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User Generated Revolution and Censorship: Is There A Right To Revolution?

By: Chris Desimone

Abstract

This essay explores the complicated political interplay between social media and censorship arising in many countries around the globe. It will explore the methodologies nations have developed to implement censorship as well as assessing their varying degrees of success. Several examples highlight various approaches such as Egypt's social uprising and similar movements in Libya, Tunisia, Mexico, and even America. Popular uprisings have taken on a far-reaching dimension with the advent of social media and the proliferation of affordable, portable technology to disseminate messages in various social media forums. This essay evaluates the methods used and methods available for use in real-world and hypothetical situations, as well as to offer a suggestion for what may be most effective going forward. Additionally, this essay advocates a unique method of incorporating international legal principles into a set of voluntary guidelines that suggests that information service providers realize and help foster the right to freedom of expression, especially in unfree societies.

I. Introduction to Censorship

Censorship takes place when the government prevents communication between a willing speaker and a willing listener through interdiction rather than post-

communication penalties.¹ Every country has taken their own normative view of censorship and their own procedural posture on how to best achieve censorship to varying degrees. Research has shown that censorship is far more likely to be legitimate when government oversees and openly admits blocking access to material and provides reasons for the content filtering.² Research has also shown that censorship is surprisingly acceptable to people even in places like America where there is said to be a shared belief in free expression.³

A nation-state that wants to censor the Internet has five options: direct control, deputizing intermediaries, pretext, payment, and persuasion. Each of these methods runs the gambit of government interaction from purely government-sanctioned censorship to completely private action. Derek E. Bambauer has devised a methodology for further classification, demarcating these methods of censorship into two helpful categories: hard censorship and soft censorship. Hard censorship methods (direct control and deputizing intermediaries) take place when the state imposes content preferences directly either through code implementation or force of law.⁴ The other three remaining methods are characterized as soft censorship. In those circumstances, the state's intervention role is diminished and also more easily evaded.

¹ Derek E. Bambauer, *Orwell's Armchair*, __ U. Chi. L. Rev. 10 (forthcoming 2012)

² *Id.* at 10

³ Owen Fletcher, *Apple Censors Dalai Lama iPhone Apps in China*, PCWORLD, http://www.pcworld.com/article/185604/apple_censors_dalai_lama_iphone_apps_in_china.html (Dec. 29, 2009).

⁴ Bambauer, *supra*, at 7

A. Hard Censorship

Direct control is a potent form of hard censorship and takes place when government imposes content decisions by creating various “choke-points” for access that it controls and then implements filtering mechanisms at that point. For example, in Saudi Arabia, all Internet traffic passes through a group of proxy servers that acts as a single point for censorship. A government agency, the Communications and Information Technology Commission, oversees the content blocking of the proxy servers and the Saudi Telecom Company, which is state owned, is the primary network provider.⁵ China performs the same type of state-run content filtering, using state-owned routers to monitor content.⁶

Deputizing intermediaries is another form of hard censorship that takes place when a state mandates that intermediaries carry out disfavored content filtering with civil or criminal penalties to follow any violation. The United States commonly uses this form of hard censorship to mandate filtering. Many states have used intermediaries such as ISPs to block unwanted material such as child pornography sites.⁷ In the United States, this form of hard censorship is subject to First Amendment barriers and has foreclosed governmental attempts to transfer responsibility for censorship onto intermediaries in the

⁵ *Id.* at 13

⁶ *Id.*

⁷ *Id.* at 17

United States.⁸ However, in nations that do not have similar First Amendment protection, this form of censorship is viable and often used.

