

GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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Privatising censorship online

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Introduction

It is an undeniable truth that the internet has provided opportunities for access to information in places where information has, historically, been restricted. For those living in conservative societies or households, the internet opens new doors to traditionally restricted or censored information, including information about sexuality and sexual health. However, online information is also restricted by governments, schools, libraries and other institutions using a variety of means. These include simple commercial filtering software that crudely blocks content by category, as is the case in many public libraries in the United States, as well as more pervasive methods of blocking content, such as internet protocol (IP) blocking or domain name system (DNS) tampering.¹

The internet can be a particularly helpful resource for youth seeking information about sexuality and sexual health, particularly in cases where information about such topics can be difficult or embarrassing to obtain.² The United States, a somewhat conservative country in which access to information online is rarely restricted at the government level, serves as an illustrative case study as to how sexual health information is sought online by youth.

According to one study, 17% of US youths report using the internet to look for “sensitive” sexual health information.³ Another study, with significant-

ly different methodology, puts the number of youth seeking sexual health information at 89%.⁴ A further study indicates that lesbian, gay, bisexual and transgender (LGBT) youth may be more likely to look for sexual health information online because they do not have anyone else in their lives to ask.⁵ While there is virtually no overt state-level interference in access to online information in the US, there may be significant restrictions placed on the internet by parents, schools, or other institutions, often resulting in censorship of sexual health information.

A 2010 study by the Association for Progressive Communications’ (APC) EROTICS⁶ project found that access to sexual information in US public libraries is often heavily restricted. As the authors report:

Methods [of censorship] used include blocking particular websites, blocking particular words in internet searches, using commercially marketed content filters and/or requiring users to agree to terms of services that included not seeking inappropriate material. Terms and sites blocked seemed unpredictable and included instances of overblocking, or denying access to information that is clearly not “harmful to minors” including websites of service organizations and websites designed for teenagers. In many instances, access to information was restricted for all users and not merely for people under 17 or 18 years of age. Depending on the library, a user may not be able to find information about anal cancer or contacts for lawyers at the Sex Workers Project.⁷

1 Murdoch, S.J., & Anderson, R. (2008). Tools and Technology of Internet Filtering. In Deibert, R. et al (Ed.), *Access Denied: The Practice and Policy of Global Internet Filtering*. Cambridge: MIT Press. access.opennet.net/denied

2 Harvey, K. J., Brown, B., Crawford, P., Macfarlane, A., & McPherson, A. (2007). ‘Am I Normal?’ Teenagers, sexual health and the internet. *Social Science & Medicine*, 65(4), 771-781.

3 Lenhart, A., Purcell, K., Smith, A., & Zickuhr, K. (2010). *Part 4: The internet as an information and economic appliance in the lives of teens and young adults*. Washington, D.C.: Pew Research Center. www.pewinternet.org/2010/02/03/part-4-the-internet-as-an-information-and-economic-appliance-in-the-lives-of-teens-and-young-adults

4 Boyar, R., Levine, D., & Zensius, N. (2011). *TECHsex USA: Youth Sexuality and Reproductive Health in the Digital Age*. New York: Ford Foundation. www.yth.org/wp-content/uploads/YTH-youth-health-digital-age.pdf

5 Mitchell, K. J., Ybarra, M.L., Korchmaros, J.D., & Kosciw, J.G. (2013). Accessing sexual health information online: use, motivations and consequences for youth with different sexual orientations. *Health Education Research*, 30(3), 1-11. her.oxfordjournals.org/content/early/2013/07/16/her.cyo71.full.pdf+html

6 erotics.apc.org

7 Ditmore, M., & Echols, K. (2010). Unequal access to information: Youth, sex and the law – content regulation in US publicly funded libraries. In J. Kee (Ed.), *EROTICS: Exploratory Research on Sexuality and the Internet*. Johannesburg: APC. https://www.apc.org/en/system/files/Erotics_Exec_Summary.pdf

Furthermore, claim the authors, “A library that buys filtering software to block pornography may not be aware that the software developers have included personal or political biases in their decision to include ‘controversial’ topics such as abortion or homosexuality under the heading of offensive content,”⁸ a fact that is evidenced by the blocking of LGBT content from websites of mainstream organisations such as the National Organization for Women⁹ or Planned Parenthood.¹⁰

