

## **Analyzing Freedom of Expression Online: Theoretical, Empirical, and Normative Contributions**

Victoria Nash

The Oxford Handbook of Internet Studies

*Edited by William H. Dutton*

Print Publication Date: Jan 2013

Subject: Business and Management, Social Issues, Technology and Knowledge Management

Online Publication Date: Mar 2013 DOI: 10.1093/oxfordhb/9780199589074.013.0021

### **Abstract and Keywords**

This chapter highlights the most significant ways in which research from across Internet Studies combines thematically to offer a picture of the challenges facing freedom of expression in the twenty-first century, as well as the need for broader theoretical frameworks. It suggests that a broader theoretical framework is required to catch the full range of law and policies shaping expression online, and to develop responses for policy and practice. The Internet presents just as many opportunities for digital surveillance or censorship as it does for free expression. The most helpful contribution of Internet Studies has been to expose and illuminate the many different forces that restrict or expand the opportunities to speak and communicate. The Internet has become central to communication and it plays a role in helping multiple actors to obtain their various goals.

Keywords: freedom of expression, Internet Studies, expression online, digital surveillance, censorship, communication

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## **Introduction**

THE continuing reinvention and worldwide diffusion of the Internet has made it an increasingly central medium of expression in the twenty-first century, challenging the role of traditional mass media, including radio, television, and newspapers. By 2011, more than two billion people worldwide—over one quarter of the world's population—were using the Internet.<sup>1</sup> As the geographic spread of this global network of networks has expanded, so it has become more embedded in every aspect of everyday life, bringing with it major societal implications, and reshaping global access to information, communication, services, and technologies (Dutton 1999). As these changes have been wrought, so traditionally separate disciplines have converged to study problems or enduring issues of common interest, albeit from very different perspectives. In this context, debates around the protection of fundamental communication rights, and in particular challenges to freedom of expression, have benefited significantly from the rich and varied insights of litera-

ture from different disciplines in Internet Studies. (p. 442) For example, research in communications and sociology has revealed how global diffusion of the Internet, along with a continuing stream of innovations enabling easy production as well as consumption of content, are making the Internet increasingly pivotal to the communicative power of individuals, groups, and institutions (Dutton 2005; Castells 2009). At the same time, research in law, politics, and regulation has highlighted countervailing trends, outlining increasing efforts to restrict and control the use of the Internet for information, and communication on political, moral, security, and other grounds, including mitigating risks to children, to privacy or intellectual property rights. Nor are the contributions limited to social science: computer science has advanced our understanding of the efficacy (or otherwise) of many technical measures used to block or limit content online, while humanities research in media or cultural studies has shed light on questions of how online communication shapes and is shaped by factors such as social norms, technical affordances, and legal frameworks.

While it would be impossible to give a detailed account of the contributions made by each discipline in all these broad areas, this chapter will highlight the most important ways in which research from across Internet Studies combines thematically to offer a vivid picture of the challenges facing freedom of expression in the twenty-first century, as well as the need for broader theoretical frameworks.

## Freedom of expression: a fundamental right

Representatives of global institutions and national governments around the world have long embraced freedom of expression as a basic human right with the most symbolic endorsement being its instantiation in the United Nations Universal Declaration of Human Rights in 1948.<sup>2</sup> As well as being enshrined in international rights instruments, the right to freedom of expression is recognized in many other regional human rights' charters such as the African Charter on Human and People's Rights or the European Convention on Human Rights (ECHR), and in many national constitutions, including China, India, and Pakistan.

Insofar as rights are devices that demarcate the boundaries of legitimate state intervention in individuals' lives, the right to freedom of expression or "free speech" can be defined as the right to speak or write without state censorship. However, this does not mean that such a right has to be "absolute" or without exception. The ECHR, for example, guarantees everyone the freedom to hold opinions and to get and pass on information and ideas, but it also allows a number of qualifications, stating that these rights:

may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of (p. 443) national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information re-

ceived in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>3</sup>

In reality, most rights are limited in law even if the degree of exception varies from one state to another. In the United States, freedom of expression is enshrined in the First Amendment to the US Constitution as part of the Bill of Rights, and is famously interpreted by the courts in more absolute terms than in many other nations. The Amendment states:

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.<sup>4</sup>

Even here, there are still exceptions: obscene materials, subject to a narrowly drawn definition<sup>5</sup>, are not protected, nor are libelous words or expression, which indicates “imminent lawless action.”<sup>6</sup> In practice, however, many federal laws seeking to limit access to certain forms of content, especially by minors, have been overturned in the United States on grounds that they are unconstitutional, often on the basis that they are either too indiscriminate in the range of content to be blocked, or that they are indiscriminate in failing to capture only the targeted group<sup>7</sup>.

In many states, the right to free expression is augmented by rights to freedom of information, providing citizens with a legal right to request and access government-held information, and imposing duties on states to publish open records. The close connection between these rights is obvious, namely that the value of free expression is significantly weakened if it cannot be exercised in consideration of key political information relating to how citizens are governed and taxes spent. The importance of this connection was expressed by Viviane Reding (2007), Commissioner for Information Society and Media in the European Commission, in saying: “Freedom of expression is one of the most fundamental rights of our European democracies”...but that “without freedom of information, freedom of expression often remains meaningless.” These recent developments reinforce the commitment of international institutions, such as the United Nations Education, Scientific, and Cultural Organization (UNESCO), which “promotes freedom of expression and freedom of the press as a basic human right.”<sup>8</sup>

**(p. 444)** Despite being recognized internationally as a fundamental human right (that is, a right which all human beings should enjoy regardless of whether or not their state has chosen to implement such rights), there is surprisingly little practical or theoretical consensus as to why we value free speech rights so highly. Most discussion of this issue has broadly fallen into three camps:

- Arguments for knowledge and social progress (e.g. Mill 1859). This instrumentalist argument suggests that without unfettered public debate and the right always to question accepted views or theories, knowledge, truth, and even society cannot progress. Although initially formulated as an attack on religious dogma, the argument still

stands as a key principle of academic freedom and provides a fundamental critique of social conservatism.

