

## **GOVERNMENT AND GOVERNANCE IN THE NETWORKED AGE: CAN CYBERSPACE REALLY BE REGULATED?**

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### **Summary**

The Internet has gained a reputation for being impossible to censor and control. In the early days of the Net, many people emphasized that the Internet's main power was its ability to avoid governmental regulation. The notion that the Internet was impossible to censor was celebrated by some civil liberties groups and condemned by governments and regulators. Several governments have tried to create new rules and mechanisms to control and regulate the Internet. However, the arguments behind regulation of the Net have proved, not only unresolvable, but also controversial. This article will begin to explore the complexities involved in regulating the Internet, how different governments,

especially Middle Eastern governments, have responded to the Internet challenges, and the current international laws regulating the flow of information in cyberspace.

## **1. Introduction**

Over the past decade, the Internet has metamorphosed from a research tool into a forum for popular culture. The global computer network that encompasses the Internet and the World Wide Web, together with a whole host of other means for electronic communication, such as bulletin boards and chat rooms, has started to attract millions of regular users. The number of Internet users is rising as the technology becomes ever more accessible. As the number of Internet users has increased, so the purposes for which they turn to this system have diversified. It is now common to use the Internet or the Web as a library or information source, for one-to-one communication and more open discussion, as a marketplace for buying and selling goods and services, and as a means of facilitating other experiences via participation in new “worlds” which have their existence only in the medium of cyberspace.

The Internet is actually a collection of technologies and an international “network of networks,” each invented and developed by engineers for their own work and to serve specific purposes. It is composed of a number of different ways of organizing, transmitting, and accessing data. Because of this multiplicity of systems, it is unlike any other single medium. Rather, it incorporates characteristics of several other media and communication systems, including print, broadcast, and postal systems.

From a user’s point of view, the Internet consists of essentially three technologies: e-mail, which replaces some telephone functions; newsgroups, for special interest discussions; and the World Wide Web, which is a medium of publication that involves a higher computing/network capacity, and is correspondingly more costly to implement and to access than e-mail or newsgroups. The World Wide Web allows for the display of many types of information, including text, images, sound, and video, as well as interactive communication.

An important element in the Internet is the Internet service provider (ISP) who supplies an Internet carriage service that is used for the carriage of information between two end users outside the “immediate circle” of the supplier.

The Internet is a unique communication medium and is more than just an industry. Like no other medium before, it allows individuals to express their ideas and opinions directly to a world audience, while allowing them access to other ideas, opinions, and information to which they may not otherwise have access. According to Godwin, “the structure, the dynamic, and the sheer cheapness of access to the Net mean that this is the first mass medium ever with the potential to give each of us a voice with the reach of a newspaper or TV station, but with the intimacy and responsiveness of the telephone.”

While the mass media usually respond to the economic and political interests of those who control them, such controls do not presently exist on the Internet. Here, citizens from the most repressive regimes are able to find information about matters concerning their governments or their human rights records that no local newspaper may dare print,

while denouncing the conditions under which they live for the world to hear. The Internet allows its users an intimate look at other countries, other people, and other cultures, which few before were ever able to attain. The power to give and receive information, so central to any conception of democracy, can be truly achieved on the Internet, as nowhere before (see chapter *Culture, Institutions and Organizations on the Internet*).

It should not be surprising therefore that several governments around the globe are becoming anxious to control and regulate this new medium. These governments are worried that the Net is being used to disseminate information they were once able to ban or block at the border. However, because of the unique nature of the Internet, which knows no national boundaries, it cannot be subject to the same governmental controls that already apply to other mass media, such as television and radio. Many legal experts argue that filtering or blocking access to Internet material by a government amounts to pre-publication censorship. Many governments that block content on the Internet suppress some material that is unquestionably legal. Moreover, many of the governments that practice Internet censorship are reluctant to make public how censorship is actually practiced and what sites are blocked, insulating their actions from any scrutiny or evaluation under international human rights standards. Two main questions pose themselves under these complicated circumstances: can the Internet be silenced, and should the decision of what to block, and what technology to use to block it, be in the hands of the end users or the governments?

