Research Report

Human Rights Council

The conflict between freedom of speech, expression and censorship on the Internet

MUNISH

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Introduction

The term 'censorship' originates from censors instituted in Ancient Rome, when democracy emerged. The censors were magistrates, whose responsibility was to regulate both the moral and political conduct of citizens. In modern day society, the term 'censorship' refers to the act of restricting and suppressing information, ideas and opinions, with the purpose of protecting a specific social institution. According to the Global Internet Liberty Campaign, these institutions can be categorized into the following: the family, the church and the state. As well as information, ideas and opinions which are censored can be categorized into the following: moral, political, religious, military and corporate censorship.

Of all media which can be used to spread and share information, the Internet is perhaps the most difficult to regulate in terms of censorship of its content. The reason for this is the fact that the Internet is a global medium of communication with universal reach, so there are conflicts which can arise as to who should have ultimate control over the Internet's content; whether that be individual countries, or a mutual decision amongst all. Due to the ever-growing magnitude of the Internet, censoring all content which is seen as unsuitable for public viewing is a task which is wholly unconceivable. This is why there is the necessity to find a justified balance between appropriate expression of opinion and free speech through the Internet, and prohibited content which is to be restricted by means of censorship.

Definition of Key Terms

Moral censorship

This is the censorship of materials which can be considered vulgar, inappropriate or morally questionable. Common examples of this are (child) pornography and pedophilia.

Political censorship

This type of censorship consists of concealing or falsifying information received by citizens, with the objective of preventing discordance with governmental/ political ideas.

Religious censorship

This entails the use of censorship in order to suppress opinions and ideas opposing those of conventional beliefs.

Military censorship

Any type of censorship conducted by those employed in the armed forces, generally in order to prevent the spread of classified information.

Corporate censorship

This is a censorship conducted by corporations, where threats are held against those with important information, in order to prevent them from spreading it.

Totalitarian regime

A centralized governmental rule in which there is only one political party that holds absolute authority and control.

Democracy

This is a governmental system with a constitution that supports and upholds human rights and fair elections.

Communism

This is a governmental system in which private ownership does not exist. In theory, there are no social classes in this system, however in reality there are generally two classes; a ruling and a working class. The social and economic activities are controlled by a single political party.

Free speech

Free speech is the human and political right to speak and communicate ideas and opinions without limitation. This is established as a human right in Article 19 of the Universal Declaration of Human Rights (UDHR). The boundaries of free speech are not absolutely defined, and are dependent on legislation.

Hate speech

This is speech which attacks or threatens one or more individuals of a certain race, gender, religion, sexual orientation etc. Similar to free speech, the boundaries of hate speech are not clearly defined, and are subject to legislation. This is a frequently debated topic, which bears a controversial question: how can we determine whether statements commonly classified as hate speech should be permissible due to the fact that there is a human right to free speech and opinions?

Human right

Any right which all humans are entitled to.

Defamation

This is the act of falsely representing or communicating words or actions with the intention of damaging/degrading a person's reputation. This is relevant in particular when considering hate speech through means of the Internet, as it can be used to sway the opinions of others about a particular person/group of people.

Circumvention

In the context of Internet censorship, circumvention refers to the use of technology to bypass filtering in order to access and view censored information and content. All the various methods of doing so involve accessing a server which is unfiltered and is not subject to censorship laws. As circumvention is a very technically challenging process, it is not a very common issue and therefore censorship still remains as an effective method of withholding information.

Sedition

This is speech or language used to instigate rebellion or protest against the authority/ government of a state.

Filtering by keyword

This type of censorship works by censoring information containing specified words/phrases which are deemed inappropriate.

Web 2.0

Web 2.0 refers to a generation of the World Wide Web (WWW) which allows for user-generated content. Examples of applications of Web 2.0 are blogs, YouTube, wikis and forums.

General Overview

Article 19 of the Universal Declaration of Human Rights (UDHR) states the following: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*" This right to freedom of speech is therefore fundamental to the protection of human rights. The conflict which arises with this article is that of where to draw the line between appropriate expressions of opinion, and speech which should be prohibited, in particular hate speech. Article 19 of the International Covenant on Civil and Politic Rights (ICCPR) states the following:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be for example provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals."