- Arguments for democracy (e.g. Meiklejohn 1965). This argument, also an instrumental one, places heavy emphasis on political speech, arguing that the free flow of ideas and exchange of views is critical to democratic processes and institutions, underpinning the ability of citizens to vote in an informed way and to hold their governments and other public institutions to account.
- Arguments for personal autonomy (e.g. Rawls 1972). This argument broadens the debate to claim both that free speech has more than instrumental value, as an intrinsic aspect of individual autonomy, and further that such speech rights apply to all forms of speech, not solely political. Clearly, the perceived weight of this principle will vary cross-culturally depending on how individual autonomy is valued in relation to collective goals. For example, a focus on individual autonomy might support the role of the individual in choosing what to filter. In contrast, a focus on collective good could support a greater role for state filtering to protect shared values.

While these principles, drawn from political theory and jurisprudence, may seem obscure, it is worth being aware of the different theoretical perspectives when exploring the way in which research from different disciplines is contributing to our understanding of the interplay between freedom of expression and digital communication. Indeed, as will be seen, in some cases radically different assumptions appear to be made, not only about the supposed rationale for prioritizing speech rights, but the way in which trade-offs are to be balanced with other policy goals.

## Freedom of expression in a network society

In the digital era of networked communication, our conceptions of freedom of expression entail two general categories of rights but are closely associated with at least two more. In 2003, the United Nations' World Summit on the Information Society (WSIS) sought to find some agreement between governments, business, and civil society groups (p. 445) as to the values and goals of a global information society. While the Declaration of Principles that emerged has no legally binding status, it does serve to elucidate some of the aspirations of players in seeking more social equity and a re-focusing on human rights in the digital era (Mansell 2005). The Declaration is particularly helpful in unpacking what might be meant by freedom of speech in a network society, stating that:

We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that 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. Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the information society. Everyone, everywhere should have the oppor-

tunity to participate and no one should be excluded from the benefits the Information Society offers. (WSIS 2003: para. 4)

There seem to be at least four aspects to freedom of speech in this context. The first focuses on the rights of individuals and groups to use various media to express views and opinions. This is most often associated with freedom of the press and the freedom to associate with others, but is increasingly being extended to the freedom to use the Internet and Information and Communication Technologies (ICTs) to shape and define personal values and identity, as well as to engage in or even lead public debate, particularly as individual Internet users increasingly take on many roles formerly played by the press.

The second aspect concerns rights of access to the means of expression. Theorists of rights and liberty have previously argued that freedom is not meaningful unless it can actually be exercised (Taylor 1991). In the age of digital networking, this increasingly translates into the requirement of access to the Internet—Hilary Clinton's “freedom of connection” (Clinton 2010)—as it becomes a primary interface between individuals and the world (Dutton 1999). It is not clear how this requirement should be interpreted—as a right of universal Internet access, or merely a policy justification for supporting the global diffusion of the Internet.

As well as protecting freedom of expression, many states also provide legal guarantees for a right to freedom of information that is the third aspect of freedom of expression in the information society set out in the WSIS Declaration. Such rights ensure that citizens have the right to access information about how government operates, and in many cases they also impose duties on government to be transparent in operation, providing “open records” of publicly accessible data. In so far as freedom of expression is deemed to be one of the fundamental civil rights supporting democratic processes, freedom of information is required in order to ensure that citizens can vote in an informed way, and that they can hold their governments accountable through public scrutiny.

It has also been argued that there is a fourth right very closely linked to freedom of expression, albeit one not set out in the Declaration above, namely the right to communicate. This concept has been the subject of both theoretical and political controversy in a historic debate that reflects some of the most divisive elements of Internet governance (Mueller et al. 2007; Hamelink and Hoffman 2008). Embodying fundamental concerns (p. 446) for equality and voice in an era of inequitable media flows, the UNESCO-commissioned McBride report argued for a new right to communicate which would involve “the extension of specific rights such as the right to be informed, the right to inform, the right to privacy, the right to participate in public communication” (UNESCO 1980). Perhaps unsurprisingly, this report, although initially sympathetically received, became associated with challenges to Western dominance of media markets and was seen as a possible threat to free trade. It is notable that since that point, calls for the international recognition of a new right to communicate have been dropped in favor of less antagonistic demands for a strengthening of existing “communication rights” such as the three outlined above (Movius 2008).

## The Internet's contribution to freedom of expression

As a global “network of networks” the Internet enables people to inform and educate themselves, express their views, and participate in civil society and democratic processes to an extent never before possible. The rich variety of communication tools and platforms it offers enables users to search for, read, share, generate, manipulate, and even co-produce information. In such ways, the Internet has complemented more traditional forms of one-to-many broadcast communication by providing opportunities for many-to-many and many-to-one forms of communication as well as new broadcast models, such as Twitter.

However, this potential for the Internet to enhance freedom of expression is not universally welcomed. For example, some worry that the Internet could undermine traditional media practices and institutions by eroding standards of broadcasting, or undermining the business models supporting national and local media. In other cases there are concerns about particular information or content that might be disseminated online, perhaps on the basis of national security, or on political or moral grounds. In such cases, it is unfortunately clear that the Internet offers just as many opportunities for digital surveillance or censorship as it does for free expression, a point too often forgotten by cyber-utopians (Morozov 2011).

