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Access Denied

The Practice and Policy of Global Internet Filtering

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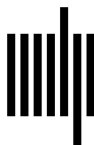
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Internet Filtering in Latin America



Introduction

With the exception of Cuba, systematic technical filtering of the Internet has yet to take hold in Latin America. The regulation of Internet content addresses largely the same concerns and strategies seen in North America and Europe, focusing on combating the spread of child pornography and restricting children's access to age-inappropriate material. As Internet usage in Latin America increases, so have defamation, hate speech, copyright, and privacy issues.

The judiciary in Latin America has played an important role in shaping and tempering filtering activity, a development common to North America and Europe. At the same time, there has been a wide range of legal and practical responses to regulating Internet activity. Latin American countries have relied primarily upon existing law to craft remedies to these challenges, though a growing number of Internet-specific laws have been debated and implemented in recent years. These issues have been addressed primarily through the application of cease and desist orders in conjunction with

requests to have materials removed from search engine results.

Though most Latin American countries have ratified the American Convention on Human Rights,¹ a regional treaty that guarantees the freedom of expression, speech continues to be threatened by government authorities, drug cartels, and others. In particular, journalists have long been targets of a range of attempts to obstruct or limit speech, from government threats to withhold publication licenses to outright intimidation and physical violence. In 2006 and 2007 journalists in Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Guyana, Haiti, Mexico, Nicaragua, Paraguay, Peru, and Venezuela were threatened, physically attacked, murdered, or simply disappeared.² For journalists working in Latin America, death threats were commonplace. In 2006 Mexico surpassed Colombia as Latin America's deadliest country for journalists (second only to Iraq globally), while Cuba has the world's second-biggest prison for journalists.³

The level of openness of the media environment in Latin America is reputed to be subject to

considerable self-censorship, particularly in Brazil, Colombia, Mexico, and Venezuela.⁴ Because of threats from local drug cartels or other gangs and individuals, many journalists practice self-censorship,⁵ including many in Colombia who avoid reporting on corruption, drug trafficking, or violence by armed groups. Drug gangs waging a campaign of intimidation in Mexico not only tack notes to corpses and publish newspaper ads, but have also posted a video on YouTube where an alleged Zeta member (a group of cartel operatives) is tortured and decapitated.⁶ The few Cubans who gain access to the Internet are limited by extensive monitoring and excessive penalties for political dissent, leading to a climate of self-censorship.

Internet in Latin America

Most countries in Latin America recognize the value of the Internet as an integral part of modern life. For example, numerous groups in Chile have recommended legislation to make access to the Internet a right, alongside access to clean water and shelter.⁷ However, the high value placed on Internet access has not in fact resulted in uniformly unfettered access. Although the Cuban government declared Internet access a “fundamental right” of the Cuban people,⁸ all Internet access there requires government authorization and oversight by the Cuban Ministry of Computer Technology and Communications.⁹

While estimates vary, the regional penetration rate appears to be approximately 12 percent.¹⁰ More than half of the Internet users in Latin America are in Brazil and Mexico, though Jamaica, Chile, and Argentina have the highest penetration rates (at 44 percent, 34 percent, and 26 percent, respectively).¹¹ Penetration rates in Argentina, Brazil, and Mexico are clustered close to 17 percent. In Bolivia, only one person in twenty is connected, and in Cuba less than one person in fifty.¹² In 2004 Cuba had the lowest penetration rate in the region, trailing even Nicaragua (2.3 percent) and Paraguay (2.5 percent).¹³

Brazil, Mexico, Argentina, and Chile are also the leaders in high-speed Internet access, accounting for 90 percent of all broadband subscribers in 2006 and forming the top four markets for ADSL in the region.¹⁴ Despite the region’s low Internet penetration, fixed line and mobile phone subscription continues to grow at an annual rate of 50 percent.¹⁵

In countries such as Argentina, Chile, and Colombia the process of deregulation has led to a surge in more affordable and increasingly popular services such as voice over Internet protocol (VoIP). Nominally the Cuban Internet service provider (ISP) market was fully competitive by 2000,¹⁶ in contrast to the monopolies in the various telephone, data, and television markets.¹⁷ However, all ISPs remain under government control and oversight; of the ISPs, only CENIAL provides personal internet access to Cuban citizens.¹⁸

