

# SOUTH AFRICA

	2009	2011
<b>INTERNET FREEDOM STATUS</b>	<b>Free</b>	<b>Free</b>
<b>Obstacles to Access</b>	7	7
<b>Limits on Content</b>	8	9
<b>Violations of User Rights</b>	9	10
<b>Total</b>	<b>24</b>	<b>26</b>

**POPULATION:** 49.9 million  
**INTERNET PENETRATION:** 9 percent  
**WEB 2.0 APPLICATIONS BLOCKED:** No  
**SUBSTANTIAL POLITICAL CENSORSHIP:** No  
**BLOGGERS/ONLINE USERS ARRESTED:** Yes  
**PRESS FREEDOM STATUS:** Partly Free

## INTRODUCTION

Digital media freedom is generally respected in South Africa. Political content is not censored, and bloggers are not prosecuted for online activities. Access to the internet has improved; in fact, more people have an option to access the internet from their mobile telephones than from computers. Nevertheless, the majority of the population is unable to benefit from internet access due to high costs and the fact that most content is in English, an obstacle for those who speak only local languages. There are increasing concerns about laws and legal cases, as well as disciplinary cases in the workplace that may negatively affect digital media freedom, although the courts have been reluctant to infringe on this freedom.

The first internet connection in South Africa was established in 1988, when an email link was set up by academics using the FidoNet mailing system, followed by a Unix-to-Unix Copy (UUCP) gateway. The early days of networking were driven by the Foundation for Research Development and a loose grouping of individuals in various universities.<sup>1</sup> The internet diffused rapidly among the country's technologically advanced elite, especially once it was commercialized from 1993 onwards. By the mid 1990's, South Africa ranked higher in internet usage than other countries at comparable levels of development. Today, South Africa maintains the greatest level of internet penetration in the region, although from a global perspective, the overall level of access is quite modest.

<sup>1</sup> Lawrie, M. 'The history of the internet in South Africa: how it began', <http://www.aug.co.za/PPTFiles/The%20History%20of%20the%20Internet%20in%20South%20Africa.pdf>, accessed 17/08/2010.

## OBSTACLES TO ACCESS

Access to the internet has steadily improved in South Africa despite the obstacles that remain, and options for access are proliferating rapidly. It is estimated that about five million people, or 10 percent of the population, have access, and the penetration rate accelerated in 2008 and 2009. This growth has been attributed to the completion in mid-2009 of the new Seacom undersea cable, the granting of Electronic Communications Network Service licenses to more than 400 organizations since a landmark August 2008 court ruling that value-added network service (VANS) providers can self-provide facilities, and the continued uptake of broadband services by small and medium-sized businesses.<sup>2</sup>

Prices remain a significant barrier to internet access, especially for users of prepaid services. The cost of dial up subscription varies from 40 to 180 South African rands (approx. US\$5 to US\$24), whereas ADSL subscription is between 50 and 200 rands (approx. US\$7 to US\$27). Those with access, especially broadband access, are concentrated in urban areas. However, after years of stifled competition, the market is slowly opening up, and it is expected that costs will drop even further thanks to the arrival of the Seacom cable and the completion of the East African Submarine System (Eassy) cable, as well as the increasing use of updated mobile-telephone technology and the laying of new fiber-optic cable within and between cities.<sup>3</sup> In fact, although the overall figures remain very low,<sup>4</sup> the number of South Africans accessing the internet through a broadband connection has grown by more than 50 percent since March 2009,<sup>5</sup> and wireless broadband access has grown by 88 percent in the same period.<sup>6</sup> Telkom SA, a partly state-owned company, retains a near monopoly in providing broadband access via ADSL, though the recent licensing of a second national operator, Neotel, should increase competition. In March 2010, the internet-service provider (ISP) M-Web launched an uncapped ADSL offering, unleashing a price war in the ADSL market.<sup>7</sup>

<sup>2</sup> World Wide Worx, "SA Internet Growth Accelerates," news release, January 14, 2010, <http://www.worldwideworx.com/archives/234>, accessed June 4, 2010.

<sup>3</sup> Candice Jones, "More Bandwidth Coming," ITWeb, March 30, 2010, [http://www.itweb.co.za/index.php?option=com\\_content&view=article&id=31713:more-bandwidth-incoming&catid=147&Itemid=68](http://www.itweb.co.za/index.php?option=com_content&view=article&id=31713:more-bandwidth-incoming&catid=147&Itemid=68), accessed June 4, 2010.