While state-led filtering or censorship may be the most obvious and feared threat to freedom of expression online, the most numerous challenges stem from the daily decisions of multiple different actors pursuing a diverse range of policy goals, many seemingly unrelated to freedom of speech at all. In some cases, the pursuit of particular goals can enhance freedom of expression. For example, the push towards economic progress by developing countries has been a major impetus behind the worldwide diffusion of the Internet, as it has become a central infrastructure for local and global economic transactions and trade. In other cases, the pursuit of different goals can lead, directly or indirectly, to restrictions of freedom of expression, such as where intellectual property legislation limits the free exchange of scientific research. It is in the pursuit of these diverse objectives that governments, regulators, corporations, and even non-governmental organizations (NGOs) can (with or without intent) expand or limit citizens’ enjoyment (p. 447) of freedom of expression. It will be argued in the rest of this chapter that the most helpful contribution of Internet Studies in furthering our understanding of freedom of expression in the digital age has been to expose and illuminate the many different forces that restrict or expand our opportunities to speak and communicate.

## Access and inequality

One of the most positive developments shaping the role of the Internet in opening up new channels of expression has been the continuing pace of worldwide innovation and diffusion, which has been well mapped both academically, such as through the World Internet Project,<sup>9</sup> and for policy purposes, such as through the International Telecommunications Union (ITU).<sup>10</sup> By 2011, over 30 percent of the world's population had access to the Internet, growing from 6 percent in 2000.<sup>11</sup> This corresponds to over 2 billion users. Internet

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diffusion has reached almost every region of the world with the exception of Africa, which has remained comparatively low in levels of Internet access at just 11.5 percent penetration in 2011.<sup>12</sup> At the same time, mobile penetration rates are also improving. Figures for Africa still lag behind at just 45 subscriptions per 100 inhabitants in 2010, compared to 95 per 100 in the Americas,<sup>13</sup> but as mobile communication converges rapidly with Internet communication this will help diminish, but by no means erase, the divide across world regions.

Studies that map penetration statistics can hide fundamental inequalities in Internet access and use between groups and individuals that will clearly impact on whether or not enhanced opportunities for communication and expression are delivered to those that need them most. While large-scale surveys of Internet penetration have been invaluable in helping to elucidate the extent to which citizens in different states face very different communication infrastructures, Internet Studies has also seen the emergence of a rich vein of work fleshing out the concept of access. Thus lack of physical or material access is distinguished from the paucity of digital skills or information literacy, often drawing on research from educational studies (e.g. Warschauer 2003). Studies in communications and sociology identify other factors which potentially hamper Internet use, including lack of mental access, resulting from too little digital experience and confidence, or a lack of “usage access,” where individuals face few opportunities for using the Internet in their daily lives, such as in the workplace (van Dijk and Hacker 2003). (p. 448) Others in sociology have warned of the dangers of focusing too much on the “digital divide” where the haves and have-nots are clearly separated on dichotomous measures of access, failing to appreciate the degrees of digital inequality that might exist between Internet users (DiMaggio and Hargittai 2001; Hargittai and Hsieh Chapter 7). Such studies are important as they highlight the extent to which, even in countries with very high levels of Internet penetration, not all individuals will reap the potential benefits of increasing diffusion, on the basis that they lack other key resources.

Legal and regulatory initiatives have underpinned increasing worldwide access to the Internet and the information, communication, and services that it enables. The Internet's worldwide diffusion has not been the inevitable outcome of the technology itself, but of a series of technological, economic, and social innovations shaped by policy and practice. For example, the Internet was developed early on as the ARPANet (Advanced Research Projects Agency Network), supported by funding from the US Department of Defense. However, it was developed within universities and research institutions primarily as a tool for scientists to share computing resources, not as a tool for national defense (Naughton 1999; Dutton 2008).

Previously, skills and infrastructures necessary to produce and disseminate content for many media, such as the press, radio, and television, were highly centralized. The potential of the Internet and advances in related technologies such as video, Web 2.0 applications, and mobile devices have enabled a more decentralized production of content. However, access to the Internet does not automatically translate into its use for the production of new content. Most users are primarily consumers of Internet services, rather than

producers of original content. The potential of the Internet, like other ICTs, to “reconfigure access” (Dutton 2005), is not always realized. This is one reason why many nations are aggressively pursuing initiatives designed to enhance the proficiency and literacy of Internet users. This could not only enable more people to benefit from the vast array of information online, but also allow them to contribute original and local content to the World Wide Web. The McBride Commission might have recognized the long-term potential of new technologies to reconfigure global information flows, but this potential has never before been as technically feasible as it is today; ensuring the appropriate skill levels remains a major challenge.

In contrast to the mass media of film and television, the Internet has a greater potential to transform the geography of production and consumption, enabling a more decentralized production and more diverse flows of content around the world. However, it could also further centralize content production, given the concentration of media skills in major centres, such as Los Angeles and London. Research on the geography of content production and consumption is in its early stages, but it is a clear priority of research on the Internet.<sup>14</sup> Increasingly, as access becomes more widespread, debate will undoubtedly turn back to the themes that gripped mass media studies after the McBride Commission around worldwide information flows, equality of voice, and the correlative debate about communication rights. (p. 449)

## Technologies of disconnection

If Internet Studies has contributed a great deal to our understanding of the concept, drivers, and demography of access to the Internet, it has also helped to illuminate how access is denied. The use of Internet filtering and other means of restricting full access to the Internet has led to a number of efforts to track and monitor its prevalence, including work done by NGOs such as Freedom House (2009), and academic research such as that undertaken by the OpenNet Initiative (Deibert et al. 2008).

