

## **The Politics of Internet Control and Delegated Censorship**

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Wendy Seltzer, [wendy@seltzer.org](mailto:wendy@seltzer.org)

Fellow, Berkman Center for Internet & Society at Harvard Law School

Founder, Chilling Effects Clearinghouse, <http://chillingeffects.org>

Against the myth that the Internet breaks traditional political boundaries, we find that the Internet itself looks different depending on our vantage point. The "politics of the Internet" includes that of Internet control, identifying chokepoints and the power that can be exerted upon and through them. For notwithstanding the distributed nature of the Internet, traffic to any given point passes through numerous bottlenecks where communications can be blocked. Moreover, major search engines operate as de facto points of centralization. Pressure at these points can change the local nature or view of the Internet, so one state's "Internet" does not look the same as another's. A state that wishes to suppress speech can do so, even online.

States can exercise the most direct control on content posters within their borders, by demanding that the posters or their hosts remove material. Against out-of-country posters and hosts, however, a state's direct control is limited. Some states block these undesirable communications at the borders, demanding that state-run or private Internet service providers prevent in-country users from reaching sites that exist on the wider Net. As the OpenNet Initiative has documented, these blocks range in scope from a few pornographic sites excluded in Singapore, through aggressive political filtering in Iran, to a wide range of political and religious dissent and human rights activism made inaccessible by the "great firewall" of China.

This direct exertion of legal force on intermediate service providers is a blunt instrument, employed by a relative handful of countries. At a lower level, but much more persuasive, is indirect "filtering," through legal pressure upon those who search or index websites. These cause the network of networks that make up the Internet to look more fragmented on closer inspection, as hosts and providers respond to threats under legal

regimes in which they risk jurisdiction. These threats may come from governmental agencies, or, even more indirectly, from private citizens invoking national laws, in areas including defamation, privacy, hate speech, and intellectual property.

As a result, we see regimes of delegated censorship, where governments do not operate the Internet infrastructure directly but nonetheless control what may be seen there. The application of pressure to search engines is a particularly indirect route for censorship, but one that has proven attractive to governments and citizens in many countries we do not tend to think of as "filtering" the Internet.

If you do a web search in France or Germany for "AAARGH," (a Holocaust denial group), in Great Britain for "NatWest Fraud," in Germany for "rotten.com" or in Argentina for various models who regret being photographed nude, the results will look different from the same search performed in the United States. In each country-specific case, results will have been removed from the non-U.S. version in response to claims asserted under national law: prohibitions on Nazi support, defamation, "glorification of violence," and rights of publicity.

In each such case, the blocks operate through traditional exercise or threat of jurisdiction: A search engine with operations in a country risks suit if those operations violate local law. In the United States, search engines and other interactive service providers are protected from most suits regarding user-provided content by Section 230 of the Communications Decency Act (a holdover from a Constitutionally invalid attempt to censor the Internet more broadly). Elsewhere, lacking such blanket immunity, search providers may be threatened with direct or secondary liability for indexing and pointing to unlawful content after being given notice of its illegality. In some cases, they believe they risk real liability, while in other cases they may feel the conclusion is uncertain but not worth the cost and legal risk of a fight for a single page listing among millions.

Increasingly, multinational search companies respond to these national requests by changing the content provided by localized versions of their search engine. In Germany, for example, when you type "http://google.com" into your web browser, you will be redirected to google.de, based on Google's geolocation of the IP address from which you requested the search. Searching from Germany for the photos of the Abu Ghraib prisoners posted to Rotten.com will return "*Aus Rechtsgründen hat Google 23 Ergebnis(se) von dieser Seite entfernt. Weitere [Informationen über diese Rechtsgründe finden Sie unter ChillingEffects.org.](#)*" At Chilling Effects, you'll see a December 2005 notice indicating (in English and German) that "A URL that otherwise would have appeared in response to your search, was not displayed because that URL was reported as illegal by a German regulatory body." The entire rotten.com website has been de-listed from Google, because German regulators alleged it violated German laws against dissemination of representations that glorify violence. Thus when French and German citizens complain of violations of anti-Nazi laws, so the search engines remove revisionist sites from the .fr and .de variants; when non-U.S. or residents complain of defamation or invasions of privacy, engines remove pages from their local results sets; when German regulatory authorities complain of glorification of violence, extreme "pornographic writings," or incitement, pages will vanish from .de search.

