

European Internet Governance and Beyond

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I would like to discuss the exercise of human rights online and the relationship with corporate platforms.

The internet is universal, international -- this platform has become vital to our daily lives, serving simultaneously as a platform for education, creation, knowledge, business and management of critical infrastructure.

Frank La Rue, the UN special rapporteur for freedom of expression, has said that the internet is a gateway through which our rights can be exercised. This includes freedom of expression, association, access to information, the right to a private life and freedom of thought.

But this space is for the most part owned and operated by private corporations. Unlike governments, companies don't have a legal obligation to protect human rights. And even if they want to, they're often placed in compromising positions by powerful political actors.

Increasingly, governments are pushing companies to make decisions about freedom of expression and speech online. The reasons behind this are many: whether it's for the protection of children, the prevention of terrorism, the regulation of hate speech, the enforcement of copyright or the preservation of cultural values, any decision about speech has clear implications for civil liberties.

Allow me to provide an example:

Imagine you were running a VPN service. You might want to get paid for this service, and start charging a small fee. But one day your payment provider blocks you, and stops processing your payments.

This was the case for a handful of VPN networks in Sweden last summer, who found their payment services blocked -- including iPredator, an anonymisation service launched by Pirate Bay co-founder Peter Sunde.

The payment processing giant Paypal blocked their funds, freezing them for up to 180 days.

- The company never received a notice as to why their service was blocked.
- They never received an opportunity to appeal this decision.

According to news sources, iPredator was informed by one of its EU payment providers that the company had been put on a mysterious “black list”, where no payment providers (apart from bitcoin, of course!) will provide them with service.

How this is possible? Here is a clear case of companies using their control of a market to make decisions that censor peoples’ ability to communicate and receive information anonymously, in violation of their civil liberties and human rights.

In 2011, the White House, led by the Intellectual Property Czar, Victoria Espinel, concluded an agreement with major payment providers, including American Express, Discover, MasterCard, PayPal, and Visa.

Espinel praised this so-called “voluntary agreement amongst companies” as key to changing the paradigm in fighting IP violations.

But because this is an agreement amongst companies, and not public policy or law:

- The terms of agreement are not public
- There is no appeals process for those who find themselves on this list
- And there’s no public information about why certain services may be blocked.

iPredator was left with very few options of payment providers apart from Bitcoin. They have also considered legal action to get the service unblocked.

This isn’t just about payment providers, or anonymization services. This is about platforms and services everyone uses, every day.

These voluntary agreements -- where companies agree to police content, processes, and users -- are happening with domain name registrars and registries, search engines, hosting companies, and advertising services.

In 2011, the proposed SOPA legislation had a complete list of companies and services that had signed on to police copyright through “voluntary agreements.” Luckily, SOPA, along with ACTA, both failed to pass. Concerned citizens took to the street to prevent these pieces of legislation from harming the open and free internet.

But while these bills are dead, the intentions behind them aren’t. And as a result of the public protests and disapproval, discussions have moved from relatively transparent legislative processes to secret and un-democratic “voluntary agreements”.

Why would companies do this?

Why would they deliberately limit the rights of their users?

There are a number of reasons a payment processor, a registrar, or a search engine might voluntarily take measures to regulate speech outside of established law.

- They may have a **genuine feeling of responsibility**. Google and Microsoft recently agreed to alter their search algorithms to block search results that are aimed at finding illegal material that might be related to the sexual abuse of children.
- They may be **concerned about ISP liability regimes**. In many cases, companies are faced with a classic threat: “if you don’t do this, we’ll regulate, and it’ll be worse.” In the U.S., this is what happened to payment providers, as well as US ISPs who have agreed on a voluntary “six strikes” copyright enforcement system.
- They may be doing it for **public relations**. Platforms that operate across countries and in several jurisdictions may feel the need or public pressure to be sensitive to cultural contexts. For instance it is well known that Facebook has blocked images of breasts, even in the context of breastfeeding, prompting very different responses from users throughout Canada, the US, and the EU.
- They may be under **direct pressure from governments**. When, in 2012, YouTube blocked the controversial ‘Innocence of Muslims’ video in Libya and Egypt, it was reportedly under direct pressure from the White House as fatal protests broke out in the Middle East. In fact, the content was both entirely legal, and within the scope of YouTube’s terms of service.

In almost all of these cases, takedowns, blocking, and other actions are not even based on legal decisions. They’re based on accusations, insinuations, and inferences. These practices have a clear impact on our civil liberties and human rights online.

When companies are left to decide on our religious freedoms, to act as judiciary and interpret what is legal and what is not, or determine for us what is acceptable political speech and what is not -- our rights can be and are being restricted.

The internet is a tool that offers us unprecedented opportunities to enrich human rights, but it can equally be used as a tool to undermine them. As a society, we must cherish the democratic potential of these technologies, but prevent the decay of our rights, online and off.

In democratic societies, any restriction of our rights must be forseen by law, not voluntary agreement. Law is accountable, law is public, law is the foundation of our democracies.

We must ensure this holds online: that policies and laws that impact our rights are transparent, that those making decisions can be held accountable for their actions, and that due process, and the presumption of innocence remain key pillars of our societies.

To conclude:

At the moment there isn't sufficient discourse on the role of companies in arbitrating our ability to speak. We urgently need serious public discussion and reflection on these practices in order to stop the erosion of civil liberties and the rule of law online.

People often argue that this is just a matter of consumer choice: that if you don't like the policies of one platform, you can move to another. But this isn't entirely true:

- People use popular services because they're good at what they're built for: staying in touch, finding things, managing information. They do it better than many other services, and there aren't always viable alternatives.
- Furthermore, companies like Facebook and Google have woven their identity authentication into the fabric of the web: by opting out of their platforms, you opt out of being able to use many of the services available on the web today.

And what about those imparting information, such as those running VPNs? They should not be subject to arbitrary blockage of services, or denied of legislative process.

Even if it were possible, it wouldn't be right. Even if you leave those services, literally billions of users will continue to use them. Just like human rights, the internet is universal: we must protect their rights too.

As people increasingly rely upon online services for information, it is critical that companies of all shapes and sizes, but particularly those with the global reach, resist voluntary arrangements. They must uphold the rule of law and their duty to respect internationally established human rights, such as freedom of expression and access to information.

There is a clear need to address these issues head on, and work with companies to come up with policies to defend against this type of government coercion. We must reaffirm the neutrality of our platforms and services, to ensure that the rights we have fought for offline are equally applicable in the online space.