Many different actors can restrict freedom of expression online. Individuals decide what to read and what to delete or filter by installing spam filters on their own devices, while parents, corporate IT departments, and public institutions like schools or libraries all have a role in deciding what content is available to users in different social contexts. In general, however, studies of censorship and filtering and freedom of expression are most often concerned with state-level censorship. Governments can directly or indirectly restrict freedom of expression by regulating access to the Internet or to particular Internet content. Many civil society advocates of freedom of expression are concerned that such state-supported restrictions are increasing and threatening freedom of expression online.

The most extensive empirical research project which examines government filtering and website blocking suggests that these practices have increased since 2002 (Deibert et al. 2008, 2010) and these trends are supported by other studies (Dutton et al. 2011; Freedom House 2009; and Reporters without Borders 2010).



## How filtering works

In parallel with advances in technology underpinning greater access to the Internet and mobile communication technologies, there have been innovations in technological approaches to controlling the flow of information over these networks. This has been driven by the need to maintain and improve the quality and security of services, such as by screening out spam and viruses, but also by efforts to block unwanted content as judged by individuals, parents, NGOs, corporations, or governments. As information and communication flows online, it may use several Internet-related protocols and services and pass through various points in the Internet network as well as the end user's device. As a result, filtering methods can be applied at various “choke points” throughout the network ranging from state-directed filtering schemes where blocking is carried out at the level of the Internet backbone, to filtering by Internet Service Providers (ISPs) or search engines, down to filtering at households or institutional level. Most concern is focused on state-sponsored or enforced filtering, but even when mandated by the government it can be implemented at different levels and by various different parties. Concerns to maximize the civil liberties of Internet users suggest that filtering decisions should be made at the lowest possible level—as close as possible to the individual user.

(p. 450) Most forms of filtering require some inspection of either data content, such as the words, strings of words, or images in the message or on the website, or of the routing or header information derived from the identity of the source. There are also other approaches to filtering such as blocking by DNS (Domain Name System) record, or through hybrid and proxy-based approaches that efficiently combine other forms of filtering. The definition or identification of content to be blocked may stem from three different sources. Blacklists (or “deny” lists) are configured to pass traffic by default unless they contain certain content, names, or keywords on the list. Such lists may be updated by public reports of illegal content or responses from law enforcement as with the “Clean-feed” system operated by British Telecom (BT) in the UK, which prevents access to child abuse sites identified by the Internet Watch Foundation (IWF). If blocking takes place within a certain network, such as within a company, the network administrator is often the person who manually defines the filtering parameters. In contrast, many defense filters or virus scanners bought or installed by users will normally use pre-defined criteria to filter content automatically.

## Critiques of content filtering

Content regulation may be a very widespread practice, often undertaken with well-meaning intentions such as preventing the distribution of illegal child abuse images. However, even efforts to restrict access to illegal content are open to controversy, with freedom of expression campaigners calling for heightened prevention and prosecution measures as well as removal of illegal content at source, rather than what is seen as paternalistic filtering activity. But it is not just illegal content that is subject to blocking: in many states, content or speech deemed to be harmful is also blocked. Such actions are a source of even greater controversy and a variety of critiques of filtering can be found in Internet

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Studies literature, some of which draw on arguments other than freedom of expression. Examples would include:

- Concerns about the imprecision or inefficacy of filtering techniques. Many contemporary filtering tools are blunt instruments, often leading to some level of over- or under-blocking. Further, many technologically savvy users can find alternative methods to access blocked material as the content itself is not erased from the Internet, creating a cat and mouse game between actors seeking to gain or block access to particular content (Zittrain and Palfrey 2008).
- “Slippery slope” arguments claiming that even limited filtering of strictly illegal content opens the door to potentially more widespread censorship. It is notable that even within the category of “illegal content” there is more consensus around the filtering of some types (say, child abuse images) than there is about others (pirated or illegally copied content, for example). So one concern might be that the scope of state-sponsored filtering will expand, either within the category of “illegal content” or beyond. Should filtering move beyond the illegal to cover legal (p. 451) but potentially “harmful”, the concern would be that censorship becomes ever more politically and socially accepted. These fears are supported by examples of states introducing wide-ranging censorship defended on the basis of more acceptable justifications such as blocking child abuse images (Akdeniz and Altiparmak 2008).
- Claims that certain types of filtering (those applied at levels beyond an individual's control) remove the responsibility of autonomous decision-making. This rather more theoretical objection suggests that applying technical “fixes” for essentially social or moral problems can have a detrimental impact on individual moral character, by removing the opportunity for us to choose not to break the law (Brownsword 2008).
- Concerns about the damaging effect of any form of censorship on other Internet “goods” such as creativity and innovation. According to this argument, the problem of Internet filtering is that it risks damaging the very things we value about being online (Zittrain and Palfrey 2008).

## Alternatives to filtering<sup>15</sup>

In addition to filtering measures, government agencies have used a number of techniques to deny access or censor particular types of online content in ways that differ from filtering. These include:

- Denial of service attacks, which produce the same end result as other technical blocking techniques—blocking access to certain websites—although only temporarily. This is more often used by non-state actors seeking to disrupt services;
- Restricting access by installing high barriers (costs, personal requirements) to register a domain or even to get Internet access; such measures may also be targeted at

certain “vulnerable” members, as with age verification measures imposed to limit access by minors.

