

Invisible Censorship: How the Government Censors Without Being Seen

Centre for Internet and Society | 2011-12-14

Pranesh Prakash

The Indian government wants to censor the Internet without being seen to be censoring the Internet. This article by Pranesh Prakash shows how the government has been able to achieve this through the Information Technology Act and the Intermediary Guidelines Rules it passed in April 2011.

Power of the Internet and Freedom of Expression

The Internet, as anyone who has ever experienced the wonder of going online would know, is a very different communications platform from any that has existed before. It is the one medium where anybody can directly share their thoughts with billions of other people in an instant. People who would never have any chance of being published in a newspaper now have the opportunity to have a blog and provide their thoughts to the world. This also means that thoughts that many newspapers would decide not to publish can be published online since the Web does not, and more importantly cannot, have any editors to filter content. For many dictatorships, the right of people to freely express their thoughts is something that must be heavily regulated. Unfortunately, we are now faced with the situation where some democratic countries are also trying to do so by censoring the Internet.

Intermediary Guidelines Rules

In India, the new 'Intermediary Guidelines' Rules and the Cyber Cafe Rules that have been in effect since April 2011 give not only the government, but all citizens of India, great powers to censor the Internet. These rules, which were made by the Department of Information Technology and not by the Parliament, require that all intermediaries remove content that is 'disparaging', 'relating to... gambling', 'harm minors in any way', to which the user 'does not have rights'. When was the last time you checked wither you had 'rights' to a joke before forwarding it? Did you share a Twitter message containing the term "#IdiotKapilSibal", as thousands of people did a few days ago? Well, that is 'disparaging', and Twitter is required by the new law to block all such content. The government of Sikkim can run advertisements for its PlayWin lottery in newspapers, but under the new law it cannot do so online. As you can see, through these ridiculous examples, the Intermediary Guidelines are

very badly thought-out and their drafting is even worse. Worst of all, they are unconstitutional, as they put limits on freedom of speech that contravene Article 19(1)(a) and 19(2) of the Constitution, and do so in a manner that lacks any semblance of due process and fairness.

Excessive Censoring by Internet Companies

We, at the Centre for Internet and Society in Bangalore, decided to test the censorship powers of the new rules by sending frivolous complaints to a number of intermediaries. Six out of seven intermediaries removed content, including search results listings, on the basis of the most ridiculous complaints. The people whose content was removed were not told, nor was the general public informed that the content was removed. If we hadn't kept track, it would be as though that content never existed. Such censorship existed during Stalin's rule in the Soviet Union. Not even during the Emergency has such censorship ever existed in India. Yet, not only was what the Internet companies did legal under the Intermediary Guideline Rules, but if they had not, they could have been punished for content put up by someone else. That is like punishing the post office for the harmful letters that people may send over post.

Government Has Powers to Censor and Already Censors

Currently, the government can either block content by using section 69A of the Information Technology Act (which can be revealed using RTI), or it has to send requests to the Internet companies to get content removed. Google has released statistics of government request for content removal as part of its Transparency Report. While Mr. Sibal uses the examples of communally sensitive material as a reason to force censorship of the Internet, out of the 358 items requested to be removed from January 2011 to June 2011 from Google service by the Indian government (including state governments), only 8 were for hate speech and only 1 was for national security. Instead, 255 items (71 per cent of all requests) were asked to be removed for 'government criticism'. Google, despite the government in India not having the powers to ban government criticism due to the Constitution, complied in 51 per cent of all requests. That means they removed many instances of government criticism as well.

'Self-Regulation': Undetectable Censorship

Mr. Sibal's more recent efforts at forcing major Internet companies such as Indiatimes, Facebook, Google, Yahoo, and Microsoft, to 'self-regulate' reveals a desire to gain ever greater powers to bypass the IT Act when censoring Internet content that is 'objectionable' (to the government). Mr. Sibal also wants to avoid embarrassing statistics such as that revealed by Google's Transparency Report. He wants Internet companies to 'self-regulate' user-uploaded content, so that the government would never have to send these requests for removal in

the first place, nor block sites officially using the IT Act. If the government was indeed sincere about its motives, it would not be talking about 'transparency' and 'dialogue' only after it was exposed in the press that the Department of Information Technology was holding secret talks with Internet companies. Given the clandestine manner in which it sought to bring about these new censorship measures, the motives of the government are suspect. Yet, both Mr. Sibal and Mr. Sachin Pilot have been insisting that the government has no plans of Internet censorship, and Mr. Pilot has made that statement officially in the Lok Sabha. This, thus seems to be an instance of censoring without censorship.

Backdoor Censorship through Copyright Act

Further, since the government cannot bring about censorship laws in a straightforward manner, they are trying to do so surreptitiously, through the back door. Mr. Sibal's latest proposed amendment to the Copyright Act, which is before the Rajya Sabha right now, has a provision called section 52(1)(c) by which anyone can send a notice complaining about infringement of his copyright. The Internet company will have to remove the content immediately without question, even if the notice is false or malicious. The sender of false or malicious notices is not penalized. But the Internet company will be penalized if it doesn't remove the content that has been complained about. The complaint need not even be shown to be true before the content is removed. Indeed, anyone can complain about any content, without even having to show that they own the rights to that content. The government seems to be keen to have the power to remove content from the Internet without following any 'due process' or fair procedure. Indeed, it not only wants to give itself this power, but it is keen on giving all individuals this power.

It's ultimate effect will be the death of the Internet as we know it. Bid adieu to it while there is still time.

The article was translated to Marathi and featured in Lokmat