

**DR IAN BROWN**

---

# **CONTENT REGULATION**

## OUTLINE

- ▶ The value of free expression vs concerns about stability, security and defamation
- ▶ How governments block and filter the internet and how people get around it
- ▶ How social media platforms moderate content
- ▶ The responsibility of private intermediaries for user content

---

## INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: PREAMBLE

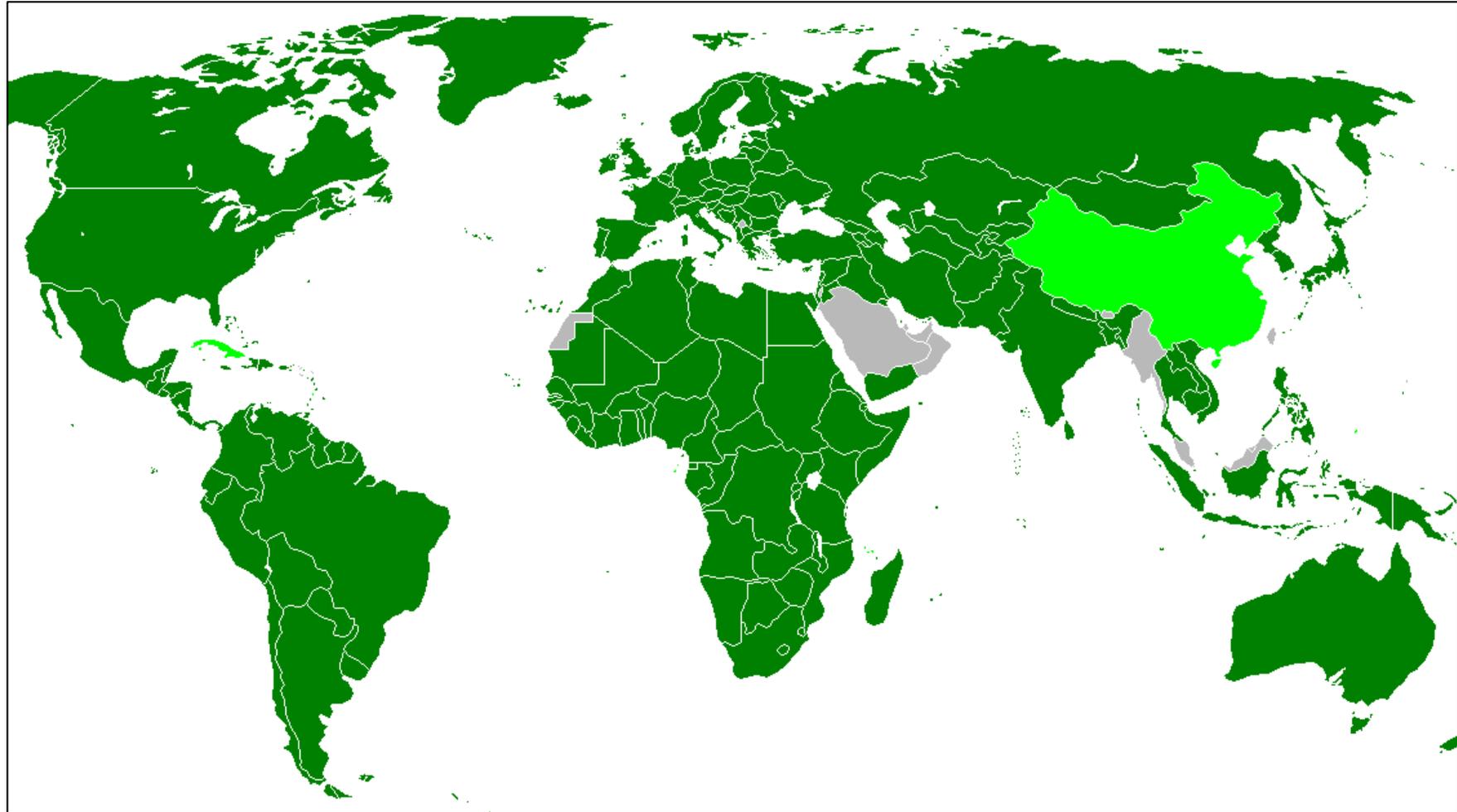
Considering that, in accordance with the principles proclaimed in the **Charter of the United Nations**, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the **inherent dignity** of the human person,