## **2. Governments' Attempts to Regulate the Internet**

According to a recent Human Rights Watch report, restrictions on Internet access and content are increasing worldwide, under all forms of government. Authoritarian regimes are attempting to “reconcile their eagerness to reap the economic benefits of Internet access with maintaining control over the flow of information inside their borders.”

An issue closely related to censorship is that of access, which is largely determined by the existing telecommunications systems. According to a 1997 report by the Panos Institute, a London-based, international, non-profit organization specializing in development issues, access requires a telephone line. Forty-nine countries have less than one telephone per 100 people, 35 of which are in Africa. India, for example, has 8 million telephone lines for 900 million people. At a global level, at least 80 % of the world's population still lacks the most basic telecommunications (see chapter *Internet Access, Cost and the Information Gap*).

Limits on access to online information are imposed by governments for a variety of reasons, including economic gain and political control. Some governments have chosen to control the liberalizing effect of the Internet by denying access to entire segments of their populations, either through exorbitant charges or by confining access to select populations, such as universities. In some countries, individuals who have Internet connections through foreign-owned corporations are able to elude these restrictions.

The following is a brief overview of the attempts and measures taken by different governments to regulate the Internet and control its content.

## **2.1 Internet Regulation in North America**

### **2.1.1 The United States**

Hysteria about “cyber porn” was ignited in the United States after *Time* magazine published a cover story, complete with lurid photographs, asserting the wide availability of sexually explicit material on the Internet. The article was based on the research findings of a student at Carnegie Mellon University. Concerns over the regulation of Internet pornography recently culminated in the enactment of the Communications Decency Act (CDA), an amendment to a telecommunications reform bill signed in February 1996.

The CDA criminalizes online communication that is “obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person” or “obscene or indecent” if the recipient of the communication is under eighteen years of age “regardless of whether the maker of such communication placed the call or initiated the communication.” Also prohibited is online communication to minors that “depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication.”

However, on June 26, 1997, in the landmark case *Reno v. ACLU*, the Supreme Court overturned the CDA, declaring that the Internet is entitled to the highest level of free speech protection. In this case, the Supreme Court held that the CDA violated the spirit of free speech guaranteed by the First Amendment. It was the nature of the Internet itself, and the quality of speech on the Internet, that led the Supreme Court to declare that the Internet is entitled to the same broad free speech protections given to books, magazines, and casual conversations.

The ACLU argued, and the Supreme Court agreed, that the CDA was unconstitutional because, although aimed at protecting minors, it effectively banned speech among adults. The Supreme Court said, “Any content-based regulation of the Internet, no matter how benign the purpose, could burn the global village to roast the pig.” The Court stated that the Internet is not as “invasive” as radio or television.

A Cyber-Rights and Cyber-Liberties Report published in the United Kingdom recently argued, “any regulatory action intended to protect a certain group of people, such as children, should not take the form of an unconditional prohibition of using the Internet to distribute content that is freely available to adults in other media. Therefore, attempts to pass online censorship legislation such as the CDA should be avoided, and child pornography laws should not be used as false examples of supposed legitimate restrictions of freedom of expression.”

### **2.1.2 Canada**

In response to the debate about cyberspace, the Canadian government formed the Information Highway Advisory Council (IHAC) in 1994 to study and prepare an official statement on what directions the Internet should take in Canada. In September 1995, the

council released its first report, which concluded that there should be controls on two primary targets: obscenity and racist/hate material. It is illegal to spread “hate propaganda” and “obscenity” in Canada. Sexually explicit material is legal as long as it is not deemed obscene, that is, characterized by “undue exploitation of sex,” meaning sex plus violence or degrading sex.