- Taking-down or removal of illegal websites from servers is one of the most effective ways of regulating content. To do so, regulators need to have direct access to content hosts, or the legal jurisdiction over the content hosts, or an ability to force ISPs to take down particular sites. In several countries, where authorities have control of domain name servers, officials can deregister a domain that is hosting restricted content (Deibert et al. 2008).

One creative approach to addressing content concerns is to enter Internet conversations. This approach is most in tune with the spirit of free expression, but only if it is transparent. For example, the US State Department has initiated an effort to respond to what (p. 452) they view as misinformation and inaccurate accounts of US policy and actions on Arab language blogs and websites by commenting on blogs, and explicitly identifying themselves as representatives of the US State Department (Khatib et al. 2012). In many respects, this is a modern form of public diplomacy, adapted to Web 2.0 technologies and in keeping with open access to more diverse sources of information.

However, some regimes have increasingly resorted to guiding or influencing online discussion without being transparent, such as through the clandestine use of paid pro-government commentators or the financing of entire websites and blogs. Freedom House (2009) pins this offence on the Chinese government for employing “50 Cent Party” commentators, Russia for using Kremlin-affiliated “content providers,” and Tunisia for using similar approaches to “subvert online conversations.” Governments may also seek to counter particular political movements or to guide online opinion by producing online publications or “propaganda” such as pro-government websites.

Control of online expression and content may also make use of offline measures. Content can be influenced by introducing rules, or laws, or by instilling social norms among content producers. This can be enforced by the threat of legal action, but also by social pressure (see for example, discussion of the limited filtering which occurs in Singapore, in Deibert et al. 2008: 366–7). Arrest or detention of content producers is perhaps the most traditional and repressive form of content control, and one that is now supported by an increasingly sophisticated range of surveillance and monitoring methods. In recent years, there has been a worrying increase in the arrests of journalists, bloggers, and Internet users in several of the more repressive regimes (Freedom House 2011). The next section explores the accumulated effect of all these techniques to highlight international variations in the protection of online freedom of expression.

## International patterns of Internet freedom

Research in Internet Studies has provided ample insights into international trends relating to enjoyment of freedom of expression online, just as they have into patterns of access and exclusion on a global scale. These findings present some surprises, with both authori-

tarian and democratic states imposing threats on freedom of expression online, as detailed below.

### Internet filtering and censorship

As noted above, in the early years of the twenty-first century, an increasing number of governments have taken steps to block or regulate Internet access or content. In 2002, the OpenNet Initiative reported on just a few governments that were blocking online (p. 453) content, while by 2007 they estimated that at least forty countries used methods to do so (Deibert et al. 2008). Freedom House's 2011 report noted that since its 2009 study, the scores for Internet freedom had declined in nine of the fifteen countries covered in both years, while Internet freedom had also been undermined in more democratic states such as Brazil, India, and the UK (Freedom House 2011: 7). Thus, national regulation of the Internet appears to be increasing, with inevitable implications for freedom of expression.

It is often assumed that content control systems are only established in undemocratic countries or by authoritarian regimes wishing to control political speech or criticism. In fact, such measures are prevalent in most liberal democracies and are often undertaken with very good intentions. A meta-analysis of existing surveys illustrates that many nations are likely to exercise some level of control, but that only a minority exhibit pervasive levels of censorship (Dutton et al. 2011). Australia, Canada, China, Finland, France, Germany, Japan, Kyrgyzstan, Saudi Arabia, the UK, the US, and Uzbekistan are just a few countries who have implemented national filtering systems or have presented legislation to approve filtering practices.

In this context it is important to take into account not just the quantity of material that is restricted but also its significance, although this is an area much better suited to discrete and detailed country studies rather than comparative research at the macro level. In democratic societies, issues of copyright infringement, hate speech, defamation, privacy protection, and child protection are at times a basis for Internet filtering or other content control. It could be argued that filtering for such purposes does not represent as significant a threat to freedom of expression as the deliberate blocking of political speech or information and communication for certain social minority groups. Others, who see freedom of expression as an absolute right of fundamental importance, would disagree.

The states most consistently identified as operating extensive filtering practices are China, Cuba, Myanmar (Burma), Iran, Tunisia, Saudi Arabia, and Vietnam (Dutton et al. 2011; Freedom House 2011; Deibert et al. 2008). These nations fall primarily in three regions: East Asia, the Middle East and North Africa, and Central Asia. Nevertheless, there is great diversity in filtering practices within these regions. In the Asia-Pacific region, much has been written about the "Great Firewall of China," and there is widespread agreement that China has one of the most sophisticated and pervasive filtering systems for Internet censorship.<sup>16</sup> Vietnam follows many similar practices. Myanmar (Burma) famously shut down the Internet in the fall of 2007, during disturbances, and held an oppo-

sition candidate, Aung San Suu Kyi, under house arrest, although she has since been released and permitted to have a Facebook account. In South Korea, the Internet is generally free, except in the area of national security, where there are tight controls. Pakistan and Sri Lanka restrict politically sensitive sites.

(p. 454) Although no significant restrictions were reported in the studies used for the meta-analysis, filtering in North America and Western Europe is mostly targeted at child sexual abuse images or hate speech and propaganda (Zittrain and Palfrey 2008). In Central and Eastern Europe there is high regional diversity, with some states being quite open and others taking steps to block access (Belarus and Kazakhstan compared to Turkmenistan). In the Middle East and North Africa, the blocking of websites is fairly extensive, especially in Syria and Iran. On the African continent, the lack of access to the Internet is the greatest obstacle to expression. In addition, while the Internet is only now beginning to play a major role due to financial and infrastructural constraints, Gambia and Ethiopia have already started to block sites and restrict access.

