accessed February 24, 2014, <http://colombiatic.mintic.gov.co/602/w3-article-4992.html>

22 Law 1341, accessed February 24, 2014, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=36913>

23 Decree 4948 (2009), accessed February 24, 2014, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=38478#0>

24 ICT Ministry, *ICT Trimestral Bulletin: December 2013*, accessed February 24, 2014, <http://colombiatic.mintic.gov.co/602/w3-article-4992.html>

25 Cortés, C. “Mobile Internet in Colombia - Challenges and Opportunities for Civil Society: The 2013 Spectrum Auction,” Open Society Foundation.

Colombia's ICT sector is subject to numerous regulatory bodies, all of which are part of the executive branch of government to varying degrees. The three main regulatory bodies—each of which has little independence—are the ICT ministry (MinTIC), 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 leads the oversight function via MinTIC. The CRC, which is responsible for ensuring efficient service and promoting competition in the telecommunications sector, is then chaired by the minister and formed by three commissioners who are also appointed by the president. The ICT minister then designates the head of the NSA. 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,²⁶ to date, there are no clear examples of executive bias in rulings.

Nonetheless, the Organization for Economic Co-Operation and Development (OECD) recently issued a set of recommendations for improving the autonomy of the various bodies involved in ICT regulation. The OECD's two principal suggestions were that the CRC develop more independence from Colombia's central government (the body can make recommendations but cannot currently enforce them), and that MinTIC refrain from regulating the sector, and instead, focus solely on promoting the development and use of ICTs.²⁷

In addition to regulating ISPs, MinTIC 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. In March 2013, MinTIC 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.²⁹ 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.³⁰

Limits on Content

Blocking or filtering of content—other than child pornography—is not common in Colombia. Despite the fact that the country has suffered from a violent conflict between the government, the FARC, and other paramilitary and guerilla groups for over 50 years, there are, perhaps surprisingly, no restrictions on publishing materials about the ongoing conflict online.

While deletion of online content is not common in Colombia, periodic court cases have resulted in judicial orders requiring the removal of specific information found to violate fundamental rights.

26 Cortés, C. "Mobile Internet in Colombia - Challenges and Opportunities for Civil Society: The 2013 Spectrum Auction," Open Society Foundation.

27 OECD, Review of Telecommunications Policy and Regulation in Colombia, April 2014, <http://www.oecd.org/internet/colombia-telecom-review.htm>.

28 Law 1341 of 2009, Article 11.

29 Resolution 597 of 2014, ICT Ministry.

30 Dominio, "Historia del Dominio Co," [History of the Domain .Co], Cointernet, <http://www.cointernet.com.co/administrador/historia-del-dominio-co> and <http://www.cointernet.com.co/dominios/uso-restringido>, accessed February 24, 2014,

Recent cases pertaining to content disputes have also determined that intermediaries are not liable for posting links to content in their search results.³¹ The most important recent ruling concerned the January 2013 case of *Guillermo Martínez v. Google* and the daily newspaper *El Tiempo*. In 1997, *El Tiempo* reported that Mr. Martínez was part of a mafia group. In 2003, charges against Martínez were dropped, but eight years later, when Martínez searched for his name on Google, the original news still appeared.

In response to Martínez's suit, the Constitutional Court ruled that Google was not responsible for the content of the journalistic pieces that were linked to the plaintiff's name. The Court's rationale was that although "Google offers a search service...[it] is not the party editing or publishing such information and [as such] it cannot assume responsibility for the truthfulness or impartiality of the content [to which it links]."³² While such a ruling is not a substitute for a law governing online content and conduct, it is an important precedent for future cases concerning intermediary liability. The ruling suggests that the responsibility of similar services, such as access providers and content hosts, may be limited and does not extend to the opinions expressed by third parties.

There are no significant records of blocking or filtering of political or social content in Colombia. There are, however, legal rulings and proposed laws that could have such an effect, such as data protection and child pornography regulations containing overly broad language. In one August 2013 case pertaining to data protection and privacy, the Superintendency of Industry and Commerce ordered MinTIC to block the websites *Cuidomifirma* and *Udfirmolarevocatoria* because the sites disclosed the personal information of those people backing a motion for the removal of the mayor of Bogotá, Gustavo Petro. MinTIC denied the request, citing a lack of legal and technical capabilities.³³ The administrators of the websites eventually removed the pages in question, reportedly for public relations reasons, thus precluding further debate in this case.