Article 20 of the same covenant states the following:

"1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

As we can see, article 19 of the ICCPR has a similar message to article 19 of the UDHR, and article 20 provides an indication as to when the right of free speech is being abused (when prohibited by law) and what content is unacceptable.

Constitution in democratic countries

In democratic countries, freedom of speech and expression play a great role within society as they are recognized as a human right, as is stated in the UDHR and the ICCPR. However, given that this right is very 'sensitive' and can be defined very subjectively, democratic countries generally enforce legislation to overcome exploitation of this right. For example, in the United States, the constitution (see major parties involved) prohibits the creation of laws that abridge freedom of speech and expression. The Communications Decency Act (CDA) of 1996 was an attempt to control pornography on the Internet as this topic is deemed by many as inappropriate. There were many changes made to this act due to legal issues concerning infringement on freedom of speech. Today, pornography regulations are specified in the Child Internet Protection Act (CIPA), among others. This goes to show that although a democratic country may fully support the human right of freedom of speech and expression, they will often use methods of filtering in order to regulate content which is seen to be exploiting this right.

Countries maintaining a highly censored Internet

There are also those countries that maintain and strongly regulate content through a variety of methods of censorship. This can be seen in China, where the 'Great Firewall' is an encompassing and highly technological system of censorship which makes use of various developments in technology to provide a highly censored Internet environment to the population. In this country, there is little adherence to the human right of freedom of speech and expression. In Islamic countries, for example Iran, censorship is also highly used. In these countries, it is used in particular for the purpose of political censorship, in order to prevent defamation and sedition which could lead to revolt.

These are only a few examples; however they clearly demonstrate the immensely differing views on what is considered to be inappropriate content on the Internet, and the levels to which censorship is put into practice worldwide. In an ideal situation, significant global progress to resolve the conflict of freedom of speech, expression and censorship on the Internet could be made as a result of a mutual decision between all countries, defining what content should and should not be viewable on the Internet. However, as policies and legislation differ greatly in each country, solving this issue is not as simple as this.

Major Parties Involved and Their Views

Peoples' Republic of China (PRC)

PRC is home to over 560 million Internet users, and the Chinese Communist Party (CCP) maintains rigid control over Internet content. According to the Freedom on the Net Report (2012) conducted by Freedom House, China is the third most censoring country worldwide, following Cuba and Iran. The Chinese government appears to have two main objectives with its tight Internet restrictions; political censorship for the benefit of their economy and moral censorship for the benefit of the citizens.

There are three main 'layers' of censorship which reinforce each other in order to create the manipulated online platform which can be viewed by the public. The first is known as the 'Great Firewall', and entails the technical filtering used to block access to specific websites, or areas within them. Web 2.0 sites containing user generated content are prone to many restrictions, due to the fact that the CCP cannot control or maintain the content uploaded. The authorities make use of filtering by keyword in order to censor specific topics, in particular those containing sedition and defamation of political leaders. The second layer is that of censorship maintained by service providers and large corporations. They are obliged to comply with the censorship legislations in PRC if they would like access to the Chinese market. The final layer consists of continuous manipulation and proactive censorship of inappropriate content as it is uploaded. As well as these three layers, there are several other methods of censorship in PRC which together, form the most intricate and complicated censorship system worldwide.

Democratic People's Republic of Korea (DPRK)

In 2006, DPRK was described by Reporters without Borders as the 'worst Internet black hole', and is on its list of the 13 Internet enemies. In DPRK, the censorship and regulations on the Internet are perhaps the most extreme; Internet access is illegal. Instead, the citizens are provided access to the country's own Intranet, called Kwangmyong. Its purpose is to restrict access to foreign content which is deemed undesirable by the government (political censorship in particular).

This Intranet does also not allow for freedom of speech or expression on the Internet, so there are many that argue that it denies the domestic users of the human right (as stated in the DOHR). Those authorized to use the global Internet are a limited selection of government officials, and the Internet comes from a North Korean- Chinese connection. The

effect of this rigid censorship is the following: the majority of citizens live their lives unaware of issues and conflicts in the rest of the world. In a sense, they are completely isolated within the boundaries of the manipulated information which is provided to them.

United States of America (USA)

As stated in the First Amendment to the United States Constitution, "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*" This amendment prohibits the creation of laws which have the intention of diminishing rights to freedom of speech. In accordance to this amendment, private Internet connections in the USA are uncensored, as is the case in many democracies with similar constitutions.

