The Affordable Connectivity Program and the Access to the Internet

di Elisa Bertolini

Abstract: *L'*Affordable Connectivity Program *e l'accesso a Internet* - The paper discusses the issue of the access to the internet and of digital literacy starting from the analysis of the Affordable Connectivity Program launched by the Biden-Harris administration and whose funding has not been renewed by the Congress. The paper claims that the access to the internet should be considered as a universal service, considering the role of enabler of rights that the net is increasingly playing. Nevertheless, the access to the internet is meaningless if people are not digitally educated to a technical and informed use the internet. Digital literacy programs should be fall within states' responsibility, especially when considering the growing of importance of social media platforms in the political discourse. The concerns arising from the economic model of social media platforms under Section 230 CDA could be partially addressed by educating the netizens with prebunking.

Keywords: access to the internet; digital divide; universal service; enabler of rights; digital literacy

1. Premise

The internet has become more and more indispensable to properly deploy one's personality, have access to services and exercise one's own active citizenship rights. It may be argued then that there is some sort of civic value of the internet, beyond the recreational use that is more frequently connected to it.

Indeed, when discussing the internet, it is convenient to outline the fact that it is not a monolithic entity. On the contrary, one must consider that there are two facets connected to the notion of internet: the first concerning the access to online content, the second the availability of the necessary infrastructure and ICTs to be able to access the net. The latter is the precondition to the former. Hence, the internet has progressively become a key mean, an enabler, by which individuals can exercises a series of rights and freedoms, far beyond the freedom of opinion and of expression, which is usually the focus of debate.

Particularly in developing countries, an internet access may be crucial to have access to a series of social services, welfare benefits and allowances and even education, to the point that, even though offline opportunities do

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ISSN: 2037-6677

exist, people resorting to them are in a situation of disadvantage.[1] Technology can be potentially excluding.

Starting from these very general remarks, the paper aims at discussing the issue of the access to the internet in the US context, together with the one of the so-called digital literacy. The paper claims that they should be discussed together because they both are indispensable requirements to fully enjoy one's rights and freedoms in the net.

Digital literacy is becoming more and more relevant also in the light of the increasing integration of the internet into the electoral process in the United States – fundraising and campaigning – together the issue of the accessibility to the net. Political speech does not need the internet to exist; nevertheless, people who are denied that access are in a situation of limited access to the political discourse and to the possibility of fully express themselves. For bad and for worse, the internet has significantly expanded the political discourse, and an important amount of the political process takes place online.

Especially, it seems of importance to discuss the connection between the access to the internet and the risk to be exposed to fake news as political propaganda. Regardless of whether the access to the internet is qualified as a right per se or as an enabler of rights, the attention paid to a proper literacy of the netizens is residual, thus raising significant concerns on the negative fallout in terms of democratic culture. Furthermore, the role of social media platforms must not be overlooked; indeed, they are not mere instruments of political propaganda by candidates to an elective office, but they can also turn into megaphone of the political agenda of their owners (leaving aside the fact that usually the megaphone comes together an important amount of funding). Elon Musk's recent stepping into an active pro-Trump campaign has affected the fairness of the whole electoral process.

The key role that the internet is been playing in the last decades is further proved by the fact that non-democratic states frequently shut down the net or promote a giant intranet (such as China) to deny the full enjoyment of freedom of expression.[2]

Against this backdrop, is seems worthy of analysis the Affordable Connectivity Program (ACP) launched by the Biden-Harris administration in 2021. The ACP considers the importance of the access to the internet to exercise full citizenship. Despite the ACP has not been renewed by the Congress, it provides the occasion to discuss the issue of the access to the internet together with the nature of it and the need, regardless of how we qualify the internet, for the state to step in to address internet literacy.

2. The Affordable Connectivity Program (ACP)

[1] A good example is offered by the Indian Adahaar program. See E. Bertolini, *Is Technology Really Inclusive? Some Suggestions from States run Algorithmic Programmes*, in 20(2) *Global Jurist* 1 (2020).

[2] I discuss the internet governance in the Chinese context in *Internet Governance and Terrorism in the Context of the Chinese Compression of Fundamental Rights and Freedoms*, in 1 *Global Jurist* 1 (2018).

The ACP is based upon the recognition of the role the internet plays in contemporary information societies. Internet connectivity allows each citizen to work, to have access to education and to a series of services and to exercise their right to have access to information. Nevertheless, the digital divide is still problematic in the US, with more 30 million Americans not having access to broadband infrastructure able to grant acceptable speed and affordable costs. The Bipartisan Infrastructure Investment and Job Act tries to address this divide by both invest in infrastructure and lowering the prices of internet connectivity plans. A total amount of $14.2 billion in the $1 trillion bipartisan infrastructure is assigned to the ACP.