Physical, legal, and economic limits on access to the Internet can constitute the most significant form of governmental control. The Cuban government strongly restricts not only private ownership of computer hardware,¹⁹ but also many public access points to Cuban intranets.²⁰ In addition to the state prohibition of private computer sales, the Cuban police have also confiscated existing private computers and modems.²¹ The lack of private resources forces most Cubans to use public access points, which may allow access only to national e-mail and Cuban intranets.²² In Venezuela, Internet use is concentrated among young, male, educated city residents, with more than 60 percent of users coming from Caracas and all but the lowest income sector represented.²³ Despite programs promoting Internet use by poor and rural Venezuelans, access for 60 percent of the population remains essentially nonexistent, and basic public education does not incorporate Internet technologies.²⁴

At the same time, many governments in Latin America have committed to investing in expanded public access points and creating

community telecenters, such as cybercafés, where most users in the region access the Internet.²⁵ In countries such as Honduras, cybercafés and other public access centers have become the local “telephone booth,” providing cheaper and more readily available Internet telephony.²⁶ Though VoIP is available throughout the region, the regulatory landscape is still evolving, with sometimes contradictory reports on the legality of the service. VoIP is illegal in Cuba, but it is offered with stringent restrictions in countries such as Guyana, Paraguay, and Costa Rica. Licensing requirements also legally restrict which operators can offer VoIP in Bolivia,²⁷ Mexico, Venezuela, Colombia, Ecuador, Peru, and the Dominican Republic, though these restrictions are not enforced in many countries.²⁸ In Chile and Brazil, the VoIP markets operate as if unregulated, but they are also evolving.²⁹ In October 2006, even after deregulation, Telefónica Chile was fined nearly USD1 million for antitrust violations in blocking VoIP calls.³⁰

The introduction of Internet services in Latin America has offered citizens opportunities to affect their social and political landscape. For example, bloggers in Mexico inaugurated their coverage of elections in the 2006 presidential campaigns. Social networking sites are also immensely popular. Orkut in Brazil was host to eleven million of Orkut’s more than fifteen million users.³¹

Social content

The protection of children is a widely used rationale for filtering the Internet in Latin America. Despite the generally sparse extent of Internet regulation, countries throughout the region have focused on making the access and provision of pornographic material illegal online.

The bulk of the regulatory responsibility for filtering has been delegated to ISPs and public Internet access points such as cybercafés. For example, in 2006 the Venezuelan National Assembly passed a law to safeguard children

from illicit content on the Internet, requiring ISPs both to limit content on their servers and to provide free filtering software to users in order to promote self-regulation.³² Examples of similar mechanisms include the 2002 Argentine Internet Providers Law, which requires all ISPs to provide filtering software to users upon request,³³ and a Colombian law demanding that ISPs monitor their content and report any illegal activity to the government.³⁴ Colombia’s “Internet Sano” (healthy Internet) campaign calls for public education on “decent” ways of using the Internet as well as penalties for improper usage.³⁵ In Peru it is mandatory for all businesses to have filters installed in all computers designated for use by children.³⁶ In Buenos Aires businesses offering Internet services that fail to install pornography filters on computers for use by children are subject to fines or temporary closures.³⁷ Definitions of pornographic content are not always clear; Argentine ISPs expressed concern that the instruction to filter “specific sites” was not adequately precise.³⁸

Regulation of child pornography is steadily being expanded to include the Internet. In 2003 Brazil made child pornography illegal in any medium, explicitly including the Internet.³⁹ Similar laws have been approved and implemented in Buenos Aires⁴⁰ and Colombia.⁴¹ In Argentina’s proposed draft law on cybercrimes, child pornography is criminalized in “any medium of communication.”⁴²

In addition to efforts at protecting children from explicit online content, other social content deemed offensive has occasionally come under fire. Since the 1997 presidential declaration regarding “Free Speech on the Internet” that guaranteed Internet content the same constitutional protections for freedom of expression, Argentina has become a haven for neo-Nazi and race-hate groups around the region.⁴³ In 2000 an Argentine appellate court affirmed a lower court’s dismissal of a claim that a Yahoo! site selling Nazi memorabilia violated Argentina’s anti-discrimina-

tion law (no. 23.592),⁴⁴ holding that the equivalent restrictions of non-Internet speech would be unacceptable.