At the meeting of the International Telecommunications Union (ITU) in Dubai 2012, the US, as well as 55 other countries, failed to sign on to a treaty which would ultimately ensure globalized Internet censorship to a certain extent. This treaty consequently failed. Instead, the US chooses to impart its own legislation concerning censorship.

Cuba

The primary purpose of censorship within Cuba is to prevent the Internet from being used in a manner which counteracts the revolution led by Fidel Castro. Generally, the only manner for domestic citizens to access the Internet is through Internet cafes, where they are given two options; national or international Internet access. Given that international access is expensive, the majority of Cubans opt for national access, which consists of only an email connection. When users enter keywords which are recognized by technology, the connection is broken. Foreigners on the other hand are able to access the worldwide Internet. However they can be prosecuted if they allow domestic citizens to access it. Through these means, freedom of speech and expression is very much restricted in Cuba. According to Reporters without Borders, Cuba is one of the 13 Internet Enemies.

OpenNet Initiative (ONI)

ONI is a collaborative partnership with the intention of exposing worldwide Internet surveillance and censorship practices. Their conclusions are based on technical findings as well as investigations, and they have published many reports as well as books which are available to the public.

Reporters without Borders

Reporters without Borders, is a France-based non-governmental organization (NGO) whose mission statement is the following:

"•*To continuously monitor attacks on freedom of information worldwide;*

•*To denounce any such attacks in the media;*

•*To act in cooperation with governments to fight censorship and laws aimed at restricting freedom of information;*

•*To morally and financially assist persecuted journalists, as well as their families.*

•*To offer material assistance to war correspondents in order to enhance their safety*."

They have created the 'List of 13 Internet Enemies', and their archives contain yearly reports on censorship and freedom of speech in a broad range of countries.

Freedom House

This is a US based NGO that conducts research on issues related to human rights, one of which is the issue of freedom of expression. As well as, it is actively involved in the promotion of freedom of speech and expression through cooperation and communication with organizations, advocates of free expression and the United Nations (UN). A particularly relevant report by this NGO is that titled 'Freedom on the Net: A Global Assessment of Internet and Digital Media'. This contains reports on a wide selection of countries, as well as further information on the previously specified topic.

International Telecommunication Union (ITU)

This is a specialized agency of the UN, which focuses on information and communication technologies. In 2012, the ITU held the World Conference on International Telecommunications in Dubai. At this conference, changes were made to the International Telecommunication Regulations, and some changes were proposed but did not pass. One of these changes was the creation of a treaty which would essentially result in global censorship to a certain extent, however it did not pass. The ITU continues to remain active in the field of Internet regulations.

Amnesty International (AI)

Amnesty International is a NGO whose purpose is to research human rights and to instigate action in order to ensure equal rights worldwide. One of the main issues it focuses on is 'Censorship and Free Speech', under which the subcategory 'Internet Censorship' falls. There are a number of research papers available concerning this topic.

Human Rights Watch (HRW)

The HRW is a NGO with a very similar purpose to AI because it monitors, conducts research on and reports on human rights worldwide. One of the main issues it focuses on is freedom of expression. As well as publishing many papers on this topic, it is a founder of the International Freedom of Expression Exchange.

National Coalition Against Censorship (NCAC)

The NCAC is an alliance of organizations whose aim is to protect freedom of speech and discourage censorship. They do so by providing education to the public about censorship, and by reporting on issues which are currently relevant. Amongst other types of censorship, Internet censorship is one of their areas of focus.

WikiLeaks

This is an online international website which, hence its name publishes classified and secret information for everyone to see. Published information originally comes from anonymous sources, and WikiLeaks claims that all information is verified before news pieces are written. Due to the exposure of information which is otherwise censored to the public, WikiLeaks has been part of many confrontations and conflicts with governments and large corporations in particular. An example of this was the conflict between the US government and WikiLeaks after they leaked over 250,000 US state department cables.

International Freedom of Expression Exchange (IFEX)

The IFEX is a network of NGOs worldwide who strive together to promote freedom of speech and expression. They mainly do so by means of campaigning, forming advocacy alliances, and publishing information and reports on current issues relevant to the topic of freedom of expression. One of the main subtopics, as is relevant to the issue at hand, is Internet censorship.