The ACP is a program launched by the Biden-Harris administration as part of the Bipartisan Infrastructure Investment and Job Act 2021 and administered by the Federal Communications Commission (FCC). Its aims at promoting internet access to eligible households, who will have $30 per month off their internet bills. Furthermore, they can also receive a one-time discount of up to $100 to purchase a laptop, desktop computer, or tablet from participating providers.

Besides, the ACP also demands the cooperation of some internet providers, willing to provide a high-speed plan for no more than $30 per month (with tribal households receiving up to $75 off a month). In doing so, the eligible household won't have to pay at all for their connectivity to the internet.

The Bipartisan Infrastructure Law is an omni comprehensive legislation dealing also with the broadband connection. The act considers that quality internet service has become necessary for the development of each citizen. Indeed, it consisted of a series of programs, all related to the access to the internet. It also established the Broadband Equity, Access and Deployment (BEAD) Program aimed at addressing the availability side of the digital divide, mainly by providing funding plans, deploying infrastructure across communities which are either unserved or underserved. Indeed, the ACP must be framed within BEAD; communities who are recipients of BEAD funding and infrastructure and who are low-income are able to afford broadband thanks to the ACP.

Besides BEAD, the Infrastructure Investment and Job Act established also the Digital Equity Act (DEA), which is concerned with the internet literacy, aiming at providing individual and communities with all the necessary information technology capacity to fully understand broadband technology and the use they can make of it. To provide people with technology without the proper instrument to use it would be pointless. Hene, DEA funds have been used to teach people how to use Broadbent technology.

The main problem with the ACP – and more broadly also with BEAD and DEA – is the cost. The ACP in particularly costly, because 23 million households have been considered eligible. In October 2023 the Administration sent a supplemental request to the congress for a $6 billion to extend funding,[3] to no avail. The main concern in the Congress, especially

[3] The text of the supplemental request is in https://www.whitehouse.gov/wp-content/uploads/2023/10/Summary-of-Funding-Request-to-Meet-Critical-Needs.pdf.

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ISSN: 2037-6677

Republicans, lays within the eligibility criteria, considered to be too generous and thus to make the costs of the program raising. Furthermore, the Congress also outlined the lack of proper accountability and transparency, thus preventing the possibility of a proper oversight as to reduce waste and fraud.

It is now convenient to address the eligibility criteria.

Is eligible anyone who meets any one of the three qualifications:

1. income is at or below 200% of the Federal Poverty Guidelines;
2. someone in the household participates in one of the enumerated programs;[4]
3. meet the eligibility criteria for a participating broadband provider's existing low-income internet program.

Instructions for the application are also provided in Spanish.[5]

The ACP has not been the first government-sponsored program concerned with the access to the internet. Nevertheless, it has filled an important gap that already existing provider low-income programs, state and local affordability programs, and the Lifeline program were not able fully address.

Amongst all the programs, the Lifeline program is the most relevant, because it is the closest to the ACP. Hence, because the ACP has been terminated in May 2024, Lifeline has been considered as a possible replacement.

Lifeline is a program dating back to 1985, whose purpose has been to provide a discount on phone service for qualifying low-income consumers in every state, territory, commonwealth, and on tribal lands. The Lifeline program is administered by the Universal Service Administrative Company (USAC),[6] and funded by the USF (Universal Service Fund).[7] The USF is

[4] Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps; Medicaid; Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); Supplemental Security Income (SSI); Federal Public Housing Assistance (FPHA); Veterans Pension and Survivors Benefit; Free and Reduced-Price School Lunch Program or School Breakfast Program, including at U.S. Department of Agriculture (USDA) Community Eligibility Provision schools; Federal Pell Grant (received in the current award year); Lifeline; Certain Tribal assistance programs, including Bureau of Indian Affairs General Assistance, Head Start (only households meeting the income qualifying standard), Tribal Temporary Assistance for Needy Families (Tribal TANF), and Food Distribution Program on Indian Reservations.

[5] The Administration has created a specific website www.getInternet.gov, with details on how to sign up for ACP.

[6] For any information regarding administrative aspects see http://www.usac.org/.