B. Soft Censorship

Nations can also use existing laws as a pretext for censoring disfavored content. This form of soft censorship is designed to discriminate against content providers by employing laws that are formally neutral and unrelated to Internet expression to block access to information of which they disapprove.⁹ The United States of America often employs this method of soft censorship as well. For example, the state of Kentucky cited gambling regulations as a means of legal authority to have gambling websites transferred to state control. Realistically, the state was worried that on-line gambling services would jeopardize the amount of revenue they could generate from horse racing and offline gambling. However, they pursued this end by using a Kentucky law that made illegal any “gambling device,” which was statutorily defined as “any so-called slot machine other any other machine or mechanical device an essential party of which is a drum or

⁸ As a practical matter, the current U.S. Supreme Court appears to be highly speech-protective. Countervailing considerations such as protecting minors from video game violence, reducing prescription drug costs, preventing emotional harm to the families of American soldiers killed in combat, or improving access to media by less well-funded political candidates were held insufficient to justify speech restrictions in this Term alone. See *Brown v. Entertainment Merchants Ass’n*, 564 U.S. ___ (2011); *Sorrell v. IMS Health*, 564 U.S. ___ (2011); *Snyder v. Phelps*, 562 U.S. ___ (2011); *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U.S. ___ (2011). This trend likely decreases further the chance that federal filtering legislation would survive judicial scrutiny.

⁹ Bambauer, *supra*, at 23

reel... or any other machine or mechanical device... designed and manufactured primarily for use in connection with gambling.”¹⁰ Clearly domain names do not fit this description but it was the Governor’s attempt to use the existing law as a pretext to avoid revenue loss by way of the gambling websites.

Payment is another method governments can use to induce filtering and censoring of content that is disfavored by the state. Governments can use their funding power to induce parties seeking aid to filter content and/or applications that they would otherwise not permit. Many U.S. statutes such as the Higher Education Opportunity Act of 2008 compel institutions of higher learning to develop and implement plans to combat copyright infringement on their network and mandate at least one technology-based deterrent in order to collect funding.¹¹ These entities are obviously free to decline the government’s funding but this comes at the peril of making them less competitive to applicants who will suffer the consequences of the cost increases they will be forced to pass on.

The final method of soft censorship is pressure and persuasion. This method is as straightforward as it sounds, governments pressure intermediaries or the entities themselves to cease to display the content or suffer certain legal and/or political

¹⁰ *Id.* at 20

¹¹ 34 C.F.R. § 668.14(b)(30); see Higher Education Opportunity Act, Pub. L. 100-315, 122 Stat. 3077, 3309 (2008).

ramifications. Persuasion involves a range of tactics that employ various combinations of norms-based pressures, market incentives, and laws.¹²

Based upon the types of censorship available, legitimate censorship has four important virtues that would lead to popular acceptance and compliance. These include, being openly described (“Openness”), being transparent about what it restricts (“Transparency”), narrow in the material to which it applies (“Narrowness”), and accountable to the people it seeks to protect (“Accountability”). Any regime that seeks to impose any method of censorship within their country must abide by these four foundational principles, otherwise, they will be seen to be oppressive and eventually motivate popular uprisings.

II. Arab Spring

The Arab Spring, as it has come to be labeled, is a revolutionary wave of demonstrations that swept through the Arab world beginning on Saturday, December 18, 2010. Revolutions, rebellions, and prolonged protests have taken place in Tunisia, Egypt, Libya, Bahrain, Syria, Yemen, Algeria, Iraq, Jordan, Morocco, Oman, Kuwait, together with a few other minor uprisings in surrounding areas. These protests have each developed in their own unique way but each has gained traction around a central focus of civil resistance to the establishment by way of strikes, marches and demonstrations. All

¹² Bambauer, *supra*, at 29

of these modes of resistance used various forms of social media to help organize, communicate, and raise awareness. As the movements gathered inertia, the established government or leader took steps to curtail the resistance by way of forceful repression and Internet censorship.

Dictators in the most repressive regimes, such as North Korea and Cuba, have long kept Internet contact with the world to a bare minimum. Less restrictive dictatorships, such as Egypt and Libya had left the doors to the Internet cracked open to the public, but upon realizing that they could no longer hide their abuses from a world a Twitter tweet away, the new model autocracies, such as Libya and Egypt have realized that they need to cut their Internet links before bringing out the guns.