Although it is an important protection mechanism, child pornography regulation in Colombia is vague and has, at times, exerted an overly broad effect, negatively impacting other types of content. Decree 1524 (2002) requires ISPs to undertake technical measures to prevent the online availability of child pornography.³⁴ Such measures—which include blocking and filtering—can easily be triggered by means of a complaint or an official request, and are executed promptly by ISPs. Under this rule, legal sites such as Cleverbot and Ask.fm have accidentally been blocked at times. Such overreach poses a problem not only in terms of the accidental restraint of legal content, but also in terms of transparency, as there is no appeals process for accidental blocks.

In October 2013, the Foundation for Press Freedom (FLIP) requested that MinTIC explain its process and submit the list of websites blocked due to child pornography complaints. The Ministry replied that such information was classified and that the mechanism was in the hands of the police, closing

31 Constitutional Court judgments: T-040 (2013), <http://www.corteconstitucional.gov.co/relatoria/2013/t-040-13.htm>, accessed February 25, 2014; T-453 (2013), <http://www.corteconstitucional.gov.co/relatoria/2013/T-453-13.htm>, accessed February 25, 2014; T-634 (2013), <http://www.corteconstitucional.gov.co/relatoria/2013/t-634-13.htm>, accessed February 25, 2014

32 T-040 (2013), <http://www.corteconstitucional.gov.co/relatoria/2013/t-040-13.htm>, accessed February 25, 2014

33 Law 1581 (2012), Article 21C, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=49981>, accessed February 25, 2014; See also: Communication 7452, ICT Ministry to Superintendence of Industry and Commerce; and Communication 5245, ICT Ministry to the Foundation for Press Freedom.

34 Law 679, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=18309>, accessed February 24, 2014; and Decree 1524 (2002), <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5551>, accessed February 24, 2014

any avenue for civil oversight or judicial control.³⁵ Advocates of internet freedom have suggested that a general constitutional remedy appeal (known as a *tutela*) may be the best way to challenge the standing of opaque criteria and a nonexistent appeals process for censored content.

Although Colombia has regulations that prohibit filtering, the wording is vague and could lead to arbitrary practices. Resolution 3502 (2011) provides that ISPs can make segmentation plans “according to the needs of the segment or the user.” There are no known cases of systematic filtering of text messages or mobile phone content, but mobile service providers offer several kinds of data plans, many of them obscure in terms of the kind of content and applications that can be used and the network management being applied.³⁶ Fixed internet service is subject to the same transparency and regulation issues.

Although difficult to measure, self-censorship is a notable problem for journalists in the realm of traditional media—and likely spills over into online media as well.³⁷ According to a national survey of journalists conducted in 2013 by Proyecto Antonio Nariño (PAN), an alliance of organizations focused on freedom of expression and access to information, 47 percent of respondents avoided publishing information due to fear of aggression; 35 percent feared losing their jobs or having their media outlets closed; and 25 percent feared pressure from state actors. The survey also revealed that 57 percent of respondents believe that local government pressures the media with allocation of official advertising. This practice is also carried out by the private sector. Of those who participated in the survey, 60 percent believe that media outlets in their region modify their editorial positions in order to gain political favor.³⁸

Given that financing is often extremely difficult, official advertisement can make a significant difference in an outlet’s long-term existence, a reality that is especially true in provinces and rural settings. According to the aforementioned Javeriana Study, 23 out of 61 online media outlets received advertising revenue. Among them, 14 included official (government) advertisement.³⁹ Although objective reporting may be compromised if government funds are essential to the sustainability of a business, the situation in the online environment is much less pronounced than that of traditional media. In the traditional setting, official advertisement facilitates the existence of many outlets, and favorable connections with government officials can be the difference between keeping a media outlet open or watching it close. This is especially true in the Colombian provinces.⁴⁰

While this landscape also applies to online journals, there are no detailed studies regarding the practices of Colombian journalists on the internet, which is by all means a recent phenomenon in Colombia. A 2012 Digital Media Study published by Javeriana University indicates that there