[7] As explained on the FCC website, before the enactment of the Telecommunications Act in 1996, the Universal Service Fund (USF) operated as a mechanism by which interstate long distance carriers were assessed to provide telephone service to low-income households and high-cost areas. Indeed, according to the 1934 Communications Act all people in the United States shall have access to rapid, efficient, nationwide communications service with adequate facilities at reasonable charges. With respect to the 1934, the 1996 Telecommunications Act has expanded the traditional definition of universal service. Hence, in present days, the FCC provides universal service support through four mechanisms: (1) High-Cost Support Mechanism provides support to certain qualifying telephone companies that serve high-cost areas, thereby making phone service affordable for the residents of these regions. (2) Low Income Support

supported by required contributions from telecommunications carriers. Because of how USF funding works, USF funds can neither be transferred nor used for any non-USF program. Hence, is not an option to look at USF funds to circumvent the inaction of the Congress, when coming to the renewal of funding for the ACP.

Even though Lifeline provides a monthly broadband service benefit for eligible households, the FCC pointed out that the program cannot be a proper ACP replacement, for three reasons: first, not all ACP eligible households can meet Lifeline qualifications; second, many ACP providers are not eligible to take part to Lifeline program; third, the subsidy Lifeline offers is below the one offered by the ACP.

To qualify for the Lifeline program, consumers must have a gross household income at or below 135% of the Federal Poverty Guidelines (for the ACP is 200%). As for the ACP, consumers may be eligible for the Lifeline program if they participate in one of the selected qualifying programs.[8] Moreover, may be eligible to Lifeline support up to six months survivors experiencing financial hardship under the Safe Connections Act (SCA). The number of qualifying programs is lower than the one for the ACP. Lifeline requirement is thus stricter than the ACP's.

With respect to the monthly amount of the subsidy provided by Lifeline to low-income households for home internet or mobile phone plans, it amounts to $9.25, which can be up to $34.25 per month for households on tribal lands. However, in both cases, the Lifeline subsidy is far below the one offered by ACP.

As mentioned previously, the Lifeline program is not an isolated program, having the FCC launched in 2012 another pilot program (Low-Income Broadband Pilot Program) to collect data to design specific policies to overcome broadband adoption barriers – namely cost, relevance and digital literacy – for low-income consumers and to improve the Lifeline program. Within this framework, 14 pilot project were launched, sharing the model of the Lifeline program, mainly with respect to the eligibility to the Lifeline benefits; however, these programs were structured differently when it comes to the subsidy amounts, conditions to receiving service, and different outreach and marketing strategies. The purpose was to test different strategies and to design the best program possible depending on the demography and on the geography, which vary significantly throughout the U.S.

Mechanism assists low-income customers by helping to pay for monthly telephone charges as well as connection charges to initiate telephone service. (3) Rural Health Care Support Mechanism allows rural health care providers to pay rates for telecommunications services similar to those of their urban counterparts, making telehealth services affordable. (4) Schools and Libraries Support Mechanism, the so-called E-Rate, provides telecommunication services (such as local and long-distance calling, high-speed lines), internet access, and internal connections to eligible schools and libraries.

[8] Supplemental Nutrition Assistance Program (SNAP); Medicaid; Supplemental Security Income (SSI); Federal Public Housing Assistance (FPHA); Veterans and Survivors Pension Benefit; Bureau of Indian Affairs General Assistance; Tribally Administered Temporary Assistance to Needy Families (TANF); Tribal Head Start; and food Distribution Program on Indian Reservations (FDPIR).

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The ACP cannot be replaced neither by the Lifeline program nor by any other subsidy programs targeted at low-income persons. The reason does not lay exclusively in the eligibility criteria nor in the amount of the subsidy. Indeed, the ACP subsidy comes in the form a voucher, meaning that the person can freely choice to acquire their broadband service from the participating ISP they prefer most, because most suitable to their needs. The freedom of choice of the consumers may also have another positive effect in terms of competition among the different participating providers, which can be certainly stimulated.

With respect to veterans, who have benefitted from the program, they may be eligible for specific programs sponsored by the Department of Veterans Affairs. According to the FCC, 15% of veteran households do not have a way to connect to the internet at home. The VA Telehealth Services has developed the Digital Divide Consult and the Connected Device Program to help qualifying veterans receive VA-loaned equipment to access telehealth services and benefits.

Despite the importance of ACP in offering access to the internet to low-income households and the absence of a concurring and alternative program, the Congress has taken no action to renew the funding of the program. Hence, on May 31, 2024, the ACP came to an end. The termination of the program was not abrupt, meaning that the subsidy has been reduced in May to $14 per household ($35 for tribal households). ACP terminated to offer the subsidy in June 2024.

The only alternative solution envisaged by the White House has been an appeal to ISPs to directly provide discounts or low-cost plans to the low-income and tribal households parts to ACP. 14 ISPs answered the White House's call and declared they would continue to offer eligible households a broadband service plan up to $30 per month until the end of 2024.

This is a non-solution, meaning that even though it extends the subsidy until December 31, 2024, the connectivity issues will continue after that date.