A recent case involving a social networking site illustrates some of the tensions between law enforcement needs and individuals' right to privacy. In 2005 the Brazilian government took issue with Google's social networking site, Orkut, when it became evident that it was being used for the sale of illegal drugs⁴⁵ and child pornography, and had also become a domain for racist speech.⁴⁶ The National Reporting Center of Cyber Crimes, which operates in partnership with the Ministério Público Federal, brought civil and criminal court lawsuits against Google's Brazilian unit alleging failure to stop the spread of child pornography and hate speech.⁴⁷ In 2006 Google agreed to comply with the Brazilian government's request that they track all users and hand over the identities of users involved in these and other illegal activities.⁴⁸

Defamation

The bulk of filtering in the Latin American region arises from court order. Conceptually, defamation covers a broad swath of unlawful acts in the region, primarily distinguished by the status of the person(s) harmed. In addition to defamation of individuals and antidiscrimination laws banning hate speech (group defamation), the majority of countries in Latin America have laws against *desacato* (disrespect, insult against, or contempt for public figures).⁴⁹

Hate speech is regulated by some Latin American countries. In Brazil, the Criminal Code includes the crime of prejudice on the basis of race, color, religion, ethnic background, or national origin.⁵⁰ The Brazilian Constitution, which establishes racism as a crime not entitled to bail or statutes of limitation, has been used as the legal basis for search engine takedowns.⁵¹ In Argentina's antidiscrimination law, a crime is considered more serious if racism is involved.⁵²

In Argentina the defendant in the case *Jujuy.com v. Omar Lozano* was found liable for publishing slanderous content on his Web site after imputing adulterous conduct to a couple and failing to remove the content promptly. An injunction was imposed and damages were set at USD40,000.⁵³ In a "defamation of the public image" case, the Brazilian court ordered the country's seven largest ISPs to block the Web site of a travel company based in the United States called "Tours Gone Wild," which reportedly sells and promotes sexual tourism packages to Rio. A Brazilian citizen had sued the Web site claiming photos were used on the Web site without permission.⁵⁴ These judicial strategies may be incorporated into future legislative moves by the Brazilian government or other Latin American countries.

Although many countries have declared *desacato* laws unconstitutional,⁵⁵ others—such as Panama⁵⁶ and Venezuela⁵⁷—are increasing restrictions on press freedom through such defamation laws. A 1999 *desacato* case in Costa Rica, where the journalist Mauricio Herrera Ulloa published accounts of the illegal acts of a public official, led to a judicial order to remove the name of the plaintiff from a newspaper Web site and to criminal convictions against Herrera Ulloa.⁵⁸ However, the Inter-American Court of Human Rights ruled that the conviction of Herrera Ulloa was a violation of his right to freedom of expression under the American Convention on Human Rights.⁵⁹

In 2006 a Brazil court extended the 1967 Press Law⁶⁰ to apply to Internet publications and fined a magazine, *Veja Online*, for defaming an ex-official in an article published online.⁶¹ The 2006 elections in Brazil provide a prominent example of *desacato* being brought into cyberspace, as well as the self-regulating stance taken by Brazilian ISPs. Senate candidate (and former President) Jose Sarney sued and won his case in the electoral court (which exists in part to "ensure that all candidates are fairly represented in the

media,” though this court does “not generally cover defamation”)⁶² against a blogger who posted a cartoon of Sarney. Even after Alcilene Cavalcante deleted the cartoon as requested by the court, the ISP that hosted her blog (<http://www.uol.com.br>) proceeded to remove the blog without a court directive to do so. Sarney also filed to sue Cavalcante’s sister Alcineia, who divulged details of the case on her blog. Again, without any court order, the ISP also removed Alcineia Cavalcante’s blog.⁶³

Privacy and confidentiality

The judiciary also continues to play an active role in parsing the scope of privacy rights and confidentiality of data by experimenting with filtering orders. For example, in 2005 a court in Brazil ordered the daily newspaper *Folha Online* to remove from its Web site 165 URLs that detailed how Brasil Telecom allegedly used a Canadian consulting company to spy on its competitor Telecom Italia. On trial for the abuses alleged in these articles, Brasil Telecom requested that the judge issue a writ against *Folha Online*. The articles were published in print a year before the takedown writ was issued, but the Web site was held to have violated the confidentiality of a judicial investigation.⁶⁴ However, after protests, the judge reduced the number of pages to be blocked the next day.⁶⁵