<sup>4</sup> South Africa currently has a broadband penetration of 4 connections per 100 inhabitants. For more information, see "SA's broadband penetration: the way forward", MyBroadband, October 13, 2010, <http://mybroadband.co.za/news/broadband/15804-SAs-broadband-penetration-The-way-forward.html>.

<sup>5</sup> World Wide Worx, "Broadband Speeding Ahead," news release, March 17, 2010, <http://www.worldwideworx.com/archives/243>, accessed June 4, 2010.

<sup>6</sup> Ibid.

<sup>7</sup> Candice Jones, "Another Salvo in Broadband War," ITWeb, May 5, 2010, [http://www.itweb.co.za/index.php?option=com\\_content&view=article&id=32837:another-salvo-in-broadband-war&catid=147&Itemid=68](http://www.itweb.co.za/index.php?option=com_content&view=article&id=32837:another-salvo-in-broadband-war&catid=147&Itemid=68), accessed June 6, 2010.

There are five mobile-phone companies in South Africa—Vodacom, MTN, Cell-C, Virgin Mobile and 8ta—all of which are privately owned, save for 8ta, which is owned by Telkom. The state previously owned a stake in Vodacom through Telkom, but the shares have been disposed of. Privately owned ISPs number in the hundreds. The State Information Technology Agency provides internet services to the government.

Broadband access is also available via mobile phones. South Africa is in an unusual position in that some mobile broadband packages are cheaper than the fixed-line alternative. However, less than half of urban mobile users who have internet-capable phones actually use the internet; most who do use internet capabilities focus on specific applications like the Mxit instant-messaging service and the social networking facility Facebook Mobile rather than regular browsing.<sup>8</sup> The total number of mobile-phone subscribers is estimated to be 32.498 million, or 71.3 percent of the adult population.<sup>9</sup>

The government has not imposed restrictions on internet access, and there have been no reports that the authorities use control over internet infrastructure to limit connectivity. Individuals and groups can engage in peaceful expression of views via the internet using e-mail, instant messaging, chat rooms, and blogs. The video-sharing site YouTube, Facebook, and international blog-hosting services are freely available.

The autonomy of the Independent Communications Authority of South Africa (ICASA) is protected by the South African constitution, although several incidents involving ministerial policy directives sent to the regulator have called the extent of its independence into question.<sup>10</sup> It has been accused of favoring the dominant companies, including Telkom. Access providers and other internet-related groups are self-organized and quite active in lobbying the government for better legislation and regulations, including measures that would upgrade the independence and capacity of ICASA.

## LIMITS ON CONTENT

While internet content remains largely free of government censorship, a recent amendment to the Films and Publications Act of 1996 has raised fears that controversial content could be restricted. The amendment, which was passed into law in 2009, requires that every print and online publication that is not a recognized newspaper be submitted for classification to the government-controlled Film and Publications Board if it includes depictions of “sexual conduct which violates or shows disrespect for the right to dignity of any person, degrades a

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<sup>8</sup> World Wide Worx, “Mobile Internet Booms in SA,” news release, May 27, 2010, <http://www.worldwideworx.com/archives/250>, accessed June 4, 2010.

<sup>9</sup> South African Advertising Research Foundation, “AMPS Trended Media Data: Cellphone Trends,” <http://www.saarf.co.za/>, accessed June 4, 2010.

<sup>10</sup> Open Society Initiative for Southern Africa, *South Africa*, Public Broadcasting in Africa Series (Johannesburg: Open Society Initiative for Southern Africa, 2010).

person, or constitutes incitement to cause harm; advocates propaganda for war; incites violence; or advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm.” Exemptions are provided for artistic and scientific speech, but the board has the discretion to grant or deny these exemptions.<sup>11</sup>

In May 2010, the deputy minister of home affairs, Malusi Gigaba, announced that he had approached the country’s Law Reform Commission to ask for a complete ban on digitally distributed pornography at the first tier of service providers, through an internet and mobile-phone pornography bill developed by the Justice Alliance of South Africa. The bill uses a very broad definition of pornography found in a law outlawing sexual offenses.<sup>12</sup> Gigaba was quoted by the British Broadcasting Corporation (BBC) as saying: “Cars are already provided with brakes and seatbelts. . . . There is no reason why the internet should be provided without the necessary restrictive mechanisms built into it.”<sup>13</sup>

Apart from the areas mentioned above, the government does not restrict material on contentious topics such as corruption and human rights. Citizens are able to access a wide range of viewpoints, and there are no government efforts to limit discussion. Online content, however, does not match the diverse interests within society, especially with respect to race and local languages. There are a number of political and consumer-activist websites, though the internet is not yet a key space for social or political mobilization.