Recognizing that, in accordance with the **Universal Declaration of Human Rights**, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the **obligation of States under the Charter of the United Nations** to promote universal respect for, and observance of, human rights and freedoms,

# ICCPR SIGNATORIES



Data: UN High Commissioner for Human Rights; Graphic: Wikimedia

---

# RIGHTS OF FREEDOM OF EXPRESSION

- ▶ Universal Declaration of Human Rights (1948)
- ▶ International Covenant on Civil and Political Rights (1966) Art. 19:
  - ▶ 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.
- ▶ Regional conventions - European, American, African
- ▶ National constitutions
  - ▶ Art. 35 Constitution of People's Republic of China
  - ▶ Art. 19 Indian Constitution
  - ▶ Art. 19 Constitution of Pakistan

# THE VALUE OF FREE EXPRESSION

- ▶ 'Freedom of expression constitutes one of the **essential foundations of [democratic] society...** it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that **offend, shock or disturb** the State or any sector of the population. Such are the demands of that **pluralism, tolerance and broadmindedness** without which there is no "democratic society".' (*Handyside v UK*, ECHR Case no. 5493/72, 1976 §49)
- ▶ 'As the most **participatory** form of mass speech yet developed, the Internet deserves the **highest protection from government intrusion**. Just as the strength of the Internet is **chaos**, so the strength of our **liberty** depends upon the **chaos and cacophony of the unfettered speech the First Amendment protects.**' (*ACLU v. Reno*, 929 F Supp 824 (1996))

# **HOW ARE HUMAN RIGHTS OBLIGATIONS ENFORCED IN DOMESTIC LAW IN YOUR COUNTRY?**

# SECURITY, STABILITY AND DEFAMATION – ICCPR RESTRICTIONS

## ▶ Article 19:

- ▶ 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 such as are **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** (ordre public), or of **public health or morals**.

## ▶ Article 20:

- ▶ 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.

## TYPES OF CONTENT TO BE REGULATED

- ▶ Moral (pornography, child abuse images, hate speech )
- ▶ Religious ('heretical' texts, gay and lesbian material)
- ▶ Cultural ('sanitisation' of materials, censorship of language and historical events)
- ▶ Informational (maps, sensitive military or infrastructural information, Wikipedia)
- ▶ Political (opposition materials or texts, accounts of events)
- ▶ Personal (self-harm or anorexia websites)

## CONTENT REGULATION IN OTHER MEDIA

Internet content regulation has emerged against the backdrop of similar regulation in other media:

- ▶ Radio jamming
- ▶ Film classification
- ▶ Television ‘watershed’
- ▶ Censorship of magazines and books and circulation of ‘samizdat’

**WHAT RESTRICTIONS HAVE  
BEEN MADE IN YOUR COUNTRY  
ON ONLINE CONTENT?**

## FILTERING & BLOCKING

- ▶ 'Technologies which provide an automatic means of preventing access to or restricting distribution of particular information' (McIntyre & Scott 2008, p. 109)
- ▶ Features of blocking: automatic & self-enforcing, opaque, reliant on co-operation and responsibility of intermediaries rather than end-user
- ▶ Rhetoric of purity: 'Cleanfeed', 'filtering' vs. censorship
- ▶ Often undertaken without court order or judicial due process.