23 million households have benefited of the ACP, meaning an average of one out of every six households in the U.S.[9] When looking more closely to the demography of the eligible households, nearly half of the ones benefitting nationwide from ACP are military families, 1-in-4 households are African American and 1-in-4 households are Latino, four million seniors and 10 million are over the age of 50 and 320,000 households on Tribal lands (where high-speed internet is generally more expensive).[10]

Despite the inaction of the Congress, it is convenient to outline that bipartisan efforts have been made to assure further funding to the program to no avail. Especially, Sen. Peter Welch, already in January 2024, introduced a bipartisan and bicameral bill (Affordable Connectivity Program

[9] State-by-state fact sheets with data on how many families are enrolled in the ACP are in https://www.whitehouse.gov/build/resources/affordable-connectivity-program-enrollment-fact-sheets/.

[10] According to the data released by the White House. See https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/06/fact-sheet-as-affordable-connectivity-program-hits-milestone-of-providing-affordable-high-speed-internet-to-23-million-households-nationwide-biden-harris-administration-calls-on-congress-t/.

Extension Act) that would provide $7 billion for the ACP, a bill co-sponsored by the now Trump's run mate Sen. JD Vance.[11] Also Sen. John Fetterman had introduced a similar bill (Promoting Affordable Connectivity Act)[12] seeking to make the program permanent by funding it through broadband and edge service providers rather than having the money appropriated in Congress' annual funding process.[13] In other words, Fetterman's bill aims at removing the ACP from the annual appropriations process incorporating it into Universal Service Fund (USF) distribution. The key point is to try to keep the program going without raising costs on consumers and thus having the ISP fund it.

3. The Access to the Internet: a Right or an "Enabler" of Rights?

The ACP calls into question the much-debated qualification of the access to internet as a human right, a civil right or as an enabler of other rights. The debate has become more and more relevant once the internet has become indispensable in everyday life. Despite the difficulty in answering such a question, it cannot be avoided, especially considering the importance the Biden-Harris administration has assigned to the access to the internet.

The end of the program means denying a portion of the US people, i.e. low-income households, which are also usually less educated, the access to the internet, meaning the possibility of exercising rights they are entitled to. Hence the question whether a specific qualification of the access to the internet could lead to the promotion of the accessibility of the internet and/or to create a positive obligation on states to facilitate that accessibility.

There is no consensus on the qualification of the access to the internet.[14] Nevertheless, at least from an international perspective, there is a growing call for it being qualified as a human right.[15]

This approach is founded on Article 19 of the Universal Declaration of Human Rights, which considers information rights when stating that everyone has the right to "hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers". The wording "receive and impart" seems to convey some sort of symmetry of information rights. At international level, it has been further articulated in a series of other conventions/covenants/charter, as the right

[11] Vance ties to the tech leaders in the Silicon Valley are well-known. During his time working in venture capital in San Francisco, he became a *protégé* of Peter Thiel, a PayPal co-founder. Theil has been a prominent donor to Vance's senatorial 2020 electoral campaign. The Valley's support to MAGA is progressively growing.

[12] The text of the bill is in https://www.congress.gov/bill/118th-congress/senate-bill/4208?s=2&r=1.

[13] https://www.fetterman.senate.gov/sen-fetterman-introduces-bill-to-make-broadband-internet-program-permanent/

[14] O. Pollicino, *The Right to Internet Access*, in M. Ienca, O. Pollicino, L. Liguori, E. Stefanini, R. Andorno (Eds.) *The Cambridge Handbook of Information Technology, Life Sciences and Human Rights*, Cambridge, 2022, 125-138.

[15] B. Çalı, *The Case for the Right to Meaningful Access to Internet as a Human Right in International Law*, in A. von Arnauld, K. von der Decken, M. Susi (Eds.), *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*, Cambridge University Press, 2020, 276-284.

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ISSN: 2037-6677

of all people to communicate freely and effectively. References can be made to the European Convention for the Protection of Human Rights and Fundamental Freedoms, to the International Covenant on Civil and Political Rights, to and the African Charter on Human and Peoples' Rights.

As rapporteur Frank La Rue (*Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/17/27,[16] by the United Nations Human Rights Council) stated in 2011, Article 19 «was drafted with foresight to include and to accommodate future technological developments through which individuals can exercise their right to freedom of expression.»

The right to freedom of opinion and expression is not only a fundamental right of its own accord but is also an "enabler" of other rights. In this framework, the internet is some sort of catalyst, which expands the individuals' freedom of opinion and expression and at the same time facilitates the realisation of other rights.

