IS INTERNET CENSORSHIP COMPATIBLE WITH DEMOCRACY?
LEGAL RESTRICTIONS OF ONLINE SPEECH IN SOUTH KOREA

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1. Introduction

In its first few decades, the Internet has become a great ally of democracy. It lets individuals thousands of miles apart to instantly send and receive information, and organize easily and cheaply with like-minded activists.¹ This power makes it, at least theoretically, the ally of the downtrodden and the scourge of those who abuse their power. It also lets individuals drive national debate by breaking open the 20th century model of few producers speaking to the masses and replacing it with a user-generated model.

The Internet does create its own hierarchy of websites that gain popularity and thus cement themselves as dominant sources of information. Yet the operational logic of that hierarchy is different: dominant websites maintain their position not by winning exclusive broadcasting licenses or owning printing presses, but by continuing to produce the content that attracts users to their websites. In addition, ordinary citizens can direct public debate by putting text or video on any of a number of user-created-content driven websites and hope that their contribution catches the attention of the Internet hordes. The Internet has thus generated an impressive record of results for social movements across the globe. It has been an important tool of organization and information dissemination for student protesters in Iran, political activists in the United States, earthquake victims in China, and pro-democracy activists in Egypt, among many others.²

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As the Internet age has matured, however, this exuberance over its democratic potential has been tempered by scepticism about whether the Internet will truly improve the quality of democracy.\(^3\) In particular, scholars have expressed concern over whether the Internet’s architecture can be manipulated by the companies that provide access to it or the governments that license them in ways that undermine its ethos of free expression.\(^4\) This concern has grown especially urgent as Internet censorship regimes in countries like the People’s Republic of China have grown more sophisticated, prompting the attention of Western governments and activist groups. Responses have ranged from the proposal of legislation in the US Congress to fight Internet censorship in other countries,\(^5\) and the development of a voluntary agreement by Yahoo, Google, Microsoft and other companies to resist pressure to use their products for censorship.\(^6\)

The possibility of government control over the Internet cuts out the very heart of its democratic ambitions. If the government can filter information that is posted and read on the Internet, it can effectively stifle online organization and criticism. It is thus especially disturbing that while the governments that maintain Internet censorship operations are mostly authoritarian in form, at least one democracy has gotten in on the game: South Korea. South Korea is the only democracy on the OpenNet Initiative’s list of regimes that engage in “substantial” Internet censorship. Its government maintains a large, sophisticated Internet censorship operation that blocks foreign websites, monitors domestic hosting services for banned content, and employs over a thousand people as censors prior to national elections.\(^7\) Many of these restrictions have been in place now for

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\(^3\) See Cass Sunstein, *Infotopia* 97-98 (2006) for a discussion of how the Internet may foster ideological segregation.

\(^4\) See Lawrence Lessig, *Code 2.0*, at 281-310 (2006) for a discussion of how Internet providers and governments can and do develop architectures that allow them to regulate what happens online; and *Patriotic Information Systems*, Todd Loendorf & G. David Garson, eds., 2008, for a discussion of how information security technology and databases can be used to stifle democracy.


\(^7\) In discussing Internet censorship one often conflates many different types of censorship, some of which are apparently more legitimate than others. It is not very controversial, for example, that states should censor exploitative child pornography on the Internet. Censorship of online gambling, religious blasphemy, advice on committing suicide, and similar content, while controversial, is also generally not thought to pose a threat to the quality of a country’s democracy. Similarly, extremist websites or websites that are directed against a state are also often believed to be legitimate targets of censorship (though there is