According to David Jones, president of Electronic Frontiers Canada, there is no intention of proposing new laws that apply to the Internet.

## **2.2 Internet Regulation in Asia**

Asia now has over 1.5 million Internet users, two-thirds of them in Japan. Among the region’s authoritarian nations, only North Korea and Myanmar are without any Internet connection. Currently, most countries in Asia are connected directly to the United States, rather than to each other, but new initiatives are underway to establish an intra-Asia connection.

### **2.2.1 China**

Commercial Internet accounts became available in China in mid-1995, but at prices far beyond the means of all but the wealthiest. In June 1995, China’s telecommunications minister stated, “as a sovereign state, China will exercise control on the information” entering China from the Internet. “By linking with the Internet, we do not mean the absolute freedom of information.” Many Usenet newsgroups were reportedly not allowed on Chinese Internet host computers.

The Hong Kong-based China Internet Corporation (CIC), principally owned by China’s state-run Xinhua News Agency, offers Chinese business subscribers only limited access to business related information. Users have access to information generated outside China, but only after it has been screened in Hong Kong. According to the Chief Executive Officer of CIC, customers can be assured their e-mail will not be screened or bugged by the mainland “unless you have broken the law.”

ChinaNet, based in Beijing and Shanghai, which became available in May 1995, provided commercial Internet access. Control of Internet access accounts was extremely tight, and people wishing to open them were required to register at the Postal Ministry. That is why black market permits became available.

On January 1, 1996, several days after CompuServe cut off access to 200 Usenet newsgroups, Xinhua News Agency reported that the government had called for a crackdown on the Internet to rid the country of unwanted pornography and “detrimental information.” A joint statement issued by the State Council and the Communist Party Central Committee said effective measures had to be adopted to solve the problem of uncontrolled information. The Chinese leadership also reportedly summoned the Chinese suppliers of Internet connections, and on January 15, 1996, the biggest supplier announced a “moratorium” on new subscribers. According to press reports, officials said that as many as 70 000 people were using the Internet through 7000 accounts, and that the high volume was more than the current system could handle.

On February 4, 1996, Xinhua announced that there were new Internet regulations that required existing computer networks to “liquidate” and “reregister,” and to use only international channels provided by the Ministry of Posts and Telecommunications, the Ministry of Electronics Industry, the State Education Commission, and the Chinese Academy of Sciences. In mid February 1996, the Ministry of Public Security ordered all those who use the Internet and other international computer networks to register with the police within thirty days.

As the *New York Times* reported, both individuals and organizations are prohibited from producing, retrieving, duplicating, or spreading information that would endanger the national security of China.

In January 1999, Human Rights Watch urged major Internet service providers to publicly condemn the two-year jail sentence handed down to a computer company owner in Shanghai, who was found guilty of “incitement to subvert the state” for providing 30 000 Chinese e-mail addresses to a US-based online magazine. “This harsh punishment reflects the Chinese government’s anxiety about the growing use of the Internet, and its own inability to control information flows,” said Asia director of Human Rights Watch.

### **2.2.2 Hong Kong**

Hong Kong has not drafted any policy or released any official statements regarding Internet censorship. The 1987 Obscene and Indecent Articles Ordinance does not specifically discuss online communication, but the ordinance reportedly applies to communication on the Internet. The Hong Kong government’s Recreation and Culture Branch, which oversees online media, recently commissioned a study of online communication.

There are currently more than fifty Hong Kong Internet service providers (ISPs), and some censor content. That includes Hong Kong SuperNet, one of the largest of Hong Kong ISPs, which voluntarily ended access to sexually explicit material on Usenet in March 1995. Star Internet followed suit in November 1995, by blocking about twenty newsgroups with erotic text and pictures.

In March 1996, the Commissioner of the Television and Entertainment Licensing Authority said that controls on the Internet should ensure a “minimum degree of decency” to protect children, and said the best solution would be for ISPs to regulate themselves.