35 Communication 5245, ICT Ministry to Foundation for Press Freedom; See also: Decree 1524 (2002), <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5551>, accessed February 25, 2014

36 Law 1450 (2010), Article 56, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=43101>, accessed February 25, 2014; and Resolution 3502 (2011), Article 9, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45061>, accessed February 25, 2014

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

38 Proyecto Antonio Nariño, Second National Survey on Freedom of Expression and Access to Information, p. 32-35, 38.

39 Proyecto Antonio Nariño, Second National Survey on Freedom of Expression and Access to Information, p. 32-35, 38.

40 Foundation for Press Freedom, “Indirect Censorship Project,” <http://www.censuraindirecta.org/web/articulos/publicidad-oficial/reforma-legal/colombia>, accessed February 26, 2014,

are 489 online media outlets, most of which are run by individuals.⁴¹ Keeping these numbers and the national survey in mind, it would be safe to say that online sources of information can be manipulated by the government or a particular partisan interest in much the same way offline sources are; however, such control does not appear to be systematic. Authorities do not issue official guidelines or directives on coverage to online media outlets or blogs, nor does the government employ or encourage individuals to defend official actions in online forums.

Many professional media enterprises are undertaken in Colombia's largest cities and, in general, the government does not interfere with operations. A wide range of sources of information with different viewpoints is available online. Politics is the main subject of online coverage, followed by regional information, culture, and international news. Some 62 online outlets exist for commentary, with 34 devoted to hyper-local coverage, and an additional 202 publishing municipal information.⁴² As the Colombian state does not appear to be censoring online media, none of these efforts requires the employment of proxy servers or other methods to circumvent state censorship. 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 15 websites in Colombia.⁴³

The internet is also becoming an important tool for social movements in Colombia. A study from the NGO Somos Defensores (We Are Defenders) indicates that during the first decade of the 21st century, social movements used the internet primarily to display official information, but within the last five years, as the popularity of the internet has grown, these movements have embraced the online environment to campaign and investigate issues of interest to their members.⁴⁴ The most important example of online mobilization in Colombia occurred in 2008, with a rally against the FARC guerrillas known as "One Million Voices Against FARC – I am Colombia." Oscar Morales, then a civil engineer, created a Facebook group to invite people to join the movement. Traditional media and government agencies quickly picked up the cause, which gave the rally significant exposure. According to media estimates, 12 million people in 200 cities worldwide took to the streets to call for a peaceful end to the conflict. In 2010, a similar rally was organized online, although with less impact.⁴⁵ Recent mobilizations organized online, such as peasants' protests in the countryside and demonstrations against education and health bills, have not yet been assessed in terms of real-world influence.

41 Rey, G. and J. Novoa, *Digital Media in Colombia*, Centro Ático, Facultad de Comunicación Universidad Javeriana, Consejo de Redacción, p.7-8; 29, 32, http://consejoderedaccion.org/documentos/emprendimiento/estudio_medios_digitales_2012.pdf, accessed February 26, 2014

42 Rey, G. and J. Novoa, *Digital Media in Colombia*, Centro Ático, Facultad de Comunicación Universidad Javeriana, Consejo de Redacción, p.7-8; 29, 32, http://consejoderedaccion.org/documentos/emprendimiento/estudio_medios_digitales_2012.pdf, accessed February 26, 2014

43 Alexa, Top Sites in Colombia, <http://www.alexa.com/topsites/countries/CO>, accessed June 12, 2014

44 Somos Defensores, 'Revelando' Magazine, No. 4., p 87, http://issuu.com/gulcuec/docs/revelando_no_4_web/1?e=2369650/4403378, accessed February 25, 2014,

45 El Tiempo, "Marcha Contra Las Farc, Mayor Movilización en la Historia del País" [Rally Against FARC, Biggest Mobilization in the Country's History], February 4, 2009, <http://www.eltiempo.com/archivo/documento/CMS-3945957>; See also: El Espectador, "Yo Organicé la Primera Marcha Contra el Secuestro" [I Organized the First Rally Against Kidnapping], December 27, 2008, <http://www.elespectador.com/articulo102432-yo-organice-primera-marcha-contra-el-secuestro>

Violations of User Rights

Over the past year, multiple revelations came to light regarding the intelligence agency's surveillance of ICT communications, sparking broader conversations about privacy and security concerns in Colombia. Additionally, in February 2014, the Supreme Court issued its first libel conviction for a comment posted by an anonymous user on a newspaper's website.

