

The limits of Singapore's "light touch" web regulation

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Abstract

In 1996, Singapore became the first country to impose regulations specifically for internet content. A decade having passed, Singapore now offers the opportunity to analyse long term patterns in the implementation and implications of authoritarian internet controls. In a study tabulating all known instances of coercion against internet communication in the decade from 1996, the authorities in Singapore are found to have generally kept their promise of applying the law with a 'light touch': there have been no instances of censorship of political content online. However, the government has been prepared to use sweeping sedition and criminal defamation laws, and has also introduced restrictions on the use of the internet for election campaigns. While Web 2.0 practices are not beyond the government's reach, they serve to undermine the ideological foundation of the regulatory regime. Licensed print and broadcast media in Singapore have been easier to regulate with a light touch because the government has multiple levers to pull and buttons to push. For example, the commercial footing of the mainstream media has made them easier for a pro-business, pro-stability government to co-opt. In contrast, insurgents using Web 2.0 technologies are mostly voluntary, non-profit ventures, immune to financial pressures. This gives media activists relative independence from the state. On the other hand, since subtler means of control won't work, dissidents find themselves on the receiving end of strong government action. This tendency is double edged. While Singapore's strong government is likely to prevail in any conflict, it will pay a political price when it resorts to less calibrated forms of coercion.

The internet's democratic promise has been intensively investigated, with most findings cautioning against sweeping conclusions. The Singapore case is particularly conducive to more nuanced study, since it spectacularly defies simple categorisation and analysis. The island republic is one of the most wired places in the world; its citizens are among the most active bloggers. This high level of preparedness for Web 2.0 is coupled with famously moribund politics. Singapore is one of the few remaining states with a hegemonic dominant party system. Ruled continuously by the same political party since self-government in 1959, and with declining levels of violence, it can realistically lay claim to have the world's most stable regime.

The world wide web's arrival appears not to have any impact on that political stability. The government has fought three general elections since the internet's "big bang" of the mid-1990s; the number of opposition-held seats in Parliament remains two. While its electoral impact has been negligible, Web 2.0 may pose a challenge to the ruling party's hegemony, gradually changing the country's political culture. This is because the internet in Singapore is less amenable than print and broadcast media to what might be called calibrated coercion (George, 2007). By making the authorities to choose between more visible censorship or none at all, internet dissent chips away at the veneer of social consensus that the state has tried to erect around politics.

Strategic self-restraint in the use of force is an important – if underappreciated – governance skill for states aiming to consolidate authoritarian rule. Application of more than the minimum required force tends to erode the state's legitimacy and authority, and thus, paradoxically, its power as well (Arendt, 1970). Chalaby (2000) notes that states have at their disposal a range

of methods to curb freedom of expression – violent, legal, administrative and economic – and that these differ in their efficiency and visibility. The internet, he adds, offers new technological means of censorship that can be integrated within the medium, rendering it invisible and anonymous to most users.

This paper provides a different assessment. While various filtering and blocking tools are indeed available to the modern day censor, their application is not as invisible or as cost-free as Chalaby suggests. While certainly not as spectacular as book burning or murder, behind-the-screen internet censorship is not as efficient as economic means of control. There are two related reasons for this. First, while filtering and blocking may not be apparent to the average user, they cannot be hidden from committed cyberactivists who are only too keen to blow the whistle on such practices. At the international level, the Open Net Initiative has regularly named and shamed states that engage in technologically-assisted internet censorship. This has not stopped the states concerned, but it does make filtering and blocking more visible and politically costly.

Second, within the context of capitalism, economic forces provide states with a convenient deniability in a way that technological tools do not. Except for the minority of citizens schooled in a critical understanding of political economy, most societies treat market forces as natural and as a given. Internet filtering and blocking tools may be harder to fathom, but it is the hand of the market that is truly invisible to most. In the Singapore case, the astute of harnessing of economic forces has enabled the state to control traditional media without significant political cost. Its inability to pull the economic strings of alternative online media is a challenge to its hegemonic dominance, despite the sophisticated tools of technological censorship that are within its reach.