Though little research is available about the use of the internet for seeking sexual health information in the Middle East and North Africa (MENA), one 2006 survey – conducted on an Arabic-language website dedicated to information about emergency contraception – found that 55% of respondents cited the internet as an important source of health information, while 26% cited magazines, 24% newspapers, and nearly 20% cited physicians as important sources. Survey respondents also identified female sexuality, male sexuality, contraception, pregnancy, violence, and LGBT health issues as “priority areas” for additional online health information.¹¹

In addition to technical solutions imposed by authorities, corporations operating online may be complicit in – or even instigatory of – censorship. Social media companies such as Facebook or Twitter comprise billions of diverse users around the world and, as such, seek to create inclusive spaces. Facebook, for example, has explicitly stated that it seeks to provide a “respectful experience” for its “global and culturally diverse community”.¹² While these platforms allow for sharing on a scale previously unknown, the rules imposed by their leadership have led to a new form of censorship.

Across the MENA region, restrictions on access to information are fairly common, both online and offline, but vary considerably in severity from country to country. In Lebanon, for example, “[c]ensorship is very strong ... [but the] internet enables us to navigate this restrictive environment,” according to researcher Nadine Moawad.¹³ In that country,

online restrictions are less severe than those placed on information offline, including books, and when they do occur often focus on defamation or pornography.¹⁴ At the other end of the spectrum, Saudi Arabia is known to heavily restrict access to a range of information online, including sexual health information, LGBT content, and even certain media publications,¹⁵ which is consistent with restrictions placed on offline content.

The role of business in censoring sexual content

The degree to which software and hardware corporations play a role in government and other institutional restrictions on content varies. While in some cases – such as the use of off-the-shelf filtering hardware by libraries – the use of commercial products is virtually inevitable, in other cases, corporations are directly complicit. For example, the governments of Saudi Arabia, Kuwait, Bahrain, Oman and Tunisia, to name only a few, have all purchased software or hardware from US or European companies for the implementation of government-level censorship.¹⁶

Online service providers – social media companies, web hosts, and other platforms – also play a role in restricting speech, by way of their “terms of service”. “[D]espite their good intentions and their claims to a free-speech-friendly philosophy,” wrote scholar Marjorie Heins in 2014, “these companies employ ‘terms of service’ that censor a broad range of [U.S.] constitutionally protected speech.”¹⁷

Online service and access providers such as social media platforms or search engines may restrict access to content for one or more of the following reasons: a government may request the corporation to do so through the use of a legal order or similar means (Google, Facebook, and Twitter all issue reports demonstrating their government-requested takedowns);¹⁸ the corporation itself may divide

8 Ibid.

9 <https://now.org>

10 www.plannedparenthood.org

11 Foster, A. M., Wynn, L., Rouhana, A., Polis, C., & Trussell, J. (2006). Disseminating On-line Reproductive Health Information in Arabic: Results from a Survey of Users of an Emergency Contraception Website. *CyberOrient*, 1(1). www.cyberorient.net/article.do?articleId=3695.

12 Larson, S. (2015, 3 May). Why Facebook Still Has a Problem With Breasts. *The Kernel*. kernelmag.dailydot.com/issue-sections/features-issue-sections/12796/facebook-nudity-breasts-advertising

13 Cabrera-Balleza, M. (2011, 22 June). Lebanon and USA: Where is the line for sex on the internet? *GenderIT.org*. www.genderit.org/articles/lebanon-and-usa-where-line-sex-internet

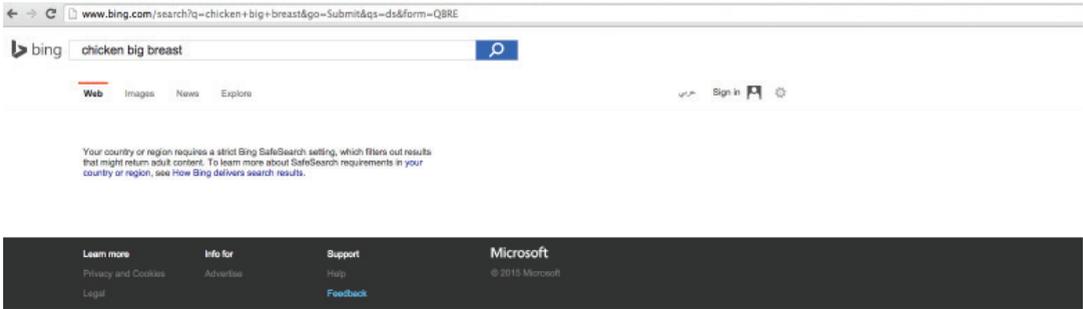
14 Moawad, N., & Qjblawi, T. (2011). Lebanon: Who's Afraid of the Big Bad Internet? In J. Kee (Ed.), *EROTICS: Sex, rights and the internet – An exploratory research study*. Johannesburg: APC. www.genderit.org/sites/default/upload/erotics_finalresearch_apcwnsp.pdf#lebanon

