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# NETWORK ACCESS: SOCIAL LAW IMPLIED IN THE CONSTITUTION FOR THE USE OF AN ACTIVE CITIZENSHIP

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## 1.The right of access to the Internet

In a context where information, computerization and globalization of processes, rules and networks now seem irreplaceable keys of access to freedom, progress and democracy, the sensation is that a new category of rights has been born and is developing within our society [Bovero, 2004].

The new law resulting from the evolution of technology is the right to digital freedom, which manifests a new aspect of the ancient idea of personal freedom and reflects the advance of new frontiers of human freedom towards a future society, and which takes its place in the prism of contemporary constitutionalism.

In the primitive version which dates to 1981, digital freedom was configured with a dual meaning, positive and negative.

The negative digital freedom expresses the right not to make public certain information of a personal, private, confidential nature; however, positive digital freedom expresses the ability to exercise the right of control over personal data which have escaped from the circle of privacy and become input elements of an electronic program; and thus positive freedom of information, or recognized subjective right, to know, to correct, to remove or add data to a personal e-file.

A careful doctrine states that the right to freedom of information takes on a new form of the traditional right of personal freedom, such as the right to check information about one's own person, as a right of *habeas data* [Frosini, 2011].

The goal of *constitutional habeas data* is to ensure freedom of information, as a personal guarantee to know and access personal information existing in databases, to control their content and then modify them in case of inaccuracy or improper storage or treatment and to decide on their circulation [Rozo Acuna, 2002].

With the advent of the Web, the right to digital information has become a claim to freedom in the active sense, not freedom *from* but freedom *of*, which is to be able to utilize computer tools of all kinds. It is the right to participate in a virtual society, created by the advent of computers in a technological society: it is a society of mobile components and dynamic relationships, in which each individual participant is sovereign of his own decisions. We are dealing with a new kind of freedom, that is to communicate with whoever you want, disseminating one's own ideas, thoughts and materials, and the freedom to receive. It thus delineates the freedom to communicate as the freedom to transmit and receive.

In this context, based on a technological concept of freedom of communication, the contents of traditional constitutional freedoms are struggling and slow to emerge, in particular those regarding communication and expression.

The matter of fundamental rights is presented as a meeting point between issues of great importance, including the definition of subjective rights, the concept of constitution and the meaning of democracy. Democracy in the 21$^{st}$ century takes a different form from that of previous centuries: the meanings of representation and sovereignty change, advancing a new mass democracy, which breaks the closed circles of the *élites* in power, forcing so to speak representatives of the will of the people to descend on the telematic marketplace and

deal directly with representatives, in the new forms of technical policy. More than anything else, the aim of current democracy, in the field of fundamental rights remains that of undertaking a precise blend of external legal experience, typical of so-called normal citizen, and the experience of internal law, its classic operators of law. The aim is very ambitious; i.e., to return to the citizen an awareness of his primary role in this phase of changing the law.
When one uses the term "fundamental rights" it refers generally to the phrase "human rights." However, if on one hand human rights aspire to universalization, and are protected by international regulations, on the other hand fundamental rights are not simply individual rights, but subjective rights that perform a "functional" task of a specific rule of constitutional law.
Within the issue under consideration, this work explores the problem of protecting recent digital rights, belonging to the so-called fourth-generation rights, particularly with regard to one law, the so-called *right of access to the network*, which is currently configured as the most innovative law, but is slow to emerge as a fundamental guaranteed right. The content of the right to electronic access is not only broader than traditional forms of the freedom to communicate, but, on the contrary, seems to have a support function with respect to a long list of traditional rights. And it is in fact the new structure of telecommunications that has reinforced the idea and the need to think about the right to Internet access, understood as a sort of mother-right, compared to that which will be acknowledged in order to connect to the Internet.
It is correct to believe, as stated in an authoritative doctrine [Zeno-Zencovich, 2004], that the social role of electronic access cannot be underestimated since in modern times it is equivalent to not providing everyone with the necessary conditions to establish relationships with others and to ensure the full expression of one's own personality.
Among the umbras indicated by jurists in the emergence of the right to Internet access as law, is the need to qualify this right; that is, if it can be placed within the fundamental rights set forth in our Constitution, specifying whether it is the case of a fundamental right or social right, or if it should receive autonomous legal regulation.

