

INTERNET FREEDOM REPORT 2014: VISEGRAD FOUR

| | Czech Republic | Slovakia | Poland | Hungary |
|-------------------------|----------------|-----------|-----------|-----------|
| Freedom of Expression | 14 | 10 | 8 | 7 |
| Maximum potential score | 15 | 15 | 15 | 15 |
| Big Brother | 12 | 10 | 10 | 10 |
| Maximum potential score | 15 | 15 | 15 | 15 |
| Legal Maze | 6 | 7 | 7 | 5 |
| Maximum potential score | 10 | 10 | 10 | 10 |
| Open Government | 5 | 6 | 5 | 6 |
| Maximum potential score | 10 | 10 | 10 | 10 |
| Total Score | 37 | 33 | 30 | 28 |
| Maximum potential score | 50 | 50 | 50 | 50 |

Czech Republic leads on Internet freedom; Hungary scores worst, marred by restrictions on online media

by Jeremy Druker and Jeff Lovitt*

The level of Internet freedom is high in the four post-communist countries that comprise the Visegrad Four (Czech Republic, Hungary, Poland, and Slovakia), but there are big differences in terms of rights of freedom of expression, level of surveillance of online activity by police and intelligence agencies, and on the way the Internet is governed.

The Czech Republic ranks among the four countries as the leader in Internet freedom, scoring 37 out of 50 in contrast to a score of 28 for lowest-placed Hungary, according to the *Internet Freedom Report 2014: Visegrad Four*. Slovakia ranks second with 33, and Poland third with 30 out of 50, according to peer-reviewed research conducted by independent think-tank analysts in the four countries.

The research is based on detailed analysis of the current situation - in law and in practice - using a methodology that examines Internet freedom by looking into four main areas, namely *Freedom of Expression*, *Big Brother* (surveillance, regulation, and interference by the state), the *Legal Maze* (the clarity of the legal framework in letter and practice), and *Open Government* (transparency and the authorities' online disclosure of their functioning and decisions, such as budget information and tender contracts).

The Czech Republic ranked first for the categories *Freedom of Expression* and *Big Brother*. Poland and Slovakia ranked joint first in *Legal Maze*, with the most clarity in terms of legal framework for governing the Internet. Slovakia and Hungary narrowly outrank Poland and the Czech Republic when it comes to *Open Government*.

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Strong freedom of expression in Poland and Slovakia set against threats to privacy through high levels of police surveillance

The **Czech Republic** and **Poland** emerge as staunch supporters of Internet freedom at home and around the world, engaging in intergovernmental forums in alliance with democratic governments that oppose state regulation, and de facto censorship, of Internet content.

In sharp contrast, publishers and bloggers in **Hungary** remain vulnerable to heavy fines and other sanctions, even after international pressure forced the government to roll back restrictions on online and other media. **Slovakia** has a dynamic, uncensored Internet market, but out-of-control surveillance undermines the rule of law and right to privacy (virtually all requests by police and security agencies to conduct online surveillance were granted by the courts in 2012-2013). There is no widespread official surveillance of citizens' online activities in **Poland**, but the courts almost always approve the thousands of police requests filed annually to engage in such monitoring.

In all four countries, reforms are required of the legal framework and its implementation, for instance concerning the rights and responsibilities of online media and the boundaries of freedom of expression for bloggers and journalists. Legislation needs to be modernized to reflect developments in the online world, and to recognize the enormous shift in personal communication and news delivery to the Internet.

In **Hungary**, regulatory bodies lack transparency and are dominated by political appointees. On the positive side, online journalists are now entitled to the same protection of sources as other journalists, and copyright law protections are in line with EU law. In **Slovakia**, online media are not subject to regulation. Online journalists are, however, not protected by the same laws as print journalists. Web content is subject to court rulings that tend to favor political actors, and strengthening of the independence of the judiciary is a top priority. In the **Czech Republic**, more needs to be done to educate

judges about the legal framework governing the Internet. In **Poland**, the debate continues as to whether content should be blocked and which copyright protections apply to material online.

The country chapters of the **Internet Freedom Report 2014: Visegrad Four** go into details on the level of freedoms on paper and in reality in each country, and include recent case studies to illustrate the impact of laws and policies in practice. The studies include conclusions and recommendations, as well as detailed scores for different aspects of freedom on the Internet.

The overall comparative scores are set out in the table above, and some of the main challenges in each country are elaborated below.

FREEDOM OF EXPRESSION

In terms of freedom of expression, the **Czech Republic** scores 14 out of 15, against 10 for **Slovakia**, 8 for **Poland**, and only 7 for **Hungary**.

Freedom of expression is consistently protected in the **Czech Republic**. The one exception has been discussion forums, which have been the focus of some of the most controversial challenges to freedom of expression online. In **Slovakia**, legislation should be updated to stipulate that online journalists have the right to protect their sources in line with the rights of traditional, "offline" journalists. The legal requirement for media in **Hungary**, including online services, to register with the Media Council should be more clearly defined, and **Poland's** press laws should also be updated to be relevant to the online world.

A very important area in need of reform in **Slovakia** is the judiciary, where independence from political interference is essential to ensure that judgments in libel cases are impartial.

Judges in **Poland** should make more use of the notice and takedown procedure before taking steps to remove online content. In **Poland** and **Hungary**, defamation should not be subject to criminal prosecution.

BIG BROTHER

In terms of censorship, government interference, and police surveillance, the Czech Republic ranks as the freest from state control, scoring 12 out of 15, against 11 for Slovakia, 10 for Poland, and 10 for Hungary.