## PROBLEMS WITH BLOCKING

- ▶ How do you restrict access to content hosted in other countries? Filter based on IP addresses, redirect DNS queries, use proxies with blocking lists and/or keyword filters
- ▶ How do you decide which content should be blocked? Are assessments of harm/benefits clearly defined?
- ▶ Blocking is only a temporary measure, and does not remove the source material.
- ▶ Blocking can deflect law-enforcement efforts from prevention and detection.
- ▶ How do you block access to non-WWW content?
- ▶ Content increasingly flows directly between peers.

## PROBLEMS WITH LIMITING ACCESS

- ▶ Age verification technologies still unsatisfactory and access to credit cards often easy.
- ▶ On the Internet no one knows you're a dog. Still true?
- ▶ But ISPs and content providers have proved they can and will restrict access to certain sorts of materials when challenged in the courts (recently: Twitter, Google)
- ▶ Can't limit access to materials exchanged between peers
- ▶ Use of social networking sites has made public/private distinctions problematic
- ▶ Popularity of services such as Facebook means many children using 'adult' services (38% 9-12 yrs, Livingstone et al. 2011)
- ▶ Walled garden more suited to some types of platform or service.

## ZONING THE INTERNET

- ▶ Trivial to regulate the content hosted **within** a country, and/or that controlled by nationals
- ▶ Increasing number of countries blocking overseas sites at national borders, or mandating blocking by ISPs
- ▶ Widespread in repressive countries such as China, Saudi Arabia, Iran...
- ▶ ...but also growing in Europe (Spain, Germany, France and the UK), Australia and elsewhere
- ▶ Blocking organisations such as IWF work with police to seek removal of illegal material hosted outside UK.

## FILTERING MOVES ON: SEARCH

- ▶ No longer effective just to block particular URLs or domains, new patterns of Internet use mean that authorities seek to control content in other ways, e.g. Search, blogs, SNS..
- ▶ Google's previous Chinese site removed contentious results (Tiananmen Square, Tibetan independence, Falun Gong...)
- ▶ German search sites follow voluntary code removing hate speech, holocaust denial etc.
- ▶ Even in US, filters results containing sites that have been notified to Google as infringing ©

## BLOCKING BLOGS AND SNS

- ▶ Microsoft has followed requests from Chinese government to remove blogs that contain politically controversial content
- ▶ Indian and Iranian governments have simply blocked access to controversial blog sites (and the latter “a large number of sites with gay and lesbian content, some politically sensitive sites, women’s rights sites...”)
- ▶ Facebook has been criticised for blocking or deleting pages posted by activists using pseudonyms during the Arab Spring
- ▶ Facebook criticised for removing harmless content or pictures relating to breastfeeding, breast cancer etc.

# **WHO ISSUES BLOCKING REQUESTS, AND HOW ARE THEY ENFORCED IN YOUR COUNTRY?**

## CORPORATE RESPONSIBILITY?

- ▶ Companies have to set up physical bases in countries with more repressive regimes - staff and resources are then vulnerable.
- ▶ Yahoo vs Google - to comply or not to comply?
- ▶ Twitter's new per-country tweet blocking
- ▶ Global Network Initiative: "Participating companies will respect and protect the freedom of expression of their users by seeking to avoid or minimize the impact of government restrictions on freedom of expression"
- ▶ Who are the ultimate guardians of free expression online - states, NGOs, companies or individuals?

## UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

- ▶ *“The framework comprises three core principles: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies.”*
- ▶ Companies faced with state demands that violate human rights have a duty to refuse to do so where they can, minimise the extent of any such cooperation, and help victims of any enforced cooperation
- ▶ GNI Principles and Implementation Guidelines already go a long way to operationalising the Guiding Principles

# INTERNET INTERMEDIARY LIABILITY

- ▶ US Communications Decency Act 1996 - 47 USC §230(c):
  - ▶ (1) No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
  - ▶ (2) No provider or user of an interactive computer service shall be held liable on account of
    - 
    - ▶ (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
    - ▶ (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).
- ▶ EU e-Commerce Directive 2001

**ARE INTERMEDIARIES  
PROTECTED IN YOUR  
NATIONAL LAW?**