15 OpenNet Initiative. (2009). *Saudi Arabia*. Cambridge: ONI. <https://opennet.net/research/profiles/saudi-arabia>

16 Noman, H., & York, J. (2011). *West Censoring East: The Use of Western Technologies by Middle East Censors, 2010-2011*. Cambridge: ONI. <https://opennet.net/west-censoring-east-the-use-western-technologies-middle-east-censors-2010-2011>

17 Heins, M. (2014). The Brave New World of Social Media Censorship. *Harvard Law Review*, 127(8), 725. harvardlawreview.org/2014/06/the-brave-new-world-of-social-media-censorship

18 Google transparency report: <https://www.google.com/transparencyreport/>; Facebook government requests report: <https://govtrequests.facebook.com/about/>; Twitter transparency report: <https://transparency.twitter.com/>



Screenshot: Bing's SafeSearch setting.

countries into markets, resulting in policies predicated on the most restrictive country in said market; or a corporation and its employees may place restrictions on content based on their own sense of morality or appropriateness or their perception of what users in a given market want. The impetus behind such content restrictions can be difficult to ascertain, and may involve a combination of the above.

Microsoft Bing

In 2009, at its launch, search engine Microsoft Bing was found to be enforcing “safe search” – a filtered version of its search results – in a number of countries; that is, users in those countries were unable to turn off the search tool, resulting in heavy restrictions on access to information. Specifically, testing of the search engine from inside various countries in the MENA region revealed that “Microsoft filters Arabic and English keywords that could yield sex- or LGBT-related images and content.”¹⁹

Specifically, users who attempted to use a filtered keyword in their search received a message that reads: “Your country or region requires a strict Bing SafeSearch setting, which filters out results that might return adult content. To learn more about SafeSearch requirements in your country or region, see How Bing Delivers Search Results.”

The latter link then leads to a page stating:²⁰

Bing categorizes certain countries as strict markets. In these strict markets, we might restrict the display of adult content (as locally defined), and because of the local customs, norms, and laws, we might limit SafeSearch settings only to “strict”. Set to “strict”, SafeSearch filters the display of explicit search results in images, videos, and text.

The statement is followed by a list of countries or regions that are limited to “strict” search: China, India, Indonesia, Korea, Malaysia, the Middle East, Singapore, Thailand and Turkey. While most of the locales where restrictions have been placed are treated as individual countries, the “Middle East” is treated as a single entity with a single set of customs, norms and laws. Furthermore, the “Middle East” is left undefined; recent testing demonstrates that it is inclusive of Egypt but not of Tunisia or Morocco, while its southern and eastern boundaries are unclear.

Promoted Tweets

Twitter offers a form of native advertising called “Promoted Tweets”, through which targeted advertising, in the form of a 140-character tweet, is displayed directly on a user’s Twitter timeline.²¹ Twitter’s advertising policy includes a number of restrictions: advertisements containing hate speech, drugs or drug paraphernalia, weapons, and political campaigning are, among others, banned.²² Also prohibited is “the promotion of adult or sexual products and services globally.”²³

Although Twitter makes exceptions for sexual health-related content, such content must still not contain or link to “adult or sexual products or services”.²⁴ As such, sexual health information providers have routinely found their advertisements banned or not approved for the site. The National Campaign to Prevent Teen and Unplanned Pregnancy,²⁵ a US-based organisation, found itself banned from using promoted tweets after tweeting a campaign that stated, “If you think condoms aren’t for you, you just haven’t found the right one

19 Noman, H. (2010) *Sex, Social Mores and Keyword Filtering: Microsoft Bing in “Arabian Countries.”* Cambridge: ONI. https://opennet.net/sites/opennet.net/files/bing_arabiancountries.pdf