Because states have a positive obligation «to promote or to facilitate» the freedom of expression, an accessible and affordable internet must be promoted. Besides, the same positive obligation on states stands because the internet is a mean to properly exercise one's freedom of expression. To be more precise, the *Report* also states that «the internet, as a medium by which the right to freedom of expression can be exercised, can only serve its purpose if States assume their commitment to develop effective policies to attain universal access to the Internet». Furthermore, the *Report* continues, «given that the Internet has become an indispensable tool for realizing a range of human rights [...] ensuring universal access to the Internet should be a priority for all States».

Following this reasoning, if Article 19 includes the internet, as a medium of expression, any practical restriction – i.e. all the issues related to connectivity issues, high costs included – are a violation of the freedom of expression.

To conclude that the access to the internet is then a human right would be misleading. The internet is certainly a medium of expression as well as a medium fundamental to properly exercise further rights.

Certainly, the access to the internet is an issue of different scale depending on the state that is considered, i.e. whether it is still a developing country or not. Nevertheless, this does not change the potential exclusion of people and their marginalisation and permanence in a disadvantage situation because they are denied internet access. The digital divide, as qualified in the *Report*, is «the gap between people with effective access to digital and information technologies, in particular the internet, and those with very limited or no access at all» and characterises, though to a different extent, all contemporary societies.

To qualify the access to the internet as either a human right or a fundamental right may serve the purpose of strengthening the positive obligation on states to fill the digital divide.

[16] The report is available at https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf.

However, if we consider the approach of the UN General Assembly, the perspective is different. Despite passing in 2016 a non-binding resolution declaring internet access a human right, the General Assembly did not address governmental responsibility to provide access to all, focusing instead on the other profile, i.e. governments taking away an already existing access. The legal basis of the resolution has been Article 19 of the Universal Declaration of Human Rights, interpreted as an instrument of soft law by the General Assembly.

The CESCR Committee has endorsed a different approach, theorising the existence of obligations deriving from the so-called cultural rights *ex* Article 15 ICESCR and interpreting them so broadly as to be able to properly establish a right to the access to the internet. In the framework design by the Committee, freedom of expression is fundamental to the exercise of cultural rights. Furthermore, the Committee also resorts to Article 15(1)b ICESCR, affirming the right to benefit from scientific progress, category in which the internet can certainly be put.

The main opposition to the access to the internet as a human right comes from the "father of the internet" himself, Vint Cerf.[17] Cerf supports the interpretation of technology as an enabler of rights and not a right itself. According to Cerf's reasoning, not to qualify the access to the internet as a human right does not downplay the key role the internet plays in civil participation; hence, it should be more properly qualified as a civil right rather than as a human right. Furthermore, Cerf considers that the positive obligation on governments to provide internet access for everyone would be too onerous from a financial standpoint. Besides, a similar obligation on governments does not exist with respect to other forms of communications. This last point seems to be the weak part in Cerf's reasoning, because the comparison between the internet and other forms of communication stands partially; other forms of communication do not play the same role of the internet when it comes to enabling the exercise of rights and freedoms. Moreover, in qualifying the access to the internet as a civil right it seems that Cerf joins in the end the resolution of the General Assembly, which, despite the different qualification, focuses on the negative profile, i.e. governments should refrain from taking away the access, rather than to promote and facilitate it.

Several jurisdictions have also recognised the fundamental importance of the access to the internet by imposing legal requirements to ensure universal service.

In February 2000, the Estonian Parliament passed the Telecommunications Act,[18] which, at Article 5(2)2) mandates that online access must be «universally available to all subscribers regardless of their geographical location, at a uniform price».[19] Thus, the access to the internet is added to the universal service list.

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[17] https://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html.

[18] The Act is available at https://www.uaipit.com/uploads/legislacion/files/0000004714_Telecommunications%20Act.pdf.

[19] « (1) A universal service is a set of telecommunications services which conforms with the technical and quality requirements established by the Government of the Republic

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ISSN: 2037-6677

In 2001 Greece amended its Constitution to include Article 5A, which includes the positive obligation on the Greek state to facilitate the access to electronically transmitted information, i.e. to the internet.[20]

An analogous obligation stands on the Mexican government, according to Article 6(3),[21] following a 2013 constitutional amendment. The guarantee of the access to the internet is in Mexican experience connected to the obligation to open the telecommunication market to competition.

Finland opted for an Estonian-like option. She did not include the access to the internet in the constitution. Through a 2011 amendment to the Communications Market Act,[22] a functional internet connection is now included in the universal service. Indeed, according to Section 60 c (1) «A telecommunications operator that the Finnish Communications Regulatory Authority has assigned as a universal service operator in universal telephone service as referred to in section 59 shall provide, at a reasonable price and regardless of the geographical location, a subscriber connection to the public communications network at the user's permanent place of residence or location» and according to (2) «The subscriber connection shall also allow an appropriate Internet connection for all users, taking into account prevailing rates available to the majority of subscribers, technological feasibility and costs».