CONTENT REGULATIONS

Internet content regulations are under the purview of the Media Development Authority (MDA), which has committed itself to “a balanced and light-touch approach to ensure that minimum standards are set for the responsible use of the Internet while giving maximum flexibility to industry players to operate”. Internet regulation – which is part of a three-pronged approach that also includes industry self-regulation and public education efforts – aims “to promote and facilitate the growth of the Internet while at the same time safeguarding social values and racial and religious harmony”.¹

Internet content regulations first surfaced in 1996.² Under a Class Licence Scheme, content providers and service providers were deemed automatically licensed as a class, bringing them within the ambit of Class Licence Conditions and an Internet Code of Practice. The new regulations required internet service providers (ISPs) to channel all traffic through proxy servers, enabling the filtering of content. ISPs had to accede to any instruction from the regulator to block content. In addition, ISPs were expected to exercise their own diligence. Content providers were not to put up “prohibited material”: “material that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws.”

The 1996 regulations also introduced a registration requirement for content providers that were Singapore political parties or any “individuals, groups, organisations and corporations engaged in providing any programme for the propagation, promotion or discussion of political or religious issues relating to Singapore”. The registration process involved completing a form that asked for information about the website’s editor, publisher and financial backers.

The breadth of the new regulations was met with indignation and suspicion by Singapore’s nascent internet community. Anxious not to have its pro-technology image ruined, the government sought to pacify the critics with what would become a standard assurance, that its powers would be used with a light touch. It also set up a National Internet Advisory Committee (NIAC), chaired by an academic, to institutionalise the role of community consultation in its internet policy formulation. The NIAC secured at least two significant amendments to the Internet Code of Practice.³ First, the responsibilities of ISPs and content providers were more clearly spelt out. Their liability was linked to the extent of their editorial

decision making, relieving them of the impossible burden of actively policing all the content that merely passed through them as intermediaries. Second, the scope of “prohibited material” was narrowed, to focus mainly on sexual content and material that “glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance”. Removed from the code were references to political out of bounds markers.

By and large, however, these regulatory principles remained consistent from 1996. In a typically Singaporean approach to regulation, the authorities claimed sweeping discretionary powers in written laws, allowing themselves maximum flexibility to address any conceivable contingency; but, at the same time, provided repeated assurances (not guaranteed by law) that these powers would be applied judiciously and without stymying productive activity and innovation. In order to secure the government’s grip on the levers of power, the regulatory regime included the following key elements: first, the authorities asserted jurisdiction over the internet in Singapore, making clear that existing laws would apply to online communication; second, regulators claimed the discretionary power to block any site of their choosing by issuing instructions to ISPs; and, third, religious and political sites would be required to register with the regulator.

In line with its “light touch” commitment, the authorities provided three main assurances. First, the government would not attempt the futile exercise of censoring all objectionable material, but only a “symbolic” list of 100 sites, to signpost Singapore’s societal values. Second, in using its blocking powers, MDA’s main target would be pornography and racial or religious extremism, not politics. Third, the registration process for religious and political sites was an administrative matter designed to enhance accountability, and nothing more sinister.

Aside from these 1996 provisions, the Parliamentary Elections Act contained significant regulations specific to the internet. Under the 2001 regulations, political parties could use the internet to campaign, but were prohibited from exploiting the medium’s most powerful features. Parties could not stream audio or video online. Nor could they generate online petitions or use the medium for viral marketing. Websites that did not belong to parties or candidates but that were required by the MDA to register themselves as political sites were banned from online electioneering.

THE STUDY

When the internet content regulations were introduced, there was considerable concern about how they would be used. A decade on, it is timely to analyse how the regulations were actually applied. The reference point in this analysis is not the libertarian standard, since a hands-off or “no touch” regulatory regime was never promised. The question of whether the Singapore approach satisfies libertarian norms may be an important one, but it is uninteresting, since it requires no investigation before declaring that the answer is “no”. Instead, the launching point for our exploration is the government’s “light touch” assurance. Judged on its own terms, has the government kept its promise to regulate with a light touch? What has this meant in practice? And, how, if it all, has this regulation differed from the government’s handling of print and broadcast media?

In order to assess the Singapore government’s use of its regulatory powers, our research project tabulated every known instance of coercion against internet communication. A broad definition of coercion is used, to embrace any implied or explicit invocation of state power, including threats that do not materialise. This broad definition is crucial to the analysis, since one of the key points of interest is how the authorities choose from the spectrum of tools at their disposal. However, the analysis only includes actions against clearly identified targets such as specific websites; statements to the general population of internet users are excluded. Cases were drawn from newspapers and independent websites. In an attempt at “open source” publishing, the evolving database was made publicly available on a web log.⁴ Where possible, individuals at the receiving end of government attention were contacted to verify or fill in details. This article is another step in this open source process: it’s hoped that the tentative findings here will stimulate further discussion that will help refine the analysis.