20 Bing Help: How Bing Delivers Search Results. onlinehelp.microsoft.com/en-us/bing/ff808447.aspx

21 <https://business.twitter.com/help/what-are-promoted-tweets>

22 https://support.twitter.com/groups/58-advertising#topic_249

23 <https://support.twitter.com/groups/58-advertising/topics/249-advertiser-policies/articles/20170427-adult-or-sexual-products-and-services>

24 *Ibid.*

25 <https://thenationalcampaign.org>

yet. See how good safer sex can feel”, and linked back to [bedsider.org](#), an “online birth control support network for women 18-29”, sponsored by the organisation. It was the link, rather than the text, that resulted in the ban; according to a Twitter account strategist, even though the text was about safer sex, “[it] still paints sex in a recreational/positive light versus being neutral and dry.”²⁶

Similar advertising censorship has been enacted by Facebook²⁷ and Google.²⁸ As sex therapist Amber Madison writes, “Social media’s strict policies wouldn’t be such an issue if teens (and adults) didn’t use technology as one of their primary sources of sexual-health information. But in fact, 89 percent of teens say they learn about a variety of sexual-health issues online.”²⁹

Deciding what’s acceptable

As the online “public sphere” becomes increasingly privatised – with companies like those mentioned earlier creating and enforcing their own rules above the law – access to sexual health information will be increasingly under threat, unless significant policy changes are made. The current landscape for enacting change is, unfortunately, rather weak.

The UN Guiding Principles on Business and Human Rights (also referred to as the “Ruggie Principles” after their primary author) state: “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate.”³⁰ The Principles are often invoked when referring to the responsibilities of corporations in responding to government requests for censorship. However, they have not often been invoked in broad reference to corporate responsibility to protect free expression.

Previous attempts at holding corporations accountable on privacy and freedom of expression have primarily come from the multistakeholder approach; most notable is the Global Network Initiative,³¹ which was founded in 2008 by a group of companies, academics, NGOs and investment firms. While the initiative has been successful in

monitoring companies’ responses to government censorship requests, it has done little to hold companies more generally to the principle of freedom of expression.

Legally, Google, Twitter, Facebook and the like are not required to protect free expression on their platforms, and yet the decisions they make impact the public discourse perhaps more than the courts in some countries. As Professor Jeffrey Rosen has been quoted as saying, Google’s lawyers and executives “exercise far more power over speech than does the [U.S.] Supreme Court.”³²

As corporations based in the US, these companies are entitled to free speech protections as well, meaning that they can restrict access to whomever and whatever types of content they wish. Specifically, providers cannot be held liable for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”³³

Therefore any attempt to sway corporations to a greater responsibility toward free expression and access to information must be made outside of, or in parallel to, the law. The Manila Principles on Intermediary Liability³⁴ suggest that content restrictions enforced by either law or practice should be necessary and proportionate in a democratic society and that any restriction of content should be limited to the issue at hand. The Principles offer a basis on which an argument can be made to these corporations that any censorship of sexual health or other lawful information is unnecessarily restrictive.

For businesses that wish to protect free expression on their platforms, the UN Guiding Principles, Manila Principles, and other resources provide excellent, easy-to-implement guidance. But ultimately, the decisions on what constitutes acceptable speech around the world are being made by corporate lawyers, paralegals, and executives, most of whom are based in Washington DC. While there are countless resources to help them get there, the decision to protect speech must come from them.

26 Madison, A. (2015, 4 March). When Social Media Companies Censor Sex Education. *The Atlantic*. www.theatlantic.com/health/archive/2015/03/when-social-media-censors-sex-education/385576

27 “Take a Stand Against Censorship.” American Sexual Health Association. www.ashsexualhealth.org/take-stand-censorship

28 Madison, A. (2015, 4 March). Op. cit.

29 Ibid.

30 United Nations Office of the High Commissioner for Human Rights. (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. New York: United Nations. www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

31 globalnetworkinitiative.org

32 Ammori, M. (2014). The “New” New York Times: Free Speech Lawyering in the Age of Google and Twitter. *Harvard Law Review*, 127(8), 2259. harvardlawreview.org/2014/06/the-new-new-york-times-free-speech-lawyering-in-the-age-of-google-and-twitter

33 Protection for private blocking and screening of offensive material. 47 U.S.C. § 230. <https://www.law.cornell.edu/uscode/text/47/230>

34 <https://www.manilaprinciples.org>

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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2015 Report

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