### 1.1 Right of access to the network: social right or fundamental right implicit in the Costitution?

The interpreter who chooses to follow the first route cannot avoid starting from the consideration of Articles 15 and 21 of our Constitution.
The basis of these articles lies in the awareness that regardless of gender, race or religion, everyone has the right not only to the freedom to express their thoughts, but also the freedom to gather information. These elements are essential for the solid development of the personality of each individual, and therefore for genuine equality between citizens and the ability of each person to participate in social life. Article 15 of the Constitution recognizes the right of individuals and social groups to communicate their thoughts to one or more subjects and at the same time guarantees confidentiality.
Constitutional protection under art. 15 is lost in the broader protection of communication in general, as if to compose a perfect triptych with Articles 13 and 14 of the Constitution, expression of the three aspects (physical, spatial and spiritual) of the inviolability of the human person [Di Lello, 2007].
The objective scope of protection of Article 15 is precisely that of private communication, consisting of both correspondence in the strict sense or any other form of interpersonal communication.
Freedom of information is understood not so much as the freedom to seek and obtain certain news, being concerned with the apprehension of knowledge in general, as the use of information sources, regardless of the information contained in them.
In order to speak of communication, in accordance with our Constitution, we can detect the *animus* of the subject of confidentiality and the *determinability* of the persons to whom our communication is addressed.

However, we must understand whether the communication model created by the Internet can make it difficult to distinguish between private communication (within art. 15 of the Constitution) and public expression of thought, which is protected by art. 21 of the Constitution.
Most of the doctrine holds that the Internet medium will benefit, as appropriate, from the guarantees of the means of expression and *sic et simpliciter* or additional collateral guarantees granted to the media for interpersonal communication. Thus thought directed to specific recipients through software that ensures confidentiality will fall within the guarantees of Article 15; on the contrary, we would not be dealing with a confidential communication if the user is using forms aimed at the public demonstration of his own thought. And in fact, in a communication posted in a forum, chat or blog, the typical guarantees of freedom of expression or the regime of freedom of assembly could well apply [Pubusa, 2006].
If one prefers instead a merely literal interpretation of Article 21, the freedom of expression, its existence and its exercise would be remitted to the person who expresses their thoughts, and in particular, with their consent, to the acquisition of information related to the formation and expression of their own thoughts. The scope of freedom of information would then be determined by a person other than its owner, and the protection would be only occasional, applied only if the freedom of expression is violated. Asking whether it is possible to appeal to a right that appears to be only proclaimed but not also "protected", is to ask whether the right "exists", also in the case that the law had not given it a precise formation.
The provisions codifying fundamental rights are usually formulated in extremely general and indeterminate terms. Faced with lists of rights formulated thus, the question arises whether it is perhaps inevitable that fundamental rights have been proclaimed in provisions formulated in a generic and indeterminate way [Ferrajoli, 2010].
Thus, the identification of a new law, such as the right of access, may be achieved by simply using a non-restrictive reading of the basic types of fundamental rights. It might be postulated that the fundamental rights constitute a *genus* with an inherent capacity for expansion, which is duplicated within in accordance with the guidelines implied for that category. In fact, fundamental rights exist before the State and thus do not depend on the law, but constitute a limit to the free production of laws. In jurisdictions with long and pluralist constitutions, the provisions that codify fundamental rights are usually formulated in extremely general and indeterminate terms. A constitutional provision providing for fundamental rights in strictly circumstantial terms would be unreasonable. Thus, a fundamental right could be considered the implicit assumption of certain explicit fundamental rights: the latter cannot be explained if you do not affirm the first. However, in the Italian constitutional order, the creation of implicit fundamental rights is greatly facilitated by the presence of Article 2 of the Constitution, usually interpreted as a meta-rule that allows the identification of all rights considered essential to the development of the individual [Pino, 2010].
From this arrangement there may derive a broad and systematic interpretation not only of art. 21, but of all constitutional precepts related to the problem of information, in order to make the related freedom autonomous and distinct from freedom of expression: however, this is not to deny the natural connections that unite the expression of thought to the acquisition of knowledge, but to find an approach that by distinguishing between legal regimes, enhances both of them, so that they can be mutually reinforcing.
In the light of this interpretation, Article 21 of the Constitution could be read as if it were written in the following way: everyone has the right to use any source of information (and the Internet is a great means of dissemination of information) available in order to spread one's own thinking.
What has been said so far is thus not opposed to extending the existing constitutional system to the Internet, given that the closing words of art. 21, any other means of communication, has allowed the constitutional provision to survive the advent of new means of mass communication.
The freedom of art. 21 of the Constitution is guaranteed, according to the wording of that article, to "anyone", and it follows that the access to the medium must be recognized for everyone in their geographic location, regardless of social status.