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 independenc[e]" 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.⁴⁶ The Constitutional Court confirmed the application of such protections to the internet in a 2012 ruling.⁴⁷ 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)."⁴⁸

While there are no specific penalties in place for libel, defamation, irresponsible journalism, or rumormongering online, cases pertaining to online defamation have occasionally been brought before the court with varying outcomes. In one 2012 case, the Supreme Court acquitted a journalist for insult and slander despite the fact that the complainant was a well-known and powerful politician.⁴⁹ Following an appeal from the politician, in March 2014 the Constitutional Court reopened the case; the complainant lost the appeal.⁵⁰

Although this case seemed to have raised the defamation threshold against journalists, establishing further protections for journalistic freedom, one notable February 2014 ruling has called into question the range of legally acceptable online speech and privacy protections. In order to better understand the ruling, it is important to note that Colombia has no restrictions on online anonymity. In February 2014, private citizen Gonzalo Lopez was convicted of libel for insulting a public officer in the online edition of newspaper *El Pais de Cali*. Lopez, who in 2008 used an anonymous profile to

46 Several decisions of the Constitutional Court state that Freedom of Expression is a universal right. See, for example, Ruling C 442 (2011), <http://www.corteconstitucional.gov.co/relatoria/2011/C-442-11.htm>, accessed February 26, 2014,

47 Constitutional Court, Ruling T-550 (2012), <http://www.corteconstitucional.gov.co/relatoria/2012/t-550-12.htm>, accessed February 26, 2014

48 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*, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>, accessed February 28, 2014

49 FLIP Annual Report 2012, FLIP.org, <http://flip.org.co/content/de-las-balas-los-expedientes-informe-sobre-el-estado-de-la-libertad-de-prensa-en-colombia-0>, accessed February 26, 2014; See also: Carlos Cortés, "Ganar es Perder un Poco" [Winning is Losing a Bit], <http://carloscortes.co/blog/2013/9/2/ganar-es-perder-un-poco>, accessed February 26, 2014

50 Constitutional Court, decision of March 17 of 2014, Justice Luis Guillermo Guerrero; see also: FLIP Files Intervention in El Espectador Case, <http://flip.org.co/content/la-flip-presenta-intervenci%C3%B3n-ante-corte-constitucional-en-caso-de-tutela-contra-el-diario>, accessed February 26, 2014; See also: El Espectador, "Contralora Pierde Tutela Contra Bejarano" [Comptroller Loses 'Tutela' Against Bejarano], February 9, 2014, <http://www.elespectador.com/noticias/judicial/contralora-pierde-tutela-contra-bejarano-articulo-473900>; and Constitutional Court, Ruling T-904, 2013. For more on Colombia's Criminal Code, see: <http://legismediosinstel.wordpress.com/leyes/delitos-de-injuria-y-calumnia/>, accessed February 26, 2014

Colombia

accuse Gloria Escalante, head of public utility company Emcali, of being both a “rat” and a “thief” in the comments section of the newspaper’s website, was the first Colombian to be convicted of libel for content posted online. Lopez—who was allegedly identified as the author of the anonymous comment by his IP address—was sentenced to 18 months and 20 days in prison and was issued a fine of US\$5,200. He has announced that he will appeal the conviction.⁵¹

As evidenced by the conflicting rulings in the cases above, Colombia has yet to enact specific regulation for the online environment other than legislation regarding child pornography and cybercrimes such as hacking. Although there are no specific penalties for online libel, if Colombia’s criminal code begins to be applied to the internet, it could negatively impact freedom of expression online. Of potential concern for intermediaries is a provision regarding online publication or reproduction of insults against others, which could result in charges of indirect insult and slander.⁵² To date, however, there have been no such cases, although the climate surrounding online freedom of expression rulings appears to be shifting.