### **2.2.3 Singapore**

In Singapore, the Internet is treated as a broadcast medium, regulated under the Singapore Broadcasting Authority Act of 1995. Singapore allows three service providers: Singnet, which is part of Singapore Telecom, Pacific Internet, and Cyberway. The government claims that it does not currently censor e-mail, but in 1997, it disclosed that it had searched individual accounts to try to identify those who had downloaded sexually explicit material. After businesses expressed concern about the security of their

information, the authorities said they would refrain from conducting such searches in the future.

The main means of censorship up to now has been to control access. In addition, sexually explicit material and news have been censored by the Ministry of Information and the Arts, the government body in charge of media censorship. Fewer than half of Usenet newsgroups are available through Signet. Currently there are no widespread uniform guidelines or procedures for restricting use of any Internet services, and local administrators have to make arbitrary decisions on access.

The minister of information and the arts told Parliament, “censorship can no longer be 100 % effective, but even if it is only 20 % effective, we would still not stop censoring... We cannot screen every bit of information that comes down the information highway, but we can make it illegal and costly for mass distributors of objectionable material to operate in Singapore.”

Although Singapore’s authorities initially stated that they would not heavily censor political criticism, they have reportedly shifted from watching for sex-related material to watching for “misinformation.” In March 1997, the government announced censorship measures that were more severe, including the licensing of all ISPs and a requirement to use filtering software. The measures were meant to prevent Singaporeans from accessing sexually explicit material and hate literature, and will also cover politics and religion.

The government also announced that the World Wide Web content providers would have to register with Singapore’s Broadcasting Authority, and that three categories of web pages would be scrutinized: those operated by political parties, electronic newspapers targeting Singapore, and pages concerned with politics or religion.

Moreover, the Singaporean authorities announced that those with web sites must ensure that they do not encourage abuse or distribute objectionable information, such as sexually explicit material. The rules also require Internet service providers to institute an acceptable use policy.

#### **2.2.4 Indonesia**

Indonesia’s first commercial provider, Indonet, began operation in late 1994. A number of others soon followed, and the country now has numerous ISPs. The more established electronic bulletin board networks also draw extensively from the Internet. The Internet is freer than any other mass medium in Indonesia, and there are no laws, regulations, or ministerial decrees concerning its use. *Tempo*, a news weekly that was closed by the government in 1996, recently established a site on the Web with the blessing of the Indonesian minister of information, who agreed that there should not be regulations against the Internet, but warned of the possibility that the House of Representatives might discuss legislating the Net.

Recently, an Indonesian armed forces spokesman told Reuters news agency that the military had suggested to the Communications Ministry the need for some sort of “toll

gate” to “black out” news that could damage culture or affect security. At present, private ISPs in Indonesia do not carry all Usenet groups, but this is reportedly done in the interests of conserving disk space and because of the language barrier.

### 2.2.5 Malaysia

The Malaysian Institute of Microelectronic Systems (Mimos), the nation’s sole Internet provider, has experienced a huge demand, with an average monthly increase of 22 % since it began service in late 1994. As of 1996, there were some 30 000 users. In April 1996, Mimos announced that it would appoint eight new ISPs to help ease congestion.

Usenet newsgroups are heavily censored. The “acceptable use” policy at Jaring, the main Malaysian Internet line, states, “members shall not use Jaring network for any activities not allowed under any law of Malaysia.”

The Malaysian government reportedly realizes that online censorship may not be effective. The former Prime Minister has warned Malaysians, “it depends on the culture. If the culture is weak, we will be the victims. But if we use it in a way that can increase our knowledge, we will get many benefits from the Internet.”

In reaction to Malaysian students abroad criticizing Malaysia on the Internet, the government has considered various ways to curb such dissent, according to the information and education ministers; the education minister proposed cutting scholarships of offending students.

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### **Biographical Sketch**

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