Thus, there may be no obstacle to the application of constitutional law to electronic communication.
Moreover, if one considers that the extension of freedom of expression is influenced not only by the content of the message, but also the means by which it is exercised, the Internet may adhere to the spirit of the constitutional provision better than any other means.
The perspective outlined up to now refers to the manifestation of thought. Instead, the perspective of an individual "surfing" the Web to search for news is different. In this case, the user's activity does not fall within the activity of expressing thought in the strictest sense, and yet it can equally fall under the regime of article 21 by virtue of the corollary of the principle of the right to information.
In fact, corollaries of the freedom of information are the right to inform oneself, understood as the right to seek information (that is, the right to access information through any means that contains it, electronic or not) and the right to be informed, that is the right have information sources available. Given their essence, these two corollaries cannot exist if not related in the sense that the former cannot exist without the second, and the latter has no reason to be without the other.
Thus, in reference to electronic communication, the right to inform oneself does not refer to a right attributable to the subject to receive information with a particular content, but to the absence of restrictions on Internet access to research information already present on the Web. Therefore, this is not a demand, but a simple freedom of the subject to not be denied access [Corte Costit., 1969].
From this point of view, the right to surf the Internet would equally be guaranteed as a right to seek information, as a necessary and indispensable corollary of freedom of information, but the guarantee does not cover the search for information that is not available.
The freedom of information is not limited however to communication and information. It also embraces political freedom and institutional organization, which also incorporates the use of services by users/citizens. It is clear that technological progress is increasingly destined to change the institutional apparatus experienced and that the democratic process is strongly influenced by the way information circulates, that is, where the possibility of its use of by all citizens is characterized by being a prerequisite of that process. Thus, electronic freedom provides impetus to the democratic principle and that of impartiality, which have their constitutional origin in Article 3 of the Constitution, which must be integrated with Articles 1 and 2 of the same constitutional text. By analyzing and following the circular path that starts from Article 1 and arrives at Article 3, three key concepts are deduced that address the entire question: inclusion, participation, and public policy. These expressions reflect the imperative – the binding principle -- inherent in art. 3 , paragraph 2 , which requires a constant connection between aims and organizations, the founding values of the constitution, and from which follows a structure of public authorities who implement them. Article 1, paragraph 2 establishes that sovereignty belongs to the people who exercise it in the manner prescribed by the constitution in various forms, to arrive at art. 3, paragraph 2 that provides for the removal of obstacles to allowing the full development of the individual for the purpose of effective participation in the political, economic and social development of the country. It is thus a full circle: the exercise of sovereignty, and in particular of individual rights, is in some way aimed at a person's relatedness to allow full participation, i.e., an active and responsible citizenship.
The first regulatory response and the first representation of the individual in this new role as digital citizen is to be found in the Digital Administration Code (CAD), approved by the d.lgs.82/2005. This legislation identifies and outlines a "species" of digital citizen, which adapts to both natural and legal persons and which rests on a double strand of rights and obligations, or the right to demand from public offices interaction in digital mode and the obligation of the administration to adopt adequate facilities to fulfilling the user's request.
Among the various standards, emphasized here are administrative procedures, the right to make electronic payments with central government, the right to quality of service in terms of information and communication technology, and the right to communicate through email. This budding relationship between citizen and administration must be placed within the context of a broader social law for which the Italian State must be spokesman in order to

ensure fruition by all users, assuming the right to education and the enhancement of computer culture. These last rights are considered by the Constitutional Court as "*corresponding to objectives of general interest, that is the development of culture, in this case through the use of the software tool, the pursuit of which is headed by the Republic in all its ramifications (art. 9 Cost.)* [Corte Costit., 2004]".
The right of access considered in this way therefore qualifies as an instrumental social right, which allows the use of other traditional social rights. This new form of participation, rather than appearing as a new phase in the development of rights, is emerging as an alternative mode of access to them. Technological innovation has opened the way for a new understanding of citizenship. In essence, the exercise of many basic rights has been facilitated by the direct relationship between the citizen and the institutional apparatus, mediated by tools that by their very nature fall outside the physical space in which the relationship between them usually takes place.
E-citizenship, by virtue of its intangible nature, would seem to offer unprecedented opportunities to exercise civil and political rights that until now remained only on paper and no less, to claim new types of rights. It thus offers a new possibility for the exercise of social, economic and political rights.
As has been noted, Citizenship in the electronic age not only presumes widespread digital literacy, but requires the concrete possibility of easy access to the Internet . Today, the new citizenship is the right to not be excluded from use and benefit of public structures and in particular the use of online resources that these structures can offer. Inclusion and access are essential aspects of the new citizenship [Masucci, 2003].
On one hand there are those who have extolled the benefits of the technology implications of the network, claiming that it will be able, by itself, to enrich their human capital and ultimately, to improve their lives; on the other, there are those who stress that the uneven diffusion of the Internet among the population will result in increasing inequality, improving the prospects of those who are already in privileged positions and at the same time denying opportunities for advancement to the non-privileged.