Similarly Spain, with the Ley 2/2011, de 4 de marzo, de Economía Sostenible,[23] which, at Article 52,[24] added broadband access to its universal

and which ensures, within an area determined in the licence of a public telephone operator, that all customers who wish to have access to the public telephone network shall have such access for a uniform and reasonable consideration. (2) The set of telecommunications services specified in subsection (1) of this section comprises: 1) telephone services provided on the channel of bandwidth 3.1 kHz which is universally available to all subscribers regardless of their geographical location, at a uniform price, 2) Internet service which universally available to all subscribers regardless of their geographical location, at a uniform price».

[20] «1. All persons have the right to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties. 2. All persons have the right to participate in the Information Society. Facilitation of access to electronically transmitted information, as well as of the production, exchange and diffusion thereof, constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19».

[21] «The State shall guarantee access to information and communication technology, access to the services of radio broadcast, telecommunications and broadband Internet. To that end, the State shall establish effective competition conditions for the provision of such services».

[22] The Act is available at https://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf.

[23] The Ley is available at https://www.boe.es/diario_boe/txt.php?id=BOE-A-2011-4117.

[24] «1. La conexión a la red pública de comunicaciones con capacidad de acceso funcional a Internet, garantizada por el servicio universal de telecomunicaciones, deberá permitir comunicaciones de datos en banda ancha a una velocidad en sentido descendente de 1Mbit por segundo. Dicha conexión podrá ser provista a través de cualquier tecnología. El Gobierno, en el plazo de cuatro meses desde la entrada en vigor de la presente Ley, mediante Real Decreto, establecerá las condiciones de acceso de banda ancha a la red pública y podrá actualizar esta velocidad de acuerdo con la evolución social, económica y tecnológica, teniendo en cuenta los servicios utilizados por la mayoría de los usuarios.

service, and stipulated that broadband connection at a speed of 1Mbit per second is to be provided through any technology.

France offers another interesting approach, based on a 2009 decision by the Conseil constiutionnel (Decision n° 2009-580)[25] on the controversial loi Hadopi,[26] which required ISPs to permanently block the access to the internet to users accused of copyright infringements.[27] Despite not qualifying the access to the internet as a freestanding right, the Council stated that the freedom to access online communication services was held to be protected under Article 11 of the Declaration of the Rights of Man and the Citizen of 1789.[28] A few months later, in another decision (Decision n° 2009-590 DC),[29] the Council (points 16-25) approved a revised version of the loi Hadopi, allowing the revocation of a person's Internet access for a maximum period of one year (L335-7) which however could only be imposed after judicial review (L335-7-2).

The French decision has been cited by the Constitutional Court (Sala Constitucional) of Costa Rica in a prominent 2010 decision (sentencia número 2010-10627),[30] which qualified the access to the internet as a fundamental right.[31]

In the US access to the Internet could be partially framed within the broader information access rights, which are protected by the constitution,

2. La Comisión Delegada del Gobierno para Asuntos Económicos, a propuesta de los Ministros de Industria, Turismo y Comercio y de Economía y Hacienda, y previo informe de la Comisión del Mercado de las Telecomunicaciones, garantizará el carácter asequible de los precios de los servicios incluidos dentro del servicio universal. En particular, podrá fijar un precio máximo para las conexiones que permitan comunicaciones en banda ancha incluidas dentro del servicio universal».

[25] The English text of the decision is available at https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/2009_580dc.pdf.

[26] Hadopi stands for Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet.

[27] I discuss more broadly the law and the decision in E. Bertolini, *La lotta al* file sharing *illegale e la "dottrina Sarkozy" nel quadro comparato: quali prospettive per libertà di espressione e* privacy *nella rete globale?*, in *DPCE Online*, 1, 2010, 74-106.

[28] Point 12 of the decision: «Article 11 of the Declaration of the Rights of Man and the Citizen of 1789 proclaims: "The free communication of ideas and opinions is one of the most precious rights of man. Every citizen may thus speak, write and publish freely, except when such freedom is misused in cases determined by Law". In the current state of the means of communication and given the generalized development of public online communication services and the importance of the latter for the participation in democracy and the expression of ideas and opinions, this right implies freedom to access such services».

[29] The English text of the decision is available at https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/en2009_590dc.pdf.

[30] See H. Miranda Bonilla, *El derecho de acceso a internet en la jurisprudencia de la sala constitucional de Costa Rica*, in 13(25) *Revista Jurídica Mario Alario D'Filippo* 5 (2021), https://doi.org/10.32997/2256-2796-vol.13num.25-2021-3610.