A. Egypt, 2011

In Egypt, a thirty-year-old emergency law was used to justify the limitations on the content of expression used by protestors. On January 25, 2011 the government instituted a widespread shutdown of communication tools in an attempt to quarantine the dissidents.¹³ This type of hard censorship, direct control, is problematic for several reasons. First, violent attacks on protestors can be grotesque and easily identifiable but, attacks on social media dissent are less visible and their effects are potentially further reaching. Second, most countries, such as Egypt, have no laws or administrative avenues

¹³ 35 Fletcher F. World Aff. 15 at 15-16

for citizens to use to push back against this type of oppression. To further understand how these concerns manifest themselves, we will analyze steps Egypt took to censor the flow of social media within the country.

Egypt's methodical dismantling of social media began by attacking content such as mass-media outlets and ground-based dissemination of protestor's materials. They then applied censorship to general social media platforms, such as Facebook and Twitter, and finally disabled the entire communication infrastructure meaning mobile telephone and Internet services.¹⁴ Though Egypt had traditionally limited its involvement in monitoring communications, this history did not stop them from this nation-wide communication quarantine.

The Egyptian government had previously engaged in soft censorship, including targeted filtering of certain media figures through media compliance law, near election time. Until the Arab Spring, Egyptian leadership was less concerned with *what* was being censored and more concerned with *when* it was being censored.¹⁵ This all changed when Wael Ghonim, a manager in Google Inc.'s Middle East and North Africa marketing division, went missing upon being detained by government cronies.¹⁶ On Ghonim's Twitter feed the day he went missing, he wrote a chilling note: "Pray for #Egypt. Very worried, as it seems that government is planning a war crime tomorrow

¹⁴ 35 Fletcher F. World Aff. 15 at 16

¹⁵ 35 Fletcher F. World Aff. 15 at 17-18

¹⁶ CBC News, *Who is Wael Ghonim?*, 2011, <http://www.cbc.ca/news/world/story/2011/02/08/f-wael-ghonim.html>

against people. We are all ready to die #Jan25.”¹⁷ After nearly two weeks in detention, Ghonim was released and gave a highly emotional interview where he explained that he was not tortured but further stated that Egyptian officers interrogated him relentlessly about how the anti-government protests were organized.¹⁸ Ghonim was detained because he was linked to creating the Facebook page “We Are All Khaled Said,” named in honor of twenty-seven year old Egyptian blogger that was beaten to death by the Egyptian police a few months earlier.

In January 2011, the strategy content-based censorship shifted to include blockage of entire web-based platforms such as Facebook and Twitter. Facebook and Twitter are used widely in Egypt, though the former has a significantly higher penetration rate. As of February 2011, there were 3.5 million Facebook users (a 4.5 percent penetration rate); 12,000 Twitter users (.00015 percent); and 13.5 million Internet users (16.8 percent penetration rate) in Egypt.¹⁹ The successful coordination of marches using Twitter, and the momentum of the "We are all Khaled Said" Facebook page, designed to

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Facebook Figures: Jennifer Preston, *Movement Began with Outrage and a Facebook Page That Gave It an Outlet*, *The New York Times*, February 5, 2011, <<http://www.nytimes.com/2011/02/06/world/middleeast/06face.html?hp>> (accessed October 10, 2011); Twitter Figures: Jolie O'Dell, *How Egyptians Used Twitter During the January Crisis*, *Mashable*, February 1, 2011, <<http://mashable.com/2011/02/01/egypt-twitter-infographic/>> (accessed October 10, 2011). *Internet Penetration: Egypt: Internet Usage and Telecommunications Reports*, *Internet World Stats*, <<http://www.Internetworldstats.com/af/eg.htm>> (accessed October 10, 2011).

galvanize Egyptians against torture by using the specific case of Khaled Said, an Egyptian beaten to death by police on the streets of Alexandria, as a rallying point were likely significant factors in the government's eventual decision to shut down these platforms entirely on January 25. However, the five-day Internet shutdown had an unintended impact on apolitical segments of society, particularly the business community and the most educated and wealthiest of Egyptians: the blockage undermined the communication infrastructure that disengaged actors relied upon for nonpolitical reasons. The shutdown of Egypt's entire online infrastructure further indicated the lengths the regime was willing to go to limit political communication and mass organization.²⁰

Using Egypt as a case study for the largest media blackout during a popular uprising, it is obvious that the Egyptian leadership had to sacrifice the predominant forum of world affairs to quarantine political communication. The regime lost credibility with the international community, essentially unplugged Egypt's formal economy, and showed international corporations operating in Egypt that they are subject to the will of the regime.²¹ Most importantly, in the example of Egypt, these sacrifices were ultimately not enough to keep the regime in power. Additionally, it has left a power vacuum that has Egypt in disarray.