## 1.2 Freedom of information vs the right of access to the Internet in the guidelines of the Courts

The findings outlined above are further corroborated by the same positions taken by the Constitutional Court, when this expressed its own evaluations, creating the basis for an information law that has helped enrich the paradigm of constitutional freedom, especially in light of the views expressed in the European context.
The guidelines outlined by the Court on one hand emphasisized the fundamental nature of article 21 of the Constitution, intended as a *"cornerstone of democracy," and on the other hand, refined the breakdown between content regulation and the the means of mass communication, assessed as " services that are objectively public or otherwise in the public interest.* [Corte Cost., 1977]*"*
In the guidelinesof this jurisprudence, the assumption was created that the "*right to information*" has increasingly come to connect with a general theory of democracy. From this we can affirm the significance of co-essentiality that the Court, in numerous decisions [Corte Costit., 1972], has referred to the relationship between freedom of expression used for information purposes and the form of the democratic state, whose essence implies "*plurality of sources of information, free access to the same through all forms of communication, absence of unjustified legal obstacles to the circulation of news and ideas*."
The doctrine did not fail to highlight the "limited and dated content of this discipline to the point of referring to it as a kind of institutional myopia, due to the fact that it had targeted the experiences of the past, far more than future prospects".
The Constituents, when they first confronted the issue of freedom of expression and the means of its exercise, were moved by the desire to remove or restrict the instruments of control over the press that had been disseminated by the Fascist regime, such as

authorization, censorship or seizure of printed material, rather than outline a information system that was defined based on the possible development of the pluralist democracy they were building. And it is for this reason that Article 21 of the Constitution is not given to search any reference to the means of mass communication which were already established. These are discrepancies which -- as pointed out by an authoritative doctrine – become even more important if we are "to compare the content of art. 21 with the formulations expressed in other international constitutional documents contemporary to our republican charter", such as those contained in Article 19 of the Universal Declaration of Human Rights, adopted by the UN in 1948 (which recognizes the right of every individual to "*seek, receive and impart information and ideas through any media*") and Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in 1950, which includes the freedom of expression, "*the freedom to receive and impart information and ideas without possibility of interference from the public authorities*."
The scheme, at the time set out for printing, could be extended by analogy to the Internet medium. Several court rulings can aid in this. For example, there is the well-known judgment of the Court of Milan [Court of Milan, 2010] pronounced in the case of Google vs Vivi Down, which recognized that the legal status of the service provider is equivalent to that of a publisher of mass-media. The decision originated with an incident in September 2006, in which the platform Google-Videos uploaded a video of a boy with Down's syndrome who was beaten up by some classmates. The footage was left on the platform for about 2 months and seen by about 5,000 people before being removed by the service provider, after a warning from the judicial police. The video involved the students who had abused the boy and a teacher from the school. The latter were accused of having insulted the reputation of the association "Vividown" and the student's disability, in accordance with Article 110, paragraphs 2 and 385, and paragraphs 1 and 3 of the Penal Code, and to have omitted the correct treatment of personal data pursuant to art. 167 of Legislative Decree no. 196/2003. The Court of Milan sentenced Google for unauthorized use for commercial purposes of sensitive data belonging to other people, in the same way as if it were a publisher of mass media.
In addition to the experience of our country's Courts we cannot neglect foreign verdicts in the U.S. and French contexts.
Among the former was a ruling by the Federal Court of the District of Pennsylvania in 1996 (and later the U.S. Supreme Court in 1997). The antecedent of the decision is represented by the *Communications Decency Act*, an act contested in Federal Court in 1996, which provided penalties for users that introduced Web content considered morally inappropriate. In its verdict the Court held that the free use of the Web is protected by the First Amendment regarding the freedom of religion, speech and press, and the interest to stimulate freedom of expression in a democratic society was superior to any alleged benefit of censorship. The matter was referred to the Supreme Court which upheld the decision of the federal courts and adopted the decision by which the judges expressed comments regarding the Internet and more specifically the relationship between the Internet and constitutional freedoms. Thus, after a well-articulated debate the judges of the Supreme Court confirmed the decision of the unconstitutional nature of the law since it conflicted with the First Amendment of the Constitution, thereby highlighting the aspect of the expression of thought instead of that concerning the confidentiality and privacy of communication. In this sense, the final impact of their motivation is important: *"The facts established show that the expansion of the Internet has been and continues to be phenomenal. It is the tradition of our constitutional jurisprudence to presume, in the absence of evidence to the contrary, that public regulation of the content of the manifestations of thought is more likely to interfere with the free exchange of ideas than to encourage it. The interest in fostering freedom of expression in a democratic society is superior to any alleged, but not demonstrated, benefit of censorship*."
From this ruling emerged the connection of network access to the exercise of fundamental freedoms. It should be noted that the Supreme Court, in using the First Amendment as a parameter of the unconstitutional nature of the law repressing freedom on the Internet, revived it, giving it a new meaning, which is not and cannot be the original one, because age of technology it not only protects the traditional right to freedom of thought, but also