ANALYSIS

In the 10 years from July 1996, there were 20-plus reported cases of state action against online communication. More than half of these cases can be categorised as “political”, in the sense that they involve challenges to power broadly defined, including, for example, school students flaming their teachers. Since non-political cases are less likely to be publicised, it would be wrong to conclude that state attention has been devoted mainly to political challenges; this is true only of most *known* cases. On the other hand, one can state with some confidence that most if not all political cases have been captured in our search, as the online community and even the mainstream press tend to be quick to circulate information about such cases. (If readers know of cases that we have missed, they are invited to contribute to the database.) The main gaps are likely to be pornography and cases involving extreme sites carrying material offensive to other religious communities or engaging in hate speech. In such cases, the targets of government action are unlikely to want attention drawn to themselves and would choose not to publicise the action, unlike most political cases.

Not all cases were initiated by the state. In particular, most cases categorised as sexual or racial/religious appear to have been prompted by members of the public who took offence and complained to the authorities. Indeed, in one 1999 case, an ISP blocked a site in response to public complaints, only to be told by the authorities that the site did not in fact violate the Code of Practice. The second ISP at the time took no action against the site. Such cases support the judgment of some observers that, on some issues, segments of the public are more reactionary than government censors.

A range of legislative tools has been used to discipline the internet. The content regulations specifically introduced for the internet in 1996 have been used sparingly. No known political website has been put on the MDA’s banned list. Two non-party sites were asked to register as political websites. One of them, Think Centre, complied. The other, Sintercom, refused. Its editors successfully appealed against the registration order in 1996, but failed to change the authorities’ mind when they reissued the instruction in 2001. Rather than register, the Singapore site was closed down. It later resurfaced overseas as New Sintercom. While still freely accessible in Singapore, it abdicated its position as one of Singapore’s leading alternative websites. Arguably, Sintercom overreacted. While it is impossible to tell what would have happened if it had simply complied with the order to register (as some of its community advocated at the time), Think Centre’s experience post-registration suggests that Sintercom’s worst fears were probably exaggerated.

It is fair to say that the registration requirement has had mixed but generally minimal impact. Few political sites have actually been asked to register, perhaps because registration is not a prerequisite for coercion: most of the strong actions have been directed at non-registered sites. The exception is the election advertising law, key provisions of which do not apply to unregistered sites. While the regulations covering online electioneering were viewed with considerable concern by netizens in the run up to the 2006 General Elections, the authorities again exercised self-restraint. Several websites devoted themselves to election news and commentary, including video. Yet, none is known to have been either blocked or instructed to register as a political site, which would have prohibited it from carrying any content that could be construed as influencing the election.

Another law that has been prominent in the regulation of political content on the internet is defamation. Singapore leaders have fairly routinely sued opponents in civil courts for attacks on their reputations published in printed periodicals and in political speeches. What is striking about actions against online speech is that some have been pursued as criminal cases, under the law of criminal defamation (Chapter XXI of the Penal Code). Criminal defamation carries a maximum penalty of two years in jail plus a fine. The two known criminal defamation cases, both in 2002, did not lead to convictions. One target, the Muslim activist Zulfikar Mohamad Shariff of Fateha.com, fled the country before police investigations were completed. Another case, involving Robert Ho, appears to be in limbo. He had earlier been acquitted of a separate charge on account of being of “unsound mind”. Away from politics, the long dormant Sedition Act was applied against cases of religiously offensive speech. These actions, which

led to a one-month jail sentence for a young poster, constituted the strongest exercise of state power against internet users.

TENTATIVE CONCLUSIONS

The case files from 1996 to 2006 suggest that the government's powers under the Class Licence and the Internet Code of Practice have indeed been applied with a light touch. The authorities did not deviate from their assurance that they would use their filtering powers mainly for pornography and not for political censorship. The internet has since developed into a lively space for a counter-discourse that frequently challenges the mainstream media's framing of events.

The government recognised early the impracticality of a censorship approach to the internet. It appears to have decided to suck in its stomach and tolerate the vast majority of the criticisms and jibes directed at it online, including fairly sustained and irreverent assaults on its painstakingly constructed aura of authority by publishers who have not tried very hard to hide their identities, such as Colin Goh of Talking Cock and Lee Kin Mun of Mr Brown.