²⁰ *The Cost of Egypt's Internet Blackout: \$ 110 Million +*, *Read Write Web*, February 6, 2011, <http://www.readwriteweb.com/archives/the_cost_of_egypts_internet_blackout_110_million.php> (accessed October 8, 2011).

²¹ 35 Fletcher F. *World Aff.* 15 at 21-22

Violence is now erupting in Egypt again because the army has not relinquished the political and economic power it held under Mubarak, and is refusing to do so. Current clashes also stem from a deeper general mismanagement of the transition by the Supreme Council of the Armed Forces (SCAF), which has included widespread use of military tribunals, imposition of emergency law, censorship of the media, imprisonment of civil society activists, crackdowns on religious minorities and poor organization of the upcoming elections.²² All of this has created an environment of uncertainty, distrust and fear. The uncertainty will not be resolved until a stable government force can exert influence over the nation at large. This body will need to prove to the people that their interests will be protected and their rights and liberties will not be curbed. The actions of Mubarak in his final months and weeks will be felt for generations, particularly if the current instability continues to fracture the nation.

B. Libya, 2011

The revolution in Libya centered on competing media propaganda campaigns. Former Colonel Qaddafi's supporters were using state-run news media to broadcast patriotic songs, poetry recitations, and rowdy rallies to support their leader.²³ Conversely, the Libyan protestors turned to social media and foreign news media to

²² Blair Glencorse, *Setting the Rules of the Game in Egypt*, 2011, http://globalpublicsquare.blogs.cnn.com/2011/11/25/glencorse-setting-the-rules-of-the-game-in-egypt/?hpt=hp_bn4

²³ Emad Mekay, *One Libyan Battle is Fought in Social and News Media*, 2011, <http://www.nytimes.com/2011/02/24/world/middleeast/24iht-m24libya.html>

spread their message through Web posts, pictures, twitter posts, and television interviews.²⁴ It became increasingly difficult for Qaddafi and his supporters to saturate the media with as much information as the Libyan protestors. Websites such as “www.libyaFeb17.com” emerged which congregated twitter posts, video footage, and images that would rally and organize the protestors.

Internet access is tightly controlled in Libya. In late 2010, the government blocked access to YouTube and Facebook. Then they cut themselves off from the Internet all together on February 18, 2011.²⁵ Within hours of the Internet shutdown it was reported that Libyan soldiers began slaughtering protestors.²⁶ Libya’s Internet is essentially owned and controlled by the government through a telecom company called Libya Telecom and Technology. The chairman of the company was the son of the late dictator, Moammar Qaddafi. Mobile phone service is similarly under government control. However, unlike Egypt, Libya has a domain service that allowed certain URLs to stay up, regardless of government intervention because they were American-based.²⁷ Bit.ly, the domain service, issued a statement through their CEO, John Borthwick, which said they would “continue to do everything we can to ensure we offer our users the best

²⁴ *Id.*

²⁵ Stephan J. Vaughan-Nichols, *Libya Turns off the Internet and Massacres Begin*, 2011, <http://www.zdnet.com/blog/networking/libya-turns-off-the-internet-and-the-massacres-begin/711>

²⁶ *Id.*

²⁷ *Id.*

service we possibly can. Many users choose to use <http://j.mp/> as an alternative to <http://bit.ly>, given that it is shorter. And some use <http://bitly.com>.²⁸ This development ushered in a notion of corporate social responsibility amid the protests. Though this technology was not available in other areas, Bit.ly took it upon themselves to ensure service for its users to encourage freedom of speech. This is extremely important in developing nations that are being censored and this type of corporate responsibility can help average citizens push back against the power and greed of government.