electronic freedom of speech, electronic freedom of the press, and freedom of assembly. Thus, the first amendment to the Constitution affirms and guarantees the right to freedom of information, as a new constitutional right of freedom obtainable from traditional rights and constitutional principles which should be read and interpreted in the context of a technological society.
Of course, in the light of the above, the role of judges will be increasingly reinforced and empowered, since it is for them to reinterpret the old constitutional tradition in the light of technological innovation. Thus, it is up to them to tackle the task of how to be jurists in a technological society, involved by dwelling now in the new world of the age of automation and to live with the legal problems that arise from it. This new condition of jurists, who now participate in the two forms of activity, the humanities and technology, reflects the general condition of man today.
Equally significant is the second case, of French jurisprudence and featuring the *Conseil Costitutionnel*. The French Constitutional Council was called upon to rule on the constitutionality of law n. 2009/669, known as the HADOPI Law, regarding the diffusion and protection of creative work on the Internet. The fragment of interest here is that in which the French constitutional court considered access to the Internet in the same way as the principle of freedom of expression embodied in Article 19 of the Universal Declaration of Human Rights of 1948 and art. 11 of the Declaration of the Rights of Man and Citizen of 1789, still in force in French law. The judges of the Conseil Costitutionnel, based on those provisions of the Statutes, have been able to affirm that the right to communication also includes the freedom to access the services of on-line communication, tools for participation in democratic life and for the expression of ideas and opinions.
Thus, an individual's freedoms also include access to the Web. Therefore, according to the Council, the penalty of disconnection from the Internet for acts of piracy cannot be imposed by an administrative order, but requires a judicial decision, as is the case for the limitation of other personal freedoms [De Marco, 2005].
Moreover, the original text of the Hadopi law would have been inconsistent with the position of the European Parliament, which in its Lambridis Recommendatio invited Member States to exclude preventive and generalized measures to limit the rights of citizens on the Internet, including disconnection from the Internet. In compliance with the Lambridis recommendation, in May 2009 the European Parliament suggested the adoption of Amendment No 138/46 regarding the package of the five directives on the transformation of the European telecommunications sector (the *Telecom Package*) with the aim of identifying access to the Internet as a fundamental right of end users. This large European telecommunications reform came into force in our legal system with Law No. 337/2009.

### *1.2.1 Right of access to the Internet: a need for explicit rules?*

In Italy, the issue of the protection of freedom of expression in relation to the establishment of a right of access to the Internet under the profile considered has recently been addressed in the legal literature by an authoritative jurist, Stefano Rodotà. At the Internet Governance Forum in Rome in November 2010, the eminent scholar developed a proposal for the adoption of Article 21-*bis*, to ensure that the Internet is recognized as a fundamental right of all Italian citizens.
The wording of this Article reads [Rodotà, 2010]: "*Everyone has an equal right to access the Internet network, on equal terms, in technologically appropriate ways that remove all economic and social obstacles."*
Article 21-*bis*, as proposed, would complement art. 21, which already exists and which guarantees freedom of the press. The illustrious author pointed out that an extension of the Constitution, albeit only the first part, is now necessary. In fact, openness to a right to the Internet indirectly but clearly strengthens the principle of network neutrality and consideration of knowledge on the Web as a common good, to which access must be granted.
By analyzing the content proposed for the new standard, we can grasp the following key points:
- The new article sheds light on the problem of the *digital divide* when it states "in a

technologically appropriate manner", and imposes on the State the commitment to overcome it.