## Expanding the framework of discussion

The preceding sections outline how Internet Studies has elucidated the ways in which changing patterns of Internet access and restrictions on online activity are shaping freedom of expression online. While this body of research has played a vital role in informing policy and exposing the worst forms of repression, there is actually a much wider body of research that should be brought to bear on this topic. The primary theme of this chapter is that it is helpful to broaden the context in which “freedom of expression” is conceptualized. Not only does the pursuit of other values shape freedom of expression, but the pursuit of freedom of expression can also itself serve a variety of other values and interests, from democratizing communication to reinforcing vested interests. A useful framework for this purpose is based on the concept of an “ecology of games.”

The idea of an “ecology of games” (EoG) was introduced in local community studies within Political Science during the 1950s (Long 1958) and was then adapted for communication technology and policy issues in the 1990s (Dutton 1992). The concept was used to focus on a key weakness of dominant elite and pluralist perspectives on community power, arguing that few actors sought to control communities per se. Instead, actors sought to achieve a wide array of more specific objectives, from making their neighborhood safer to enhancing the quality of schools, to getting a promotion. In other words, there exists an ecology of actors, each pursuing particular objectives, and each making choices in the pursuit of those objectives that shape the development of a community. From this perspective, community development is a largely unplanned process driven by the unanticipated interactions of multiple players or stakeholders within overlapping “games.” The unfolding history of such separate but interdependent games is then driving the evolution of local communities.

The use of the concept of “games” is not meant to trivialize their importance. Games have a set of objectives, rules, and values, with a range of players and prizes. Likewise, (p. 455) actors in public policy and regulation also have objectives, and compete or cooperate with others to achieve their objectives under a set of rules. Success can also mean that they are rewarded—there are prizes. However, the games of policy and regulation are different from games played for entertainment in that their outcomes shape critical aspects of everyday life and work, even the protection of fundamental rights such as freedom of expression.

### A new framework: the ecology of freedom of expression

The ecology of games perspective has been refined and applied to a variety of policy areas including transport (Lubell et al. 2010), science and technology (Brandon 1994), and education (Stone 1995). Dutton (1992) applied this framework to telecommunications policy and later to computerization and Internet governance (Dutton and Peltu 2007), where it can be seen as particularly appropriate, given the unusual character of the policy landscape. While much of the debate about the Internet's “regulability” has been caught between cyber-utopian claims of citizen empowerment and institutionalism's focus on the emergence of new transnational governance organizations (Mueller 2010), the ecology of games framework can engage with developments on both levels (Dutton et al. 2011). The players of games in Internet policy and regulation can be traditional political actors such as states and international bodies, as well as increasingly influential bodies such as corporations or NGOs, or even individual users. Similarly, in any one game, those different players may have objectives on radically differing scales, as in the copyright game, where states and international trade bodies pursue goals relating to maximizing trade receipts, but are pitted against individuals simply seeking to use and reuse creative content.

A report for UNESCO provided a new perspective on the study of freedom of expression, by viewing these freedoms as the outcome of an ecology of choices made, not only about freedom of expression, but also a variety of other objectives (Dutton et al. 2011). Table 21.1 below (adapted from that report) illustrates how the wide range of separate but interrelated goals being pursued by a variety of different actors (governments, NGOs, industry), employing an array of strategies, might influence the state of freedom of expression on the Internet.

In some cases, actors such as those from civil society are explicitly seeking to achieve greater freedom of expression, but others are focused on restricting freedoms, such as through the use of Internet filtering, the censorship of news and mass media, or efforts to silence journalists or bloggers. More indirectly, some actors are focused on quite different goals altogether, such as protecting children from harmful content, management of critical networks or infrastructure, or even promoting the vitality of an economy. The more the Internet has become central to communication, the more it has played a role in helping multiple actors to achieve their various goals, which explains the wide variety of policy areas listed below. (p. 456)

Table 21.1 Examples illustrating an ecology of freedom of expression on the Internet

<i><b>Policy Areas</b></i>	<i><b>Policy Goals and Objectives</b></i>	<i><b>Actors</b></i>
Digital Rights	Expanding access to the Internet	National and local governments, international bodies, NGOs, Local SMEs and international corporations
	Maximizing or restricting freedom of expression	NGOs, press and media, national governments
	Data protection	Courts, law enforcement, government agencies, national and regional governments.
	Protecting privacy	Corporations, NGOs, government agencies.
Protecting national interests	Intellectual Property Rights (IPR): copyright and patents	Creative industries, WIPO, national governments, NGOs, ISPs, users.
	Innovation and market growth	National, regional, and local government, venture capital industry, SMEs, large industry
	Competition and market development	National and regional governments, regulators, consumer groups
	National security	Governments and national security agencies, law enforcement, ISPs, Internet industry
User-Focused	Child Protection	Law enforcement, NGOs, national governments, international bodies, parents and educators

	Decency: Pornography	Adult content industry, national regulators, governments, NGOs, ISPs
	Libel: Defamation	Courts, lawyers and law enforcement, press and media
	Hate Speech	Governments, NGOs, international bodies
Internet-Focused	Internet Governance and Regulation	Governments, international bodies, corporations, NGOs, national regulators
	Domain Names and Numbers	ICANN, registries, individuals and firms
	Standard Setting: Identity	W3C, national and regional governments, IETF
	Net Neutrality	ISPs and mobile operators, national governments and regulators, NGOs

### Three examples of games impacting on freedom of expression<sup>17</sup>

#### i) Privacy versus national security: Blackberry

Companies providing services that encrypt user communications or data have often been challenged by courts and governments to provide access to private information in the name of national security. Research in Motion (RIM), the Canadian makers of the (p. 457) Blackberry, received such requests from government representatives in the United Arab Emirates, Saudi Arabia, Indonesia, India, and Bahrain, who argued that RIM's encryption of Blackberry messages posed national security threats and that the routing of data to RIM's offshore servers put control over data beyond the scope of national regulators and law enforcement. In 2010 Saudi Arabia and the United Arab Emirates went so far as to threaten a shutdown of Blackberry services within their respective national borders if RIM could not find a technical solution that would enable security services to monitor Blackberry communications.