[31] «En este caso concreto, por el servicio público en cuestión –el servicio de telecomunicaciones– también están involucrados otros dos derechos fundamentales, el derecho a la comunicación y el derecho a la información. En cuanto a estos derechos, debe indicarse que, a la luz de la sociedad de la información y del conocimiento actual, el derecho de todas las personas de acceder y participar en la producción de la información, y del conocimiento, se vuelve una exigencia fundamental, por ello tal acceso y tal participación deben estar garantizados a la totalidad de la población».

DPCE online
ISSN: 2037-6677

statutes, and the common law. The profiles of these rights which are relevant to the present discussion are their implications, which directly derive from the First Amendment,[32] because they impose to the government a double obligation: first, to make certain information available to the people, and second, not blocking access to certain information or places of information exchange. In this framework, access to the internet becomes instrumental to access information. Furthermore, the fact that when access to information has entered a conflict with copyright, the Supreme Court has consistently favoured the former, whenever the government or a private individual has tried to copyright certain works, considered to fall into the category of relevant information that must be accessible to everyone.

4. Access and Digital Literacy

The access to the internet is fundamental per se or because it allows the individual to enjoy more fully their rights and freedoms? As the previous paragraph has briefly discussed, there is no single answer to the question.[33] Several concurring approaches have been endorsed by states, all of which, despite being different, acknowledge the pivotal role the internet plays in the contemporary information society. Nevertheless, none seems to be properly satisfactory. Passaglia's proposal of framing the access to the Internet as a social right – thus neither a human right, nor a freedom, nor an enabler of rights – is the only viable solution, because able to produce concrete outcomes.

So far, the focus tends to be on the issue of the access to the internet, which is fundamental, but hides another major issue that almost no government seem to have properly considered, i.e. digital literacy. They fail at acknowledging that the issues related to the internet go beyond the access to the net and the connectivity. This profile is even more relevant, when one endorses the qualification of the access to the Internet as a social right.

Digital literacy is a broad concept, which suffers of an excess of clarity. Hence, there is no consensus on its definition. Nevertheless, it can be defined as the combination of both technical and cognitive abilities in using information and communication technologies. Digital literacy is necessary for a correct and informed use of the various digital platforms.

According to Aviram and Eshet[34] the concept of digital literacy is composed of five different types of literacies:

1. Reproduction literacy: the ability to use digital technology to create a new piece of work or combine existing pieces of work to make it your own.
2. Photo-visual literacy: the ability to read and deduce information from visuals.

[32] Ex multis, see *Packingham v. North Carolina*, n. 15-1194, 582 U.S. 98 (2017).
[33] Paolo Passaglia also discusses the issue in *Behind the Curtain: Questioning the Right to Access the Internet, in Search of Definitions (and Conditions)*, in *Völkerrechtsblog*, 17-102022, doi: https://doi.org/10.17176/20221017-110251-0.
[34] A. Aviram, Y. Eshet, *Towards a Theory of Digital Literacy: Three Scenarios for the Next Steps*, in 9(1) *European Journal of Open, Distance & E-learning* 16 (2006).

3. Branching literacy: the ability to successfully navigate in the non-linear medium of digital space.
4. Information literacy: the ability to search, locate, assess and critically evaluate information found on the web and on-shelf in libraries.
5. Socio-emotional literacy: the social and emotional aspects of being present online, whether it may be through socializing, and collaborating, or simply consuming content.

Indeed, if the access to the internet is fundamental to have access to a series of social services, allowances and welfare benefits as well as to education, citizens must be taught how to claim them. Low-income households, uneducated and elderly citizens could be denied the access to rights they are entitled to not exclusively because they are denied access to the internet, but also because they may not know how to do it. Furthermore, having access to the internet implies for every netizen the risk to be exposed to fake news,[35] misinformation,[36] disinformation,[37] e-mail frauds, phishing, identity theft and other fraudulent behaviours, as well as hate speech. The development of AI has significantly increased the risk of manipulation of information, video, photos and thus the vulnerability of the netizens.

The vulnerability of ordinary netizens is particularly problematic when it come to the political discourse, which has significantly shifted to social media platforms.[38] Here the problem of vulnerability is twofold: first, the reference is to the ability to identify fake news/disinformation/misinformation; second, the reference is to the debunking,[39] which never reaches the same audience and is far less effective.

Indeed, the constant exposure to fake news, misinformation and disinformation creates a vicious circle of continuous malicious influence and illusion, which goes under the name of continued influence effect and the illusory truth effect. Even though an inaccurate information has been corrected, people's memory and reasoning continue to rely on that (continued influence effect). Furthermore, the repetition of the same (incorrect) information makes that information familiar and thus more likely to be considered truth (illusory truth effect).