The Brazilian judiciary has also engaged with Google over the privacy concerns regarding sexual content that appeared on its video-sharing site YouTube in 2005. After a Brazilian model and her boyfriend sued YouTube for hosting a sexually explicit video they claimed violated their right to privacy, Google agreed to take down the video, but it continued to be put back online by users. In January 2007 a São Paulo judge ordered telecommunications companies to block YouTube until the video was removed from the Web site. Several ISPs, including Brasil Telecom, announced their intention to comply with the

court ruling.⁶⁶ Days later, the judge revoked his order and lifted the ban on the entire site.⁶⁷

Security and political speech

With the exception of Cuba, there has been no reported technical filtering of content relating to security or political speech. Since it established its first full-time Internet connection in 1996,⁶⁸ the Cuban government has combined access restrictions with severe penalties for illegal uses—including violations such as counter-revolutionary writing⁶⁹—to deter free expression online.⁷⁰ Regulation outlaws Internet use “in violation of Cuban society’s moral principles or the country’s laws,” as well as e-mail messages that “jeopardize national security.”⁷¹ Moreover, the government restricts Internet use by having all legal Cuban Internet traffic pass through state-run ISPs, which use software to detect politically dissident information, and requires ID and registration for Internet use.⁷² E-mail messages are monitored prior to being sent or delivered.⁷³

Copyright

Many countries in Latin America, including Argentina and Brazil, have attempted to shore up intellectual property rights (IPR) protections by drafting and updating laws and ratifying international agreements such as the World Intellectual Property Organization (WIPO) Copyright Treaty. Other countries, such as Chile and Mexico, have been criticized for having antiquated or weak laws that fail to meet international threshold requirements set by the UN and WIPO.⁷⁴ Uneven regulation of IPR is often coupled with a level of enforcement characterized as insufficient or anemic.⁷⁵ For example, one of the objectives of the U.S. government in signing a free trade agreement with Chile was to improve protection against piracy for U.S. copyright and trademark holders.⁷⁶ As a proposed replacement for the North American Free Trade Agreement, the Free Trade Agreements of the Americas (FTAA) would include every country in Central America, South

America, and the Caribbean, except Cuba. Although the United States has pushed for greater intellectual property protections, negotiations have been stalled since 2005.⁷⁷

At the same time, the drive for enhanced IPR regimes, often led by the United States, has been controversial for a range of reasons, from lack of public support to the nature of the civil law system in many countries.⁷⁸ For example, these international “individualistic” and “exclusionary” frameworks have been criticized as alien to many of the unique cultures of the region, indigenous rights, and traditions of collective rights. Panama’s IP laws recognize indigenous folklore and knowledge, and in 2000 it became the first country in the world to conceive of a *sui generis* IP system for the protection of indigenous crafts and knowledge.⁷⁹

Other factors

In Latin America economic factors can have a significant impact on citizens’ Internet access. In Cuba a combination of Cuban government policy, the U.S. trade embargo, and personal economic limitations prevents the vast majority of Cuban citizens from accessing the Internet. Access is likely restricted even further by the U.S. government’s sponsorship of reverse filtering, which encourages Web sites to prevent access from Cuba and other countries.

In Venezuela, President Hugo Chávez’s announcement on January 8, 2007, of re-nationalization plans for the telecom CANTV⁸⁰ has heightened fears of expanded regulation and content restrictions as the government assumes greater control of Internet media. A recent article notes that CANTV has held 83 percent of the Internet market since the market’s privatization,⁸¹ so any changes in filtering through a nationalized CANTV will have a strong impact on Internet users.

Conclusion

Governments and especially courts in Latin America are engaged in an adaptive process of regulating online activity and content. Only Cuba employs systematic technical filtering, with many countries delegating the responsibility for filtering content unsuitable for minors to ISPs. In addition, a wide range of actors—including government officials, telecom companies, individuals, and judges—have attempted to induce or enforce filtering on a case-by-case basis, often with negotiated and shifting results. The ad hoc approaches that have been applied thus far suggest that efforts to control Internet content in Latin America are still unsettled and contested; this promises to be an area of considerable change in the coming years.

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NOTES

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