- In addition, all citizens, "on equal terms", must have access to the Internet: and must be able to do so "in a technologically appropriate manner", i.e., by providing an ADSL line of at least a guaranteed minimum speed, without the cost of this falling on the citizens themselves ("that remove all economic and social obstacles").

The term *digital divide* refers to the exclusion of some parts of the country from the possibility/need to use the services offered by the new networks, due to lack of investment in connection infrastructure. In practice, it takes the form of unequal access of the citizen to the advantages of using the electronic system compared to others who benefit from it.
In addition to any potential barriers to access, the digital divide can also relate to other factors, including the availability of information, the quality of technical resources, and the personal ability to use technology. Thus, in addition to the infrastructural digital divide, we must also take into account the *social digital divide*, namely the lack of involvement of part of the population in the use of IT tools and the new services.
In this respect, rather than a binary structure, the relationship of the individuals with the computer reflects a multiple structure, the result of the combination of a plurality of variables. This combination has been defined, in figurative language, as *"a rainbow, the result of the presence of physical media, software, content, services, infrastructure and so on* [Clement-Shade, 2000].*"*
Recognizing digital inequality is important since it allows one to place the aspect of access in a broader context, characterized by a strong focus on the impact that technology has on social inequalities. These considerations allow division of the concept of digital divide into three aspects, namely access, use and skills.
Later we will enter into the merits of the subdivision of these classes, but for the moment it is important to emphasize that the quality of access, the availability of increasingly sophisticated technological equipment enabling a continuous connection, together with the possession of the skills that permit one to achieve more and better aims, are all elements pertaining to the sphere of Internet use.
The social problem of digital literacy, understood in its double meaning of the concrete possibility of an individual to own the physical support that conveys the service and an appropriate level of technical expertise, has been neglected until recently.
Nowadays we are witnessing a remarkable expansion of the telecommunications sector, such that it should also be supported by an increase in computerization of the public sector through an effective expansion in the use of new technology. This creates an obvious gap between those who have the ability to go online and those who cannot.
The state's duty is thus to eliminate the cognitive obstacles that hinder true digital equality.
Therefore, we could hypothesize that the right of access is connected, by a close relationship of cause and effect, to the condition of aid from the State [Sadowsib, De Rooij, Smits, 2006], in order to ensure an infrastructure program that provides the right to access the services offered by broadband, regardless of the potential user's geographic location. Moreover, it is necessary for the State to facilitate the purchase of computers for the sector of individuals who are unable to deal with a similar expense, employing the tool of financial incentives.
A question, then, arises: does lack of access to the Internet lead to discrimination for the deprived, creating an obstacle to the possibility of their full social inclusion? Does an affirmative answer to this question suggest that broadband should be included among essential services guaranteed and protected by the State, and thus be configured as an essential public service?
This might mean that the state should intervene to remedy any deficiencies in infrastructure, where if operators were to decide that it was not cost-effective to invest in, and that the State should decide in advance the limits of this service and who is involved in ensuring the provision of the same to end users.
If Article 21-*bis* becomes a reality, the Internet should be recognized as a constitutional and basic social right of all citizens.

This policy is not original, but has already been introduced in Finland since July 2010. This nation allowed broadband connections to become a right for all residents. To achieve this, the Government determined that all providers were obliged to provide each resident a broadband line with a minimum speed of 1 Mbps, which by 2015 will reach 100 Mbps.
Methods for the growth of broadband adopted by Finland have relied primarily on market forces, encouraging state intervention only where it was absolutely necessary. More specifically, even in the case when market failures were recorded, national subsidies could not in any case exceed one-third of the amount required in the project, with a maximum of a further one-third for European and local funds. The private forces would thus be obliged to cover at least one-third of the cost of the project.
In line with this, Finland is one of several European countries that have adopted a coherent and effective policy of development of broadband. The country falls among the top ten in Europe regarding broadband penetration rate, and occupies first place for use of broadband technology in business [I-com, 2010].
We believe that the explicit provision of the right to Internet access as a fundamental right by adding a new Article to the Constitution, would eliminate at the root every problem of the existence and legal status of the right in question; however, it can be assumed -- also in light of the giurisprudence examined -- that this is not strictly necessary.
Believing that there should be a specific constitutional provision means in essence to doubt, if not deny, that at this right, with such characteristics, cannot be configured in our system. Of this, in fact, we should strongly doubt.

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