Because debunking is hardly successful, the whole point of digital literacy is to promote prebunking, which can be considered as the inoculation of cognitive antibodies against fake news, misinformation and disinformation.[40]

[35] Fake news can be defined as false information that is disseminated, regardless of intent to mislead.
[36] Misinformation can be defined as false information that is disseminated, regardless of intent to mislead.
[37] Disinformation can be defined as misinformation that is deliberately disseminated to mislead.
[38] I have discussed Trump's political lies and alternative facts "ideology" in *Alternative Facts, Political Lies and Freedom of Expression: A Paradigm of Trump's Administration*, in *DPCE Online*, 1, 2021, 1271-1300.
[39] On the difference between these three concepts, see S. Lewandowsky & J. Cook & U.K. Ecker *et al.*, *The Debunking Handbook 2020*, 2020, available at https://www.climatechangecommunication.org/all/handbook/the-debunking-handbook-2020/.
[40] Some strategies of prebunking and debunking are in S. Lewandowsky & J. Cook & U.K. Ecker *et al.*, *The Debunking Handbook 2020*, cit., 8.

Positive actions promoting education programs on digital literacy are fundamental when it comes to prebunking and to make people aware of the risks inherent to online communication and information. When it comes to debunking and fact-checking, on the contrary, it is fundamental the role that can be played by the community, both ordinary netizens and specialists.

The key issue remains the economic model of social media platforms *ex* Section 230 CDA,[41] which becomes even more critical when candidates can create their own social media platform. The example is again Trump with his SN Truth.[42] It seems much more viable to promote literacy programs than to amend the social media platforms' economic and liability model.

The rationale of Section 230 is clear; the irresponsibility SNs enjoy aims at preventing any chilling effect that a regulation may have on internet speech. Hence, the liability regime of SNs, although they operate almost worldwide, endorses the American approach to freedom of speech enshrined in the First Amendment. However, and this may be seen as some sort of paradox, even a regime where platforms would take on more responsibility would be not free of concerns. Social media platforms are private subject that would implement a system of private censorship without any legal check.

A more viable solution could be to have social media platforms[43] to provide the user additional information on the same story, allowing them to hear different bells on the same topic. This solution shares the same criticalities of debunking and fact-checking. Most users will never bother with reading the additional information, because post-truth and alternative facts both appeal to the emotions of the audience, not to their intellect. Therefore, it is doubtful that additional information can redress the audience perception of what they read on the platform. This if why digital literacy, mainly though prebunking, is of utmost importance. Furthermore, the selection of the additional information would rely upon the algorithm, which raises concerns with respect to the problem of algorithmic accountability.

From a complementary perspective to digital literacy is to be mentioned a new set of rights, theorised by two Italian scholars, Franca D'Agostini and Maurizio Ferrera, called *diritti aletici* (the made-up Italian word *aletici* comes from the Greek word for truth, *aletheia*-ἀλήθεια), corresponding to: the right to be truthfully informed; the right to receive a proper education in order to be able to distinguish truth from false; the right to be recognised as reliable sources of information; the right to have a reliable scientific system; the right to live in a cultural environment favouring and protecting the pursuit of truth; the right to live in a society which has a high regard for truth in both private and public life.[44] However, as well as digital literacy, to implementation of these rights would require a positive action from the state, because they can hardly be enforced by courts.

[41] 47 U.S.C. § 230(c) (2012).
[42] www.truthsocial.com.
[43] Facebook with the related articles or YouTube info boxes placed under videos on controversial topics.
[44] F. D'Agostini & M. Ferrera, *La verità al potere. Sei diritti aletici*, Torino, 2019.

5. Final Remarks

The paper aimed at stressing the need for framing both the access to the internet and the digital literacy as positive obligations on states.

The US approach emerging from the ACP still is the one qualifying the internet as a public utility – this neither a universal service not a right – , to be regulated like phone lines; in doing so, it seems quite difficult to have telecommunication companies to provide an affordable broadband internet connection nationwide. Furthermore, the promotion of digital literacy to facilitate a more informed use of the internet does not seem to be of governments' concern. The potential exclusivism of the internet towards digitally uneducated people and the exposure to a significant amount of fake news, misinformation and disinformation on social media platforms are two sides of the same coin.

Indeed, the access to the internet is meaningless if people are not digitally educated to a technical and informed use the internet.

Elisa Bertolini
Dipartimento di Studi Giuridici
Università comm.le L.Bocconi
elisa.bertolini@unibocconi.it

DPCE online
ISSN: 2037-6677