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On the Internet, Can Freedom Go Too Far?

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Douglas Wood on Digital Media

In examining the balance between government control of the Internet and leaving cyberspace free from regulatory restraint, matters of politics and commerce often come into conflict.

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No one will soon forget the Arab Spring, in which social media played a major role in the fall of governments in Egypt and Libya, with others still on the precipice. Those with even better memories will recall Twitter's importance in the suppressed uprising in Iran in 2009. And this past summer, David Cameron, the U.K.'s prime minister, accused social media of being a contributing factor in the London riots. Without question, in the past five years social media have become critical to communicating and uniting a populace, whether it is engaged in championing freedom or perpetrating crimes. In response, some governments deny access and effectively turn off social media when times get tough.

The problem is that when they shut down Facebook and its brethren, they also shut down e-commerce. It's a Hobson's choice. It also seems clear that governments that censor the Internet during domestic uprisings have seen mixed results. It remains unclear if such actions are effective or if they simply incite citizens to fight harder.

The issues surrounding the balance between [government control of the Internet](#) and leaving cyberspace free from regulatory restraint was at center stage at the recent London Conference on Cyberspace. In the opening speech, William Hague, the U.K.'s Foreign Secretary, rebuffed controls suggested by China and Russia in what may be a prelude to a future in which international trade could end up being the loser.

China and Russia have been pushing for international treaties to govern Internet activities they deem prejudicial to their national security. The trouble is, other countries see these moves as efforts to stifle expression and suppress freedom. As Hague put it, "Nothing could be more fatal or self-defeating than the heavy hand of state control on the Internet." Hague insisted that the Internet's innovation and explosion in ideas can only exist if governments restrain themselves in exerting any controls.

Hague did acknowledge that cybercrime is growing exponentially and poses a major threat to continued confidence in the Internet. The Internet is the fastest-growing platform for data thieves, sexual predators, and scam artists. Companies are habitually [victimized by hackers](#) and their intellectual property routinely held for ransom. Nor are governments immune, as tax revenues are lost and national security put at risk. Annual economic losses are in the billions.

At every turn, criminals seem to find ways to avoid safety measures as they continue to steal information and deliver millions of false, deceptive, and dangerous digital messages to unwitting consumers. Despite that reality, Hague insists that the solution does not lie in government repression of expression, but in finding "rules of the road" that bring calm to today's "cyber-free- for-all."

Earlier this month, at the Conference on Internet Freedom, U.S. Secretary of State Hillary Clinton seemed to echo Hague's views on government control. After a vigorous verbal lashing aimed at countries known to suppress expression—Syria, Iran, and others—Secretary Clinton concluded by saying that the United States embraces private-public collaboration to support the development of the Internet, asserting that today's system works and should be left

alone.

But where does all this leave corporations and consumers? What about the side of the Internet that drives the global economy as opposed to global politics? While ending oppressive regimes around the world is an attractive political goal, at what point does allowing unfettered, government-free discourse derail e-commerce, the financial engine of the Internet without which there would be no expression at all?

It is clear that Secretaries Hague and Clinton, like most politicians, use their political pulpits to advance political agendas. That's fine. But not when it defers to private control for the commercial side of the Internet and its vast majority of users. In essence, the U.K. and the U.S. would prefer that an ad hoc militia solve the Internet's myriad of problems, albeit with a little bit of help from governments when it's in their national interest to do so.

The Catch 22 of this hands-off approach is that the problems on the Internet are epidemic, the costs astounding and rising. If Secretaries Hague and Clinton think the private sector is the answer, they haven't been reading the daily headlines reporting on data breaches, hacking, fraud, phishing, spoofing, intellectual property theft, and the seemingly unending list of cybercrimes that go on unchecked. If the private sector is the answer, it deserves a failing grade.

But that's understandable. The private sector lacks the tools to fix these problems and must have a strong partnership with government for self-regulation to work. While it's a complex partnership, when the responsibility is shared, the results are balanced. If either side abandons its responsibility, the remaining side becomes a rogue player, whether they're a government or a self-regulatory body.

But how do the comments of Secretaries Hague and Clinton and their embrace of the private sector over government control concern the general counsel of global companies?

In recent weeks, it's become increasingly clear that the impending [gold rush of new top-level domains](#) under the auspices of the Internet Corporation for Assigned Names and Numbers (ICANN), is an example of the partnership between government and self-regulation gone awry, as the United States Department of Commerce has abandoned its responsibility and defaulted to a rogue private sector overseer—ICANN.

The Department of Commerce refuses to assert its oversight in ICANN's decision to launch what independent experts predict will globally cost economies billions—and exacerbate existing problems in finding the criminals and scammers that plague the Internet. This despite a growing chorus of misgivings, including: grave concerns expressed at hearings before House and Senate committees; dire warnings from the Federal Trade Commission; stiff opposition from over 25 global intergovernmental organizations, including the United Nations, the International Monetary Fund, and the World Intellectual Property Organization; condemnatory editorials in the *Washington Post*, the *San Francisco Chronicle*, and other leading publications; and the strong opposition of a coalition of over 150 private companies and trade associations.

In the face of all these misgivings, the DOC has opted for the kind of hands-off approach that seems so attractive when it's expressed by Secretaries Hague and Clinton under the lofty goal of Internet freedom. The question for corporate counsel and responsible governments, however, is whether ICANN's misguided perspective on Internet freedom and the DOC's abdication of responsible oversight in the face of overwhelming and globally-shared government and private sector objections will, in fact, make a bad situation worse—and leave the Internet in the hands of an unsupervised, unrestrained, and self-anointed Tsar.

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See also: ["Porno and Madison Avenue, Strange Bedfellows."](#) CorpCounsel, November 2011.

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