Making a decision on such an ethically complex issue is very difficult for any organization, and in this case was further complicated by several other factors, ranging from the economic to the practical. The Blackberry's routine encryption feature—designed to make messages more difficult for anyone (including RIM) to monitor—is a major selling point of



the device, and market pressures pushed RIM towards technical monitoring, with stock shares falling as governments threatened shut-downs, and rising on news of technical solutions for monitoring. Like most handset manufacturers, RIM is also dependent on service providers in other nations to provide cellular access for their Blackberry devices, so where these service providers were more tightly controlled by government agencies they would have provided additional pressure for monitoring.

It is worth noting that such complex tensions between individual privacy, national security, and corporate economic success are not only found in more authoritarian states. During the UK riots of 2011, information about the location of proposed civil action was believed to be passed via free one-to-many encrypted Blackberry Messenger systems, leading to calls from media and politicians that RIM identify the ringleaders, alongside calls for access to social networking sites such as Facebook and Twitter to be restricted in such emergencies (Cameron 2011).

### ii) Child protection

The Internet is an increasingly central component in the lives of children and young people in the developed world and cannot be seen as an “adults-only” environment. It is in this context that some of the most emotive debates around freedom of expression online arise, at the point where the laudable regulatory goal of protecting minors pushes up against the noble ideal of free speech for all (including children). Many, possibly even most states, have introduced some regulatory tools to protect children online, at least in terms of prohibiting illegal activity; the question remains as to how much regulation is enough, and how much is too much. In many jurisdictions, this debate hinges in large part on the distinction between activities that are illegal and those that are harmful.

In attempting to combat activity that is clearly illegal, many countries have expressed revulsion at the production, dissemination, and use of child sexual abuse images, and in most countries the removal of these images is deemed to be a justified limitation to freedom of expression. Despite this agreement however, regulatory responses vary, with many countries still without legislation that specifically addresses child sexual abuse images. Even within countries with strong domestic legislation that enforces notice and take-down of such material, the challenge of dealing with images hosted on foreign (p. 458) servers is significant. Blocking of such images through the use of blacklists and filters at ISP or search engine level is one very obvious response, but one which has its own limitations, as previously outlined. Should Internet content be controlled by law enforcement agencies or should it rather be a responsibility undertaken by ISPs and search engines? If so, should this occur with or without government support and mandates? Removal of child abuse images at source may still be subject to some controversy, but filtering is even more problematic, although it remains one of the few tools available to limit the continuing re-victimization of those abused.

Once discussion of child protection moves beyond preventing what is clearly illegal towards what is potentially harmful or inappropriate for some users, tensions between rights becomes greater. In countries as diverse as Denmark, South Korea, the United

States, and Afghanistan, schools and libraries are required to use filtering software to protect children who use their systems. While the ability for consenting adults to opt out of using these filters varies between countries, such censorship falls primarily upon disadvantaged people who must use public facilities to access the Internet. The extent of state responsibilities in protecting children is very much a matter of debate. Some experts argue that regulation may not be the most efficient solution and that parents, teachers, and childcare workers should have primary responsibility for dealing with online child protection issues (Thierer 2007). Others, however, have pointed out that household inequalities are associated with experience of online harm, implying that such support networks may not reach all those most at risk (Livingstone and Haddon 2009).

No matter where governments decide to limit freedom of expression rights in the name of child protection, it is important that such regulation be transparent, focuses on specific potential risks, and is measured by its effectiveness. In doing so, governments can employ tools to protect the most vulnerable while lessening risks that their efforts be perceived as serious repression of speech (Hills et al. 2010).

### iii) Protective regulation: net neutrality

Principles of net neutrality require that ISPs do not discriminate against users through access fees, favor one type of content or content provider over another, or charge content providers for sending information to consumers over their broadband cables (Hogendorn 2007). As digital media evolve with the creation of new applications and services, the escalating need for bandwidth has made the net neutrality debate more prominent. It is attractive to many as a possible solution to managing existing bandwidth more efficiently as demands begin to exceed supply, rather than simply expanding available bandwidth. However, it is also a strategy to enable providers to find additional revenue from video on demand services, which fuels debate over the commercialization of the Internet.

Net neutrality has often been viewed as a North American issue, though regulatory policy in Europe and elsewhere would indicate otherwise (Marsden 2010). The Internet is increasingly being threatened by privatization, and net neutrality has become linked with approaches to vertical integration between content and conduit (Wu and Yoo 2007).

(p. 459) This has raised concerns about potentially discriminatory actions and the possibility of a two- or multi-tiered Internet. Other commentators have noted that ISPs have already employed discriminatory practices such as throttling, but with a broad public interest aim of ensuring that exceptionally high bandwidth users do not slow down overall Internet traffic. This has distanced them from concepts of net neutrality, albeit in the interests of improving service.