The South African blogosphere has been highly active in promotion of AIDS awareness and the discussion of environmental issues, in addition to more general political coverage. Mobile phones are used for political organization, especially during recent developments like the establishment of the new political party Congress of the People (COPE), a breakaway faction of the ruling African National Congress (ANC). The main political parties that ran in the 2009 national elections also developed online campaigns to attract young voters, drawing inspiration from U.S. president Barack Obama’s use of internet platforms in his 2008 campaign.<sup>14</sup>

Radio, followed by television, continue to be the main sources of news and information for most South Africans, but there are increasing efforts to extend mainstream news outlets to online platforms. The *Times* and *Mail & Guardian* newspapers, for example, operate affiliated websites. All major media groups now have an online presence.

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<sup>11</sup> Films and Publications Amendment Act, No. 3 of 2009, <http://www.info.gov.za/view/DownloadFileAction?id=106329>, accessed June 4, 2010.

<sup>12</sup> Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007, <http://www.info.gov.za/view/DownloadFileAction?id=77866>, accessed June 4, 2010.

<sup>13</sup> “Porn Ban on Net and Mobiles Mull’d by South Africa,” BBC, May 28, 2010, <http://news.bbc.co.uk/2/hi/technology/10180937.stm>.

<sup>14</sup> J. Duncan, “Desperately Seeking Depth: The Media and the 2009 Elections,” in *Zunami! The 2009 South African Elections*, ed. R. Southall and J. Daniel (Johannesburg: Jacana Media, 2009).

## VIOLATIONS OF USER RIGHTS

The constitution guarantees “freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research.” However, it also includes constraints, and freedom does not extend to “propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender, or religion and that constitutes incitement to cause harm.”<sup>15</sup> The judiciary in South Africa is independent and has issued at least one ruling protecting freedom of expression online.

Libel is not a criminal offense, but civil laws have been applied to online content. Moreover, criminal law has been invoked on at least one occasion to prosecute for injurious material. In January 2009, an Eldorado Park resident, Duane Brady, was fired by his employer and arrested for *crimen injuria*, a common-law offense entailing the deliberate injury of a person’s reputation or invasion of privacy, after he insulted his wife’s friend on Facebook. The case intensified an ongoing debate about freedom of expression and its limitation on social networking sites, especially when it came to employees defaming their employers online. The issue had first come to the fore in 2007, when a blogger, Llewellyn Kriel, was fired by the media firm Avusa for criticizing his immediate employer, the *Sowetan* newspaper.<sup>16</sup>

Threats to media freedom have also extended to the online content of newspapers. For instance, in May 2009, the country’s public broadcaster, the South African Broadcasting Corporation (SABC), filed a charge of “stolen property” after the *Mail & Guardian* posted on its website a documentary on political satire that the broadcaster had refused to air. The documentary explored the fact that award-winning cartoonist Zapiro is being sued by President Jacob Zuma for portraying him about to rape Lady Justice. The newspaper’s editor, Nic Dawes, argued that he and his colleagues had a professional duty to make such material public, and accused the SABC of censorship.<sup>17</sup>

In May 2010, the South African Council of Muslim Theologians attempted to stop the *Mail & Guardian* from publishing a cartoon by Zapiro that depicted the prophet

<sup>15</sup> Constitution of the Republic of South Africa, May 8, 1996, Bill of Rights, Chapter 2, Section 16.

<sup>16</sup> “Legal Cases from Facebook Usage Rise,” IT News Africa, November 30, 2009, <http://www.itnewsafrika.com/?p=3380>, accessed June 4, 2010; Arthur Goldstuck, “Fired for Blogging,” *Amablogoblog*, November 30, 2007, <http://www.thoughtleader.co.za/amablogoblog/2007/11/30/fired-for-blogging/>.

<sup>17</sup> Matthew Burbidge, “SABC Lays Charge of ‘Theft’ over Zapiro Doccie,” *Mail & Guardian*, May 28, 2009, <http://www.mg.co.za/article/2009-05-28-sabc-lays-charges-of-theft-over-zapiro-doccie>, accessed June 6, 2010.