Prosecution, imprisonment, or detention for ICT activities is quite rare in Colombia. While isolated cases have occasionally been exposed by organizations, there are no records of writers, commentators, or bloggers being subject to imprisonment or fines as a result of posting material on the internet.⁵³ Neither are citizens subject to imprisonment or civil liability for posting, accessing, or downloading material from the internet or for transmitting information via email or text messages.

Colombia has no restrictions against anonymous communication or encryption, and there are no registration requirements for bloggers, cybercafe owners, or users. There are some registration requirements for cell phones—sellers must be licensed with the government and owners are expected to register their phones—however, it is largely possible to have a mobile phone anonymously.⁵⁴

Apart from the occasional public bidding or contract that sheds some light on the matter, getting an accurate picture of Colombia’s surveillance activities is very difficult. The issue is aggravated by the fact that information related to intelligence activities is classified under Law 1621 (2012). Further complicating the matter, there is no independent body to supervise such activities or to hold those in charge accountable. Congress receives a yearly intelligence report, but as there is no independent oversight, partial or biased information can be submitted.⁵⁵

Episodes of illegal surveillance (known in Colombia as “Las Chuzadas”) carried out by intelligence agencies, the army, or the police, constitute an ongoing scandal in Colombia. In 2009, the magazine *Semana* exposed a secret wiretapping operation carried out by a governmental agency known as the

51 El Comercio, “Colombia: Primera Condena por Injuria en un Foro de Internet,” [Colombia: First Conviction for Libel on Internet Forum], July 21, 2014, <http://elcomercio.pe/mundo/latinoamerica/colombia-primera-condena-injuria-foro-internet-noticia-1744624>.

52 For more on Colombia’s Criminal Code as it may pertain to the online environment, see: <http://legismediosinstel.wordpress.com/leyes/delitos-de-injuria-y-calumnia/>.

53 The only documented case took place in 2010, well before the timeframe of this report. See, La Silla Vacía, “Crónica del ‘Falso Positivo’ de Facebook en Nueve Episodios,” <http://lasillavacia.com/historia/9091>, accessed February 26, 2014,

54 Decree 1630 (2011), Articles 6 to 9, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=42907>, accessed February 26, 2014

55 Law 906 (2004), Articles 235 and 237, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=14787>, accessed February 26, 2014

Administrative Security Department (DAS) that intercepted the private communications of journalists, politicians, and NGOs. Although DAS was later disbanded, many of the public officials who staffed the project were transferred to the new federal security agency that replaced DAS—a policy that has engendered concern over the scope of the new agency's activities.⁵⁶

In June 2013, reports surfaced that the government was establishing a centralized platform for monitoring and analysis, known as PUMA. The government reportedly invested upward of US\$100 million in the platform, which is to become operational by the end of 2014 as a “fundamental tool for criminal investigation to ensure public safety” and, according to official reports, is not to be used as a general intelligence-gathering apparatus. PUMA is intended to provide the government with the capacity to intercept communications in real-time, extending to social media, email, telephone networks, and internet data traffic.⁵⁷ Following reports about the government's new surveillance platform, Senator Juan Lozano called on the government for increased transparency and regulation surrounding the country's surveillance programs.⁵⁸ To date, no information on PUMA's processes or oversight has been released. Because the environment is so opaque, it is difficult to assess the scope of surveillance carried out under PUMA; however, the lack of transparency and oversight raise serious privacy concerns.

In February 2014, *Semana* exposed another round of wiretappings, this one an illegal operation carried out by the army on government representatives taking part in peace talks with the FARC guerrillas in Havana, Cuba.⁵⁹ According to the media, the military set up a fake internet cafe under the code name Andrómeda, which it used to illegally target government and guerilla representatives. In addition to conducting illegal surveillance, hackers recruited by the army also forged multiple emails between representatives on both sides of the peace talks.⁶⁰

The scandal has since escalated. In May, one of the alleged hackers, Andrés Fernando Sepúlveda, was arrested, but was later shown to have been working for the presidential campaign of Oscar Ivan Zuluaga, a frontrunner against President Juan Manuel Santos, rather than the army.⁶¹ Given that both surveillance and the peace talks were expected to be contentious issues during the May 2014 presidential election—in which President Juan Manuel Santos won re-election—the involvement of a campaign aid hints at an underlying political market for intelligence information.