Using denial of Internet access as a political weapon during crisis events is all about direct control. Mubarak, in Egypt, waited to implement his blackout, and then let it run past the point where the damage to the Egyptian economy and the cost of international outrage exceeded the dwindling benefits to the regime. In the end, all the Egyptian government accomplished was to attract the sort of sympathetic attention and message support from the Internet community that is pure oxygen to a democratic opposition movement. Libya faced this same decision leading to the civil war, and each time, perhaps learning from the Egyptian example, they backed down from implementing a multiday all-routes blackout.²⁹ Each time they did this, service was restored within a few days at reduced levels with filtering modules to regulate content.

²⁸ *Id.*

²⁹ James Crowie, *What Libya Learned from Egypt*, 2011, <http://www.renesitys.com/blog/2011/03/what-libya-learned-from-egypt.shtml>

When governments face this decision in the future, backed into a corner by a popular uprising supported by Internet communication, they will be forced to address the problem that Libya and Egypt did: reestablish control over national communications at any cost, and face the backlash. That is why the Internet is too vital to be left in the hands of centralized authority, and also why corporate entities must take responsibility to help ensure access to the Internet in the face of oppression through censorship.

III. Corporate Responsibility and Social Media

At first blush, corporate responsibility and social media seemingly have little in common. Corporate responsibility is a notion that encompasses corporate social responsibility, sustainability, corporate citizenship, ethics, issue advocacy, environmentalism, and community relations. In the context of communication in the modern economy, corporate responsibility and social media are intertwined in fostering a company's reputation and even affecting their bottom lines.

Studies have shown that social media initiatives can be directly correlated to a company's financial performance.³⁰ With that notion as a catalyst, it will be fairly easy to convince companies to take on this mantle. Several scholars have begun to analyze this important dynamic, especially in authoritarian regimes where corporate influence may provide an important counter-force. Law professors Anupam Chander and Erika

³⁰ Patricio Robles, *Does Social Media Lead to Better Financial Results for Companies?*, 2009, <http://econsultancy.com/us/blog/4252-does-social-media-lead-to-better-financial-results-for-companies> (concluding that deep engagement with consumers through social media channels correlates to better financial performance)

George have taken this topic head on and succinctly explain their views on corporate responsibility and its interplay with social media.

A. Chander's 'Global Corporate Citizenship'

In January 2010, two American corporations operating in China offered an important case study for Chander – Google and Yahoo. Google is the world's biggest media company. Through its search engine, YouTube, Blogger, and Orkut services, Google has become the world's most important platform for disseminating information, earning more than half its income outside the United States.³¹ The rise of Google has signified a fundamental transformation comparable to how radio and television moved free speech from the local street corner to the national platform: the Internet has shifted it to the global stage. Given this transformation, free speech and its Western proponents must now deal with the reach of this media into oppressed societies.

Chander posits two important questions: "Must new media companies refuse to bend to repressive demands in such societies, disengaging entirely if that proves impossible? Or should they remain engaged even on compromised terms because companies with fewer ethical constraints will fill the vacuum created by their disengagement?"³² When Google began offering its service from servers in China in

³¹ Google, Inc., Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Quarterly Period Ended September 30, 2009 (Form 10-Q), at 25 (Nov. 4, 2009) (reporting that non-U.S. revenues accounted for fifty-three percent of all revenues).

³² Anupam Chander, *Googling Freedom*, 99 Cal. L. Rev. 1 (2011) at 6

2006, they agreed to censorship, but decided not to locate its Web 2.0 services such as Blogger and Gmail there, seeking to avoid placing personally identifiable information within reach of the local authorities.³³ On the other hand, stung by criticism of its complicity in repressive actions early in its operations in China, Yahoo retreated behind the corporate veil, transferring its operations there to a Chinese company in which it became the largest shareholder.³⁴ It was from these two differing approaches that Chander finds distinctly different roles that companies can choose to play. Depending on how corporations conduct their business, may affect the future of social media, especially in authoritarian regimes.