Part of the debate is determining what constitutes “good” and “bad” discrimination (Wu and Yoo 2007) and what kind of policy or set of laws governments should adopt in order to ensure fair access. There is no clear agreement in the academic literature on this point. Some have argued that net neutrality regulation will incentivize ISPs to invest in broadband infrastructure at a more socially optimal level (Cheng et al. 2011), while others recommend that policy-makers promote new market entries by adopting policies that

boost the size of “best-efforts” broadband connections (Atkinson and Weiser 2006) or simple market-based solutions backed up by light-touch regulation (Marsden 2010).

## Implications of applying the ecology of games framework

The preceding examples serve to highlight how policy actors focused on goals or objectives other than promoting or limiting freedom of expression may ultimately have a significant impact on citizen enjoyment of this fundamental value. They also reveal the great range of actors involved in this process. In some cases (such as net neutrality) national governments may take a conscious decision not to act, leaving policy to be set by the actions or explicit self-regulation of industry players. In other cases (such as efforts to reduce the distribution of child abuse images), governments may choose to act, and may even align interests internationally to achieve certain goals.

It is often assumed that the absence of government intervention is necessarily a good thing, and when the openness of the Internet is at stake, less regulation is definitely preferable to more. However what is often ignored is the role being played in this context by other actors such as industry or NGOs. Self-regulation is often perceived as a more flexible, less obtrusive means of resolving policy problems (Tambini et al. 2008). However, as the preceding examples make clear, it may also be more difficult to protect fundamental rights if unaccountable non-state actors are ultimately responsible for shaping how individuals use the Internet.

In this light, Internet Studies has a particular responsibility to play in this ultimately normative debate. The investigation and measurement of the extent of freedom of expression is a vital foundation, but it is also important that more effort is devoted to empirical study of the myriad different policy “games” which impact on citizens’ enjoyment of this core value. With these solid research foundations we will be better placed to understand and, if necessary, to change the status quo. (p. 460)

## Conclusions

Research from across the many disciplines covered by Internet Studies highlights the tensions inherent in the Internet's contributions to freedom of expression. On the one hand, studies of access and patterns of global diffusion reveal how the Internet's steady expansion and the growing ease of producing as well as consuming content are opening up ever more opportunities for communication and expression. On the other hand, studies in the legal or political frame note that this augmentation of individuals’ communicative power has spawned greater efforts to restrict and control the use of the Internet for information and communication on political, moral, cultural, security, and other grounds. It is also leading to ever more regulatory initiatives aimed at limiting risks to children, to privacy,

to national security, and so on, which can indirectly, and even unintentionally, limit freedom of expression.

As a consequence, defenders of freedom of expression have raised growing concerns that legal and regulatory trends might be constraining freedom of expression at the very time that the Internet has become more widely recognized as a major medium for fostering global communication. It is clear that technological innovation will not necessarily enhance freedom of expression; indeed, research from across the many disciplines covered by Internet Studies suggests that such fundamental freedoms will be diminished unless we pay more attention to the full array of policy “games” that shape outcomes in this area, and the normative frameworks of discourse and theory which provide the values ultimately guiding those games.

Thus, what is needed is a broader theoretical framework that can encompass the range and variety of actors, objectives, and strategies involved in shaping freedom of expression online. The ecology of games framework is sufficiently flexible to do just this, and its application will help us to more systematically monitor the wide range of legal and regulatory developments that directly—and indirectly—shape the future of free expression on the Internet in local and global contexts.

## Acknowledgement

This chapter draws on and updates an earlier report completed for UNESCO: Dutton et al. (2011).

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### Notes:

(1) Current worldwide statistics on usage at <<http://www.internetworldstats.com/stats.htm>>. Accessed August 18, 2011.

(2) Article 19 states: "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." See: <<http://www.un.org/en/documents/udhr/>>. Accessed August 18, 2011.

(3) Article 10 see <<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>>. Accessed April 30, 2012.

(4) First Amendment, see: <<http://www.law.cornell.edu/constitution/constitution.billofrights.html>>. Accessed April 30, 2012.

(5) The "Miller Test" determining whether the materials meets one of three possible criteria, drawn from *Miller v. California*, 413 U.S. 15 (1973).

(6) *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

(7) See *ACLU v. Mukasey*, 534 F.3d 181 (3d Cir. 2008) and broader discussion of its case history at <<http://www.mediacoalition.org/ACLU-v.-Mukasey>>. Accessed July 31, 2012.

(8) See: <<http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/>>. Accessed May 10, 2012.

(9) See <<http://www.worldinternetproject.net/#news>>. Accessed April 21, 2012.

(10) See <<http://www.itu.int/itu-d/ict/>>. Accessed April 21, 2012.

(11) Data given for March 31, 2011. Taken from: <<http://www.internetworldstats.com/stats.htm>>. Accessed April 21, 2012.

(12) Data given for March 31, 2011. Ibid.

(13) Data taken from ITU World Telecommunication/Ict Indicators Database: <<http://www.itu.int/net/pressoffice/stats/2011/03/index.aspx>>. Accessed April 21, 2012.

(14) See <<http://www.oii.ox.ac.uk/research/projects/?id=89>>. Accessed July 31, 2012.

(15) The following three subsections draw on material from the author's earlier UNESCO Report (Dutton et al. 2011).



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(16) A website was available that enabled users to “[t]est any website and see real-time if it's censored in China.” However, the site now notes that: “Because of the ever stricter measures of censorship China imposes on the Internet, the team...at present can no longer vouch for the reliability of its test tool.” See <<http://www.greatfirewallchina.org/>>. Accessed April 21, 2012.

(17) This following section draws on material from the author's earlier report for Unesco (Dutton et al. 2011).

### **Victoria Nash**

Victoria Nash is Director of Graduate Studies and Policy and Research Fellow at the Oxford Internet Institute, University of Oxford, UK.