56 Agencia de Noticia UN, “Inteligencia y Contrainteligencia Necesitan Reglamentación Clara” [Intelligence and Counter-Intelligence Require a Clear Regulation], July 3, 2013, <http://www.agenciadenoticias.unal.edu.co/ndetalle/articulo/inteligencia-y-contrainteligencia-necesitan-reglamentacion-clara.html>

57 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 22, 2013, http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12890198.html

58 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 22, 2013, http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-12890198.html

59 *Semana*, “Las Cuza-DAS,” [No English Translation – Refers to Surveillance Scandal], December 19, 2009, <http://www.semana.com/nacion/articulo/las-chuza-das/111197-3>; See also: *Semana*, “Alguien Espio a los Negociadores de La Habana” [Who Spied on the Negotiators in Havana?] February 3, 2014, <http://www.semana.com/nacion/articulo/alguien-espio-los-negociadores-de-la-habana/376076-3>

60 Helen Murphy, “Colombia Probes Reported Military Spying of Peace Negotiations,” *Reuters*, February 4, 2014, <http://www.reuters.com/article/2014/02/04/us-colombia-spying-idUSBREA1315W20140204>

61 *El Tiempo*, “‘Hacker’ del Proceso de Paz Dice que Compró Datos de Andrómeda,” [Peace Process Hacker Says He Bought Information From Andrómeda], May 15, 2014, <http://www.eltiempo.com/politica/justicia/hacker-andres-sepulveda-dice-que-compro-datos-de-andromeda/13990081>

In recent years, NGOs have been increasingly vocal about their concern over Colombia's surveillance policies. In April 2014, Fundacion Karisma and other Colombian NGOs authored a letter to Colombian President Juan Manuel Santos asking that a commission including NGO representatives be convened to assess and reform the national surveillance apparatus.⁶² The president appointed an official to meet with the organizations, and the ICT ministry invited NGO representatives to join the official commission on cybersecurity issues. However, this commission, which is formed by representatives of all public forces and the main governmental agencies, avoided discussions of any intelligence issues related to the scandal.⁶³

While intercepting personal communications in Colombia does require a judicial order, 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.⁶⁴ Retention and treatment of user data by authorities other than the intelligence agencies has not yet been regulated in Colombia. Monitoring of the radio frequencies used for communication can also be conducted without a judicial order.⁶⁵ An additional threat to user privacy comes in the form of Article 2 of Decree 1704 (2012), which requires that ISPs have backdoor access for judicial purposes—which can be used under the attorney general's authorization.⁶⁶ A service provider that does not comply with these obligations will face fines and could lose its license to operate.⁶⁷

Corruption, longstanding-armed conflict and associated surveillance, and the war against drugs have become the greatest threats facing freedom of expression in Colombia—regardless of whether that expression occurs in print or online. According to the NGO FLIP, 142 journalists have been murdered since 1977; 64 of these cases have already reached their statute of limitations, meaning that the victims' families will never see justice. Only 19 of those who committed murder have been convicted, and no masterminds have been brought to justice.⁶⁸ Impunity—a pervasive problem in Colombia's judicial system—is ranked by PAN's *Freedom of Expression and Access to Information Index* as one of the gravest threats to overall expression.⁶⁹

Due to the country's high level of violence, it is difficult to isolate deaths that have resulted specifically from online activity. One recent murder, however, appears to have been connected to online activism. In September 2013, lawyer Edison Molina was murdered in Puerto Berrío, Antioquia.⁷⁰ Prior to his death, Molina received threats and verbal attacks online in response to his activism on social networks and radio on behalf of public interest issues. Although there have been

62 Katitza Rodriguez, "With New Unchecked Surveillance Revelations, Colombian Government Ignores Both History and Human Rights," Electronic Frontier Foundation, April 3, 2014, <https://www.eff.org/deeplinks/2014/04/new-unchecked-surveillance-revelations-colombian-government-ignores-both-history>