As Chander explains, these corporations and their control over the Internet can either promote a surveillance state or, alternatively, encourage participation of the public sphere by rational discourse and deliberation.³⁵ Google, Microsoft, and Yahoo, along with civil society organizations, have since adopted a new human rights policy—the Global Network Initiative, which commits them to consider human rights as they offer their services around the world.³⁶ Google’s challenge to Chinese repression at the beginning of 2010 was a watershed moment in honoring this commitment. It is difficult

³³ Andrew McLaughlin, *Google in China*, The Official Google Blog (Jan. 27, 2006, 11:58 AM), <http://googleblog.blogspot.com/2006/01/google-in-china.html>; *Google Move ‘Black Day’ for China*, BBC News (Jan. 25, 2006), <http://news.bbc.co.uk/2/hi/technology/4647398.stm>

³⁴ Chris Leahy, *Alibaba Clicks with Yahoo*, Euromoney, Oct. 2005, at 96, *available at* <http://www.euromoney.com/Article/1009375/Alibaba-clicks-with-Yahoo.html>

³⁵ Chander, *supra*, at 9

³⁶ Jessica E. Vascellaro, *Google, Yahoo, Microsoft Set Common Voice Abroad*, Wall St. J., Oct. 28, 2008, at B7.

to assert this obligation due to America's general disdain for the idea that public corporations should bear responsibilities other than profit maximization for shareholders. However, many states have statutorily mandated that corporate managers consider groups and concerns other than their shareholders in decision-making and courts have upheld these provisions.³⁷

Based upon those findings, it is not a stretch to consider Chander's idea of Global Corporate Citizenship as a solution or counter-balance to authoritarian regime censorship. In his words, "this view saddles multinational corporations with obligations that extend to all of humanity, or more precisely, to the communities in which its employees and consumers live. These obligations go beyond satisfying the statutory minimums, especially in the developing world."³⁸ Many free-market economists believe that the only responsibility corporations have to citizens in their communities is to maximize profit but, as Chander insists, should not this obligation change or, at least, be re-evaluated when they do not operate in a free society?³⁹ New media now plays an important role around the world and as social media and its importance changes, so too should the paradigm through which corporations view their social responsibilities. Corporations like Google and Yahoo now play an important role in empowering or oppressing individuals, whether they wanted to assume that responsibility or not.

³⁷ *Shlensky v. Wrigley*, 237 N.E.2d 776 (Ill. App. Ct. 1968)

³⁸ Chander, *supra*, at 23

³⁹ Chander, *supra*, at 25

In signing the Global Network Initiative, Google and Yahoo have begun to recognize and adopt a broader social responsibility ethic. This initiative is a shared set of voluntary principles that govern certain government responses or pressures that infringe on the freedom of expression or privacy.⁴⁰ This does not mean that companies must withdraw from oppressive states but rather ensure that procedures are in place to protect the important rights of freedom of expression and privacy. This initiative encourages accountability by requiring companies to both establish internal compliance and possibly utilize outside auditors to ensure conformity.

Another mode of implementation, which would use existing law to help further Chander's idea is The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA"), was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business. Specifically, the anti-bribery provisions of the FCPA prohibit the "willful use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation

⁴⁰ *Diverse Coalition Launches New Effort to Respond to Government Censorship and Threats to Privacy*, Global Network Initiative (Oct. 28, 2008), http://www.globalnetworkinitiative.org/newsandevents/Diverse_Coalition_Launches_New_Effort_To_Respond_to_Government_Censorship_and_Threats_to_Privacy.php.

of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.”⁴¹ Using this statutory mandate, an amendment could be added to prevent companies from dealing, doing business with, or establishing corporate facilities in countries that have been found to be oppressive or restrictive of its citizen’s use of social media. This takes Chander’s Global Citizenship ideal and uses international law to mandate compliance. It would not require the political capital to create new legislation but rather use existing statutory language and expand it to protect freedom of expression through social media in other countries.