Muhammad, arguing that the image was insulting to Muslims. A court injunction, which would have extended to the online version of the newspaper, was not granted.<sup>18</sup>

There have been no reports that the government monitors e-mail or internet chat rooms, except to combat child pornography. Recent legislation potentially allows for extensive monitoring, and was in force as of June 2009. The Regulation of Interception of Communications and Provision of Communication-Related Information Act of 2002 (RICA) requires ISPs to retain customer data for an undetermined period of time and bans any internet system that cannot be monitored. In addition, the Electronic Communications and Transactions Act of 2002 (ECTA) created a legion of inspectors trained to “inspect and confiscate computers, determine whether individuals have met the relevant registration provisions as well as search the Internet for evidence of ‘criminal actions.’”<sup>19</sup>

Mobile subscribers are required to provide extensive personal information to service providers, and the data are then made available to the government. An identification number is legally required for any SIM-card purchase, although this law appears to be enforced unevenly, and people already in the possession of SIM cards are required to register these cards and provide proof of residence and an identity document by the end of 2010.<sup>20</sup>

The ECTA also requires ISPs to respond to and implement take-down notices (TDNs) regarding illegal content, such as child pornography, material that could be defamatory without justification, or copyright violations. The law states that ISPs “do not have an obligation to monitor,” exempting them from liability if proscribed content is found on their service but taken down once a notice is received. However, this exemption only applies if the ISPs are members of a recognized representative organization. The Ministry of Communications has recognized the Internet Service Providers’ Association of South Africa (ISPA) as an industry representative body under the ECTA. The ISPA acts as an agent on behalf of its 160 members and provides the ministry with annual information about the total number of TDNs issued, the actions taken in response, and the final results.<sup>21</sup> Most of the complaints lodged are resolved amicably, with ISPA’s clients agreeing to take down the offending content.<sup>22</sup>

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<sup>18</sup> “Anger Mounts Over Zapiro Cartoon,” *Mail & Guardian*, May 22, 2010, <http://www.mg.co.za/article/2010-05-22-anger-mounts-over-zapiro-cartoon>, accessed June 24, 2010.

<sup>19</sup> Privacy International, “South Africa,” in *Silenced: An International Report on Censorship and Control of the Internet* (London: Privacy International, 2003), [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-103781](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-103781), accessed June 24, 2010.

<sup>20</sup> Nicola Mawson, “Major’ RICA Threat Identified,” ITWeb, May 27, 2010, [http://www.itweb.co.za/index.php?option=com\\_content&view=article&id=33518:major-rica-threat-identified&catid=69&Itemid=58](http://www.itweb.co.za/index.php?option=com_content&view=article&id=33518:major-rica-threat-identified&catid=69&Itemid=58), accessed June 8, 2010.

<sup>21</sup> Paul Vecchiatto, “Content Disputes Settled Amicably,” ITWeb, March 12, 2010, [http://www.itweb.co.za/index.php?option=com\\_content&view=article&id=31260%3Acontent-disputes-settled-amicably&catid=182%3Alegal-view&Itemid=58](http://www.itweb.co.za/index.php?option=com_content&view=article&id=31260%3Acontent-disputes-settled-amicably&catid=182%3Alegal-view&Itemid=58), accessed June 8, 2010.

<sup>22</sup> “Nyanda Recognises ISPA as Industry Representative Body,” BizCommunity.com, May 21, 2009, <http://www.bizcommunity.com/Article/220/16/36156.html>, accessed June 8, 2010.

RICA provides for an “interception direction” that obliges ISPs to send the communications in question to an interception center. However, the law requires judicial oversight and includes guidelines for judges to establish whether the interception is justified in terms of proportionality and narrowly defined standards.

Reports indicate that the government conducts some surveillance of mobile-phone conversations and short-message service (SMS) or text messages. The National Communications Centre (NCC) reportedly has the technical capabilities and staffing to monitor both SMS and voice traffic originating outside South Africa.<sup>23</sup> Calls from foreign countries to recipients in South Africa can allegedly be monitored for certain keywords; the NCC then intercepts and records flagged conversations. While most interceptions involve reasonable national security concerns, such as terrorism or assassination plots, the system allows the NCC to record South African citizens’ conversations without a warrant.<sup>24</sup>

There have been no reports of extralegal intimidation targeting online journalists, bloggers, or other digital-technology users by state authorities or any other actor.

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<sup>23</sup> Moshoeshoe Monare, “Every Call You Take, They’ll Be Watching You,” *Independent*, August 24, 2008, [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=vn20080824105146872C312228](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20080824105146872C312228), accessed March 27, 2009.

<sup>24</sup> *Ibid.*