63 Personal testimony anonymous digital security and internet freedom expert in Colombia

64 Law 1621 (2013), Article 44, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=52706>, accessed February 26, 2014

65 Law 1621 (2013), Article 17.

66 Decree 1704 (2012), <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=48863>, accessed February 25, 2014

67 Decree 1704, Article 7.

68 FLIP Annual Report, 2013, FLIP.org, <http://flip.org.co/content/protestas-sin-garant%C3%ADas-para-cubrir-informe-sobre-la-situaci%C3%B3n-de-la-prensa-en-colombia-2013>, accessed February 26, 2014,

69 Proyecto Antonio Nariño, Second National Survey on Freedom of Expression and Access to Information, p. 32-35, 38.

70 CPJ, Journalists Killed – Colombia: Edison Alberto Molina, accessed July 10, 2014, <http://cpj.org/killed/2013/edison-alberto-molina.php>

no significant advances in the judicial investigation, FLIP has suggested that Molina's online activity may have led to his murder.⁷¹

It is worth noting that although some may be targeted for the online publication of critical commentary on the longstanding conflict or other sensitive issues, there is no broader trend of retaliation specifically for online content in Colombia. This is fairly rare in a climate plagued by violence and impunity, and while such threats may eventually follow online journalists, to date, they have not faced the same level of danger as have print journalists.

In 2009, the Colombian government passed new standards for user privacy and data protection with the adoption of Law 1273, which criminalizes various types of cybercrime, including hacking, illegal interception and use of data, and the distribution and use of malware. Penalties range from 36 to 48 months imprisonment, along with fines.⁷² After hinting at the growing threat of cyberattacks, in 2011, the government announced the creation of a national cybersecurity sector. In early 2014, following the army's Andromeda hacking scandal, 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.⁷³ Colombia then partnered with the Organization of American States (OAS) to develop two bodies—the Colombian Cyber Emergency Response Group (coICERT) and the Cyber Police Center (CCP)—in order to ensure the country's cybersecurity.⁷⁴

Although the president recently announced that Colombia is vulnerable to cyberattacks, there are few known cases of technical violence.⁷⁵ While there have been periodic reports of weak cybersecurity protocols in Colombia, some have suggested that the president's recent focus on cyberattacks and hacking may serve as a means to divert attention and blame from the latest government surveillance scandal rather than as an accurate portrayal of the threat level. While phishing—the stealing of sensitive personal data—appears to be a significant issue in Colombia,⁷⁶ 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.

71 Foundation for Press Freedom, "Protestas, Sin Garantías para Cubrir," [Protests, without Guarantee of Coverage] Annual Report on Freedom of the Press in Colombia, 2013, http://flip.org.co/sites/default/files/archivos_publicacion/Informe%20Anual%202013_0.pdf, accessed April 21, 2014

72 Rachel Glickhouse, Explorer: Fighting Cybercrime in Latin America, Americas Society/Council of the Americas Online, November 14, 2013, <http://www.as-coa.org/articles/explainer-fighting-cybercrime-latin-america>

73 El Espectador, "En Ciberseguridad, 'Estamos en Panales' y Expuestos a Todo Tipo de Ataques: Santos," [In Cybersecurity, 'We are in Diapers' and Exposed to All Kinds of Attacks," February 8, 2014, <http://www.elespectador.com/noticias/politica/ciberseguridad-estamos-panales-y-expuestos-todo-tipo-de-articulo-473682>

74 Phillip Acuna, "Colombia to Receive Cyber-Security Assistance from International Experts," Colombia Reports Online, March 31, 2014, <http://colombiareports.co/colombia-receive-cyber-security-assistance-international-experts/>

75 Blu Radio, "Santos Anuncia Creación de Comisión para Evaluar Riesgo de un Ciber-Ataque," [Santos Announces Creation of a Committee to Assess Risks of a Cyberattack], February 7, 2014, <http://www.bluradio.com/56008/santos-anuncia-creacion-de-comision-para-evaluar-riesgos-de-un-ciberataque>

76 Mimi Yagoub, "Cyber Crime in Colombia: An Underestimated Threat?" *Insight Crime Online*, July 11, 2014, <http://www.insightcrime.org/news-analysis/cyber-crime-colombia-underestimated-threat>