B. George’s Expansion of Global Network Initiative

Erika George attempted to build upon important ideas that Chander explored in his article and insisted that he failed to acknowledge two important dimensions: the role of social media’s international audience and the issue of inequality.⁴² The international audience helps extend Chander’s findings to a broader population. For example, throughout the revolutions in the Middle East, multiple media outlets were aimed at the governments. Increased exposure of government conduct made it easier to mobilize public opposition to rights abuses: both internal and external rights advocates, those working inside the borders of a repressive regime and their allies outside of their

⁴¹ U.S. Dept. Of Justice, *Brief Overview of the Foreign Corrupt Practices Act, 2011*, <http://www.justice.gov/criminal/fraud/fcpa/>

⁴² Erika R. George, *Tweeting to Topple Tyranny, Social Media and Corporate Social Responsibility: A Reply to Anupam Chander*, 2 Cal. L. Rev. 23 (2011) at 26

jurisdictional boundaries, are better able to shame governments into changing their conduct by exposing their actions to a global audience.⁴³

Another danger Chander identified and dismissed is the possibility that corporations, or the people comprised within, may not always advocate positive messages. One example of this dynamic is the use of the Internet to promote homophobia. The murder of the Ugandan gay rights activist, David Kato, provides a case in point. Faith-based organizations used new media to raise money to fund the dissemination of ideas that have been credited with contributing to Uganda's consideration of legislation that would criminalize and impose a death penalty on homosexuality.⁴⁴ Kato was killed shortly after an article including the names and addresses of several gay men and lesbians was published in a Ugandan newspaper under a banner reading, "Hang Them."⁴⁵ Clearly, this was a situation where the free dissemination of information led to Mr. Kato's death. Chander's article did not fully explore the harms that may be associated with promoting an un-filtered press. This type of hate speech is harmful and often uses the same avenues of dissemination Chander

⁴³ Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 5 (Thomas Risse, et al. eds., 1999).

⁴⁴ Jeffrey Gettleman, *Americans' Role Seen in Uganda Anti-Gay Push*, N.Y. TIMES, Jan. 3, 2010, <http://www.nytimes.com/2010/01/04/world/africa/04uganda.html>; *see also* Scott Lively, *Report from Kampala*, DEFEND THE FAMILY INTERNATIONAL (Mar. 17, 2009), <http://www.defendthefamily.com/pfrc/archives.php?id=2345952>.

⁴⁵ Jeffrey Gettleman, *Ugandan Who Spoke Up for Gays is Beaten to Death*, N.Y. TIMES, Jan. 27, 2011, <http://www.nytimes.com/2011/01/28/world/africa/28uganda.html>.

seeks to protect. George retorts, to the extent that Chander rests his responsibility argument on the role industry plays in realizing rights involved in democracy, he should also argue that it is imperative that corporations operating in the Internet communications technology sector to assume responsibility for ensuring vulnerable populations are somehow protected from hatred and harassment.⁴⁶ Such an obligation would also be consistent with international and foreign laws. While the Supreme Court of the United States has determined that the First Amendment can protect racist speech, many other free countries have, consistent with international human rights requirements, enacted legislation recognizing that hate propaganda threatens the equal protection of minority groups.⁴⁷ Further, international human rights law requires governments to adopt measures to eradicate incitement to discrimination and condemn “all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.”⁴⁸ Particularly in countries where the rule of law is weak, George argues, media companies have a special obligation to police their own compliance with laws against hate speech.

Minority groups face severe vulnerabilities and that reality is underscored in unfree societies. As George emphasizes, using empirical data, violence tends to be more extreme for minority groups in authoritarian societies because their government leaders

⁴⁶ George, *supra*, at 32

⁴⁷ *Id.*

⁴⁸ International Convention on the Elimination of All Forms of Racial Discrimination art. 4, *adopted* Dec. 21, 1965, 660 U.N.T.S. 195

ascribe great worth to nationalism and state unity.⁴⁹ They tend to classify anything outside the majority profile to be ‘separatist’ resulting in heightened oppression. George advocates countering this phenomenon with Google’s YouTube policy of prohibiting hate speech. Specifically, the corporation’s community guidelines warn: “we don’t permit hate speech (speech which attacks or demeans a group based on race or ethnic origin, religion, disability, gender, age, veteran status, and sexual orientation/gender identity).”⁵⁰ This type of filtering can allow free speech to flow as long as those who advocate hatred and violence do not target specific, vulnerable groups. However, it would lead to properly claim that it would dilute First Amendment values.