Many of the websites thus removed from search are located outside the complainant's jurisdiction, and are not blocked at the borders, but as they are blocked from appearing through the intermediate channels of search engines, they disappear to much of their audience. Those who don't yet know of these pages' existence are now less likely to find them. The laws cause search providers to reshape their search results differently from mere language or country-based enhancement.

This indirect control is imperfect; search-engine based blocks are circumventable. Someone who knows a site's address or follows a link, rather than doing a search, will still be able to access pages removed from search. Likewise, someone who forces a search engine to show its generic .com-based pages rather than the localized ones will

still see the full generic set of results and be able to navigate to the removed sites. Chilling Effects has even automated some comparison, offering a split-screen view of a nationalized search and its .com version.

Despite their imperfections, these blocks raise political concerns. The more indirect the removal requests are, the less transparent they tend to be. It can be hard for the public to know whom to blame or how to protest search removals. If a web page author is asked to remove material, he can choose to comply by modifying the page, fight the allegations, or accept the consequences that his site may be blocked in some jurisdictions. Browsers who see pages disappear may at least see the author's explanation. By contrast, when sites are blocked at a search-engine level, it is up to the search providers to notify their end-users. If they do not, the page disappears invisibly. In most engines, pages simply disappear from listings, leaving searchers unaware that a site they never saw is gone. Although the hand of the law is still obscured by indirection, Google has advanced our knowledge by giving notice of the removals in its results page and sending removal requests on to the Chilling Effects Clearinghouse, <http://www.chillingeffects.org>.

Among the major search engines, only Google gives indication when it removes results from a search page because of legal demands. By following Google's link to Chilling Effects, where a copy of the takedown demand or indication of its nature is posted, the searcher can see both that pages are missing and who is responsible. The links at least describe the indirect restraint, enabling the frustrated searcher to appeal the removal to Google or the requesting party or to protest the law.

Significant numbers of searchers are frustrated. In a given month, about 200,000 searchers click through the links to Chilling Effects at the bottom of non-U.S. Google searches. Some of these people may have been searching for the very reasons their governments wanted to prevent access, such as to share racist or violent goals, to slander a reputation, or to view "extreme pornography." Others, however, may have been trying

to engage in political debate with those ideas, to canvass online opinion, or to view and create art. Blocking frustrates valuable expression as well as that deemed harmful.

Reasonable opinions may differ on the propriety of Internet content control. If it's for the French and Germans to decide how much Nazi propaganda they will tolerate, perhaps they should have the choice to apply that decision online as well as off-. But the Internet's power for information dissemination should at least illuminate that decision. Online, it is easier for anyone to speak – those who offend and those who rebut the offense. The marketplace of ideas may work more effectively when it is more competitive. Governments can track offensive speech and respond to its audience rather than blocking it. Indirect blockages are susceptible to both over- and under-inclusiveness. A block on rotten.com for its gruesome violence also blocks its political commentary. Finally, risk-averse cost-sensitive private intermediaries make their blocking decisions without the checks of the political process, and may err on the side of blocking more than a government could legitimately stop directly.

Here in the United States, we tend to assume we see "the Internet," relatively censorship-free. Thanks to the First Amendment, and CDA 230, that is largely true. Yet here we have exceedingly strong copyright protections. Under the Digital Millennium Copyright Act, claimants are empowered to demand removal of alleged infringements from both ISPs and search engines, and the service providers are encouraged by the "safe harbor" from liability to comply "expeditiously." Thus the largest volume of removal requests Google reports to Chilling Effects are copyright claims invoking the DMCA safe harbor. While many of those are real infringements of copyright, such as an author complaining that books or articles have been copied wholesale for-profit, some of the demands seek removal of political speech, criticism, parody, and news reporting that makes fair use of the copied content. Other requests demand removal of competitive websites whose descriptions look similar by coincidence, not copying of copyrightable expression. Over-aggressive copyright claimants get away with these demands when the cost of investigating exceeds the benefit to the intermediary, and the poster is chilled

from counter-notifying by lack of understanding of legal options or uncertainty about the consequences.

The result, even here in the U.S., is delegation of censorship. The indirect, often-invisible, disappearance of speech from intermediate points in the Internet mutes the political debate around this censorship. We are left only dimly aware of the legal pressures exerted and of how the Internet differs across national borders. Citizens who value free expression should call for national debate on these practices, calling attention to the governments and laws that are the source of pressure and evaluating the effects against free speech principles. Other search engines should follow Google's notice and linking practices to help facilitate these conversations, so we can all see an Internet we have democratically chosen and created.