Surveillance is a potential problem even in the **Czech Republic**, where the Supreme Court should issue an official interpretation of the law governing online surveillance so as to avoid courts issuing inconsistent verdicts that unnecessarily breach privacy. Similarly, the government should publicize takedown requests made to private companies. In **Slovakia** and **Poland**, more careful oversight is needed in the area of surveillance. In **Slovakia**, legislation is needed to close loopholes that allow police to freely obtain certain information on Internet users, and in **Poland** lawmakers should resist initiatives that would give authorities legal power to block websites. In **Hungary**, the powers of the politically appointed media regulator to oversee online content should be rolled back.

LEGAL MAZE

In terms of the clarity of the legal framework in letter and practice (*Legal Maze*), Poland scores the best with 7 out of 10, compared with 6 for Slovakia and the Czech Republic, and 5 for Hungary.

Judges in the **Czech Republic** often fail to understand the online world, and the setting of clear principles for Internet-related cases would help eliminate discrepancies when judges rule

differently upon similar cases. In **Slovakia**, censorship is prohibited by the constitution, but a regulatory framework is needed, backed up by a definition of censorship applicable to the online world. Similarly, in **Poland**, copyright law should be reformed to clarify the limits of fair use so as to balance the interests of users and copyright-owners. In **Hungary**, the media laws fail to provide adequate safeguards to guarantee pluralistic and autonomous oversight by the Media Authority and Media Council.

OPEN GOVERNMENT

For *Open Government* (transparency and the authorities' online disclosure of their functioning and decisions, such as budget information and tender contracts), Hungary and Slovakia both score 6 out of 10, while the Czech Republic and Poland trail with 5 out of 10.

In the **Czech Republic**, current laws are vague enough to allow various offices to refuse freedom-of-information requests, claiming commercial confidentiality or privacy concerns. Legislation should be tightened to improve responsiveness to requests. In **Slovakia**, the law requiring publicly funded contracts to become valid only after being published online should be strengthened so that documents online are searchable, and include all pricing and budget details. Exceptions should only occur where grounds have been clearly established that certain information comprises a trade secret as defined by law.

Poland needs a broader definition of public information to cover internal documents concerning the management of public funds, and more data in open formats should be automatically made available online. Similarly, in **Hungary**, government databases are hard to search. The rules against "abusive data requests" have the effect of arbitrarily restricting the disclosure of public data, and should be repealed.

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The four country reports were drawn up based on a common methodology, with a set of questions for each section. The research teams' scores were drawn up by the analysts in the respective countries, peer-reviewed in-country, reviewed by Transitions Online and PASOS, then subject to a final comparative peer-review across the four countries.

The scale for each question is from 0 to 5, where 0 indicates no openness/freedom at all, and 5 indicates maximum degree of openness. For each score, researchers were asked the following questions:

- Is the body of laws/regulations/practice optimal/not needing any reforms to protect freedoms on the internet?
- Is the body of laws/regulations/practice generally adequate to protect freedoms on the internet?
- Are there significant gaps in the given area, where it is necessary to introduce and implement changes/statutory reforms to sustain open government/protection of freedoms/protection of privacy/clarity and transparency of legal framework?
- Is there a serious lapse in open government/ protection of freedoms/protection of privacy/clarity and transparency of legal framework?

The score (0-5) was assessed for each of the following questions within the four main chapters:

Section 1: Freedom of Expression

Freedom of expression on the Internet – laws, definitions, and de facto regulation

- The legal framework and instances of prosecutions entailing denial of freedom of expression.
- Legal rights and protections for online expression and their status compared with print and broadcast rights.
- Cases of bloggers or online journalists being prosecuted, fined, or jailed for defamation or libel.

Section 2: Big Brother

- Censorship – laws and implementation, and pressure-group activity, including requests to remove material.
- Filtering and blocking of Internet content by state and other actors.
- Published information on government surveillance/tapping – by government and by private companies.

Section 3: Legal Maze

- Transparency of legal procedures and appeals mechanisms
- Copyright laws, fair use – laws and practice

Section 4: Open Government

- Quality of access to information legislation and Internet provisions.
- Access on Internet to government and parliament decisions, court cases, and decisions; right and speed of access to data through requests, and capacity of authorities to answer complex information requests.

The study was conceived with a view to raising the public profile of Internet freedom and censorship issues in the Visegrad countries within the region and internationally. Further objectives included the aim of addressing governments in the four countries to persuade them to take a consistent, open approach to Internet freedoms and transparency of government on the Internet, and the generation of empirical-based input to consultations in the European Union on digital rights and Internet freedom. The project also provides a template for evaluating and monitoring Internet freedom over time.

Internet Freedom 2014: Visegrad Four, compiled by independent think-tanks in the four countries, is the result of a project led by Transitions (TOL) to a methodology designed by PASOS (Policy Association for an Open Society). The participating think-tanks were the Association for International Affairs (AMO), Czech Republic, the Center for Media & Communication Studies, School of Public Policy, Central European University, Hungary, the Institute of Public Affairs (IPA), Poland, and the Institute for Public Affairs (IVO), Slovakia.



PASOS (Policy Association for an Open Society) is a network of independent think-tanks working to strengthen participatory policymaking at the local, national, and international level.

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Transitions (TOL) is a publishing and training organization with a mission of strengthening the professionalism, independence, and impact of the news media in the post-communist countries of Europe and the former Soviet Union.

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