Timeline of Events

Date	Description of event
September 17th, 1787	The United States Constitution is adopted
December 10th, 1948	Universal Declaration of Human Rights (UDHR) is adopted by the UN General Assembly
December16th,1966	International Covenant on Civil and Political Rights (ICCPR) is adopted by the UN General Assembly
1989	World wide web (WWW) is invented by Tim Berners-Lee
2006	'Enemies of the Internet' list was introduced by Reporters Without Borders
November 16th, 2006	The 'Great Firewall' in Peoples' Republic of China is first implemented
2009	Freedom House begins to publish Freedom on the Net reports
June 29th, 2012	UN Resolution (A/HRC/20/L.13) passes, recognizing Internet freedom as a basic human right
December 3rd – 14th, 2012	World conference on International Telecommunications Union (ITR)
January 18th, 2013	This is the first Internet Freedom Day in protest against the Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA) of 2012

UN involvement, Relevant Resolutions, Treaties and Events

Due to the enormous and continuous growth of the Internet, there is an increasingly greater need for UN involvement in order to maintain the adherence to human rights standards whilst ensuring that Internet content is appropriate. Listed below are the main events, resolutions and instances in which the UN has become actively involved in the issue at hand.

- Universal Declaration of Human Rights (UDHR) – Not all of this document is relevant to the issue of the conflict of freedom of speech, expression and censorship on the Internet; Article 19 is that which is relevant.

- International Covenant on Civil and Political Rights (ICCPR) – Similar to the UDHR, only specific articles are relevant. These are Articles 19 and 20, which together establish the right to freedom of speech and expression, and draw boundaries at which this should be limited.

- Calling of an International Conference on Freedom of Information, 14 December 1946, (**A/RES/59**)

- The promotion, protection and enjoyment of human rights on the Internet, 29 June 2012, (**A/HRC/20/L.13**)

- International Telecommunication Regulations (Updated in 2012 at the Dubai International Telecommunication Union world conference. A treaty to introduce censorship to a certain extent worldwide failed.)

- United Nations Educational, Scientific and Cultural Organization (UNESCO) conference on 'Freedom of Expression on the Internet' in Marrakech

Evaluation of Previous Attempts to Resolve the Issue

Due to the differences between national constitutions, it is very challenging to find a globally-applicable solution in the attempt to resolve this issue. Through documents and conferences, the foundations for establishing human rights and communication between countries which are relevant to the topic have been created. If we look in particular at the ITR regulations, we can see that an attempt to instigate worldwide censorship failed, which suggests that it did not consider the standpoints of countries who are strongly supportive of the right to freedom of speech and expression (democratic countries in particular). Although none of these attempts significantly resolved the issue, they definitely made progress.

Possible Solutions

In terms of finding the balance between freedom of speech, expression and censorship on the Internet, there are no clear-cut solutions. For significant worldwide progress to be made, mutual decisions and agreements need to be established between countries defining the following; what information can be considered inflammatory when published on the Internet, and what means of filtering/censorship technologies are appropriate. This could be done through an international binding treaty or agreement. Given that countries have different stances on this topic, it may be very difficult to come to an agreement on and therefore to adopt such a document. This has been demonstrated by the failure of the treaty at the ITR conference in 2012.

The fact remains that the Internet is an ever-evolving environment and developments in social networking and other Web 2.0 applications means that human behavior online is

constantly evolving as well. There are several courses of action that could aid in enabling governments to keep up with these rapid changes:

- Through educating and engaging the public in respect to the standards and limitations to content which can be published online.

- By developing and institutionalizing further advancements in technology in order to strive to block unsuitable content whilst allowing for freedom of speech and expression to a certain extent.

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Appendices

I – Universal Declaration of Human Rights (UDHR)

http://www.un.org/en/documents/udhr/

II – International Covenant on Civil and Politic Rights (ICCPR)

http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

III – Freedom on the Net Reports (2012)

http://www.freedomhouse.org/report/freedom-net/freedom-net-2012

IV – Reports on current issues by the OpenNet Intiative

https://opennet.net/reports

V – 'Enemies of the Internet' by Reporters Without Borders

http://en.rsf.org/list-of-the-13-internet-enemies-07-11-2006,19603

VI – A useful report by UNESCO entitled 'Freedom of connection, freedom of expression: the changing legal and regulatory ecology shaping the Internet'

http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/freedom-of-connection-freedom-of-expression-the-changing-legal-and-regulatory-ecology-shaping-the-internet/