IV. The Fundamental Right to Free Expression

Yahoo’s co-founder Jerry Yang declared while signing the Global Network Initiative, “Yahoo was founded on the belief that promoting access to information can enrich people’s lives and the principles we unveiled today reflect our determination that our actions match our values around the world.”⁵¹ Companies like Microsoft, Google, and Yahoo are beginning to understand the moral responsibility that they have assumed as they become the media giants of the 21st Century. Though the Global Network Initiative is an important start and these companies have taken affirmative steps to show

⁴⁹ George, *supra*, at 31

⁵⁰ *YouTube Community Guidelines*, YOUTUBE.COM, http://www.youtube.com/t/community_guidelines (last visited June 3, 2011).

⁵¹ Maggie Shiels, *Tech Giants in Human Rights Deal*, BBC News (Oct. 28, 2008), <http://news.bbc.co.uk/2/hi/technology/7696356.stm>.

their support beyond petition signing, more can and should be done by way of legal requirements and remedies.

Rights to food and health are codified in international human rights laws and require governments to take appropriate steps to ensure that activities of private business and civil society are in conformity with the right to food.⁵² Industry can often influence to what extent food and health rights are implemented or, alternatively, placed at risk. This is also true in the context of social media and information system engines that fuel their profound reach. The right to free expression and its importance is underscored by the Arab Spring and the role social media outlets have played in freeing oppressed populations. Corporations must continue to see out the Global Network Initiative but they can be encouraged through the creation of international law mandates. Erika George elucidates important considerations in her article and this essay further argues that these administrative steps should be codified into law to ensure compliance. These steps include: (1) conducting due diligence to assess the risk of rights that the company's conduct may present to their community; (2) communicating with members of the community who are likely to be most affected; (3) consider the consequences of different options; and (4) select a court of conduct that does not further contribute to existing conditions of civil and/or political restraint or deprivation.⁵³ By affirmatively mandating

⁵² International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, 993 U.N.T.S. 3

⁵³ George, *supra*, at 35

that companies who begin operations in foreign nations conduct these important inquiries and address the necessary concerns, the right to free expression can be bolstered.

Though companies may hesitate to support compliance measures that may enhance costs, the voluntary creation of the Global Network Initiative is indicative of a new corporate model that focuses on the cyber-citizen consumer over the bottom-line. In fact, it may even increase the bottom-line in the future, as the cyber-citizens constituency would feed off of open access to information and privacy protection. Providing services that are good for consumers will attract further consumers, meaning that there will be a convergence of interests between consumers and shareholders, particularly in unfree populations.

Conclusion

Censorship is an important power that many governments and private actors wield, many times without a full understanding of their actions. As social media expand and converge with political forces, the ramifications of censorship and filtering methods become more apparent. As Egypt and Libya highlighted, government censorship can become a catalyst for revolution. Governments, as well as private actors, need to be transparent about their modes of censorship and their reasons behind it. If they are not, any attempt to subvert dissenter's views will be swallowed by a public firestorm, as was the case with regimes in Egypt and Libya. Social media and their expansive reach have changed the game and as the brave protestors around the globe have shown, reckless censorship will not win the day.

Additionally, corporations have now assumed a new role of policing the fundamental right to freedom of expression, particularly in oppressed nations. Beyond a moral responsibility to ensure this essential freedom, corporations should be forced to go a step further from voluntary coalitions, such as the Global Network Initiative, and required to adhere to international law that ensures freedom to access social media. Not only will this help foster an important right but it will also increase their brand's respect and profitability as the cyber-citizen helps carry these multi-national corporations into the next decade.