This tolerance, while standing in stark contrast to the PAP of earlier decades, should not be confused with an ideological shift towards liberal democracy. The government appears rightly confident that individual self-expression as such does not pose a serious challenge to its rule. It may even provide a release valve for pressures that could otherwise build up. Self-expression has also been recognised as a means of enhancing citizens' sense of belonging to the nation. In some cases, notably the army bloggers who violated the SAF Act in 2005 by posting images from their overseas training stints, the authorities took pains to emphasise that, in upholding the law, they were not trying to dampen self-expression: the bloggers were actually encouraged to carry on their good work.

If and when individual opinions threaten to develop into a potentially more powerful political force, the government has the power to intervene offline. The government continues to be sensitive to criticism appearing in mainstream newspapers, which are regarded as more public media that help establish the agenda and tone for public debate, and which it is able to supervise through its close relations with their directors and senior editors. Hence, the government's strong response to a column by Lee Kin Mun appearing in the daily newspaper, *Today*, which led to his being dropped as a columnist even his popular Mr Brown blog continued unhindered. Similarly, the government is able to intervene at the point when individual self-expression crosses the line towards the mobilisation and organisation of protest. For example, the gay activist Alex Au has been able to publish his forceful Yawning Bread blog unimpeded, but he and his comrades have been thwarted in their attempts to register the gay rights group People Like Us as a society.

Thus, tolerating free expression online is not necessarily a major concession to the forces of democratisation. Indeed, for a government that is confident of its abilities to exercise and act on surveillance, allowing free play on the internet can actually strengthen its position: if most of its potential opponents are drawn to the freedom of the internet as the preferred medium for outreach and coordination, the internet turns into a convenient, one-stop window for a technologically adept government to track all of them.

In these respects, the light touch regulation of the internet can be seen as a case of strategic self-restraint, helping to consolidate the PAP's authoritarian rule in line with the theory of calibrated coercion. However, the case files also suggest that the internet has placed some strains on this approach. The government has occasionally felt forced to use tougher measures than were needed in the immediate pre-web age. The application of criminal defamation, in particular, stands out as deserving of closer scrutiny. In each of the two cases, why did the authorities up the ante by resorting to the Penal Code, instead of letting it be handled as a civil matter? Perhaps it was because the protagonist was a less predictable insurgent element, and not a large media organisation or political party who could basically be counted on to respond rationally and predictably to the plaintiff's lawyers. The internet-empowered individual activist like Robert Ho or Zulfikar Shariff is a relatively unfamiliar opponent for the PAP, and may have been seen to merit the strong arm of the law.

In a few cases, strong action has not been especially unpopular. In particular, the conviction of young Singaporeans under the Sedition Act for racist speech appeared to have enjoyed significant public support. Indeed, it could be said that there was pressure on the government to act decisively. While this is difficult to document, other instances of racially offensive speech that do not come to public attention are probably dealt with quietly, with the police calling up the offenders for polite but firm conversations that have the desired deterrent effect. In the 2006 cases, however, the offending postings were relatively public, and the authorities' hand was forced by the lodging of police reports by members of the public.

In more political cases, however, it is highly unlikely that the public would be buying for blood. On the contrary, a hardline response can backfire on the PAP, making it harder to cultivate its image as a popular government that rules entirely with the consent of the public, and not by coercion. This is where the internet is problematic for the government. Licensed print and broadcast media in Singapore have been easier to regulate with a light touch because the government has multiple levers to pull and buttons to push. For example, the commercial footing of the mainstream media makes them susceptible to subtle commercial pressures and aligns them with a pro-business, pro-stability government. Furthermore, the gatekeepers in charge of the mainstream media are essentially members of the establishment who, while not seeing eye to eye with the government on every issue, value their insider status in what they regard as a common national project. Therefore, the government does not have to wield a big stick in order to secure the cooperation of mainstream media.

In contrast, the internet insurgents are harder to co-opt. Since most are voluntary, non-profit ventures, they are immune to financial pressures. The threat to close down a blog, unlike a newspaper, is not a threat to jobs or shareholder value. Many bloggers already see themselves as marginalised, so not being considered for the PAP's recruitment tea parties would not necessarily be seen as a significant cost to crossing the political "OB" markers. This situation is double edged. On the one hand, media activists can celebrate their relative independence. On the other hand, since subtler means of control won't work, dissidents may find themselves on the receiving end of strong government action. This prospect is also ambiguous. While there is little doubt that the government will ultimately prevail in any contest, it may have to pay a high political cost by having to resort to less calibrated forms of coercion.

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