

2011

## Censoring the Internet

Timothy Zick

*William & Mary Law School*, tzick@wm.edu

---

### Repository Citation

Zick, Timothy, "Censoring the Internet" (2011). *Popular Media*. 165.  
[https://scholarship.law.wm.edu/popular\\_media/165](https://scholarship.law.wm.edu/popular_media/165)

- Concurring Opinions - <http://www.concurringopinions.com> -

## Censoring the Internet

Posted By [Timothy Zick](#) On October 26, 2011 @ 12:37 pm In [Current Events,Cyberlaw,First Amendment,Technology](#) | [2 Comments](#)

There are [reports](#) <sup>[1]</sup> that WikiLeaks may have to shut down owing to financial difficulties. That will please many, like Vice President Biden, who think Julian Assange is nothing more than a high-tech terrorist. If Assange's explanation is to be credited (and I recognize this is a big "if" for some), the website's financial difficulties stem from a concerted effort by U.S. officials to pressure financial intermediaries (i.e., PayPal, Master Card, Visa) not to permit donors to utilize their sites to make donations. Some may recall that when WikiLeaks first began publishing confidential information about U.S. war operations and diplomacy, some government officials publicly called on these intermediaries to block donations. This, in turn, led to denial-of-service reprisals by hackers against the cooperating intermediaries.

In a very interesting recent article entitled [Orwell's Armchair](#) <sup>[2]</sup>, Derek Bambauer (Brooklyn Law) argues that governments have turned to persuasion of intermediaries and other indirect forms of "soft censorship" to control Internet content. Bambauer argues that through these indirect methods, government officials are engaging in a form of Internet censorship that is often as or more effective than "hard" forms of legal censorship. Focusing on issues of transparency, breadth, and accountability, Bambauer argues that, in general, soft censorship is less legitimate than hard censorship. He urges, perhaps counter-intuitively, that the government ought to proceed by way of statute if it intends to censor or regulate content on the Internet.

My point here is not to assess the merits of Bambauer's proposal. I'm more interested in his descriptive claim — namely, that despite all the talk in the U.S. of a free and unfettered Internet, the U.S. government is indeed "censoring" content in this space. I think the WikiLeaks case highlights one of the most pressing concerns in what I refer to in a [forthcoming article](#) <sup>[3]</sup> as the "emerging global theater." Faced with diminished power to control the flow of information on the Internet, officials in the U.S. are naturally seeking other means by which to regulate certain types of harmful content (i.e., IP infringement, terrorist advocacy, disclosure of government secrets). Many of these means are, as Bambauer claims, less transparent than legislation or administrative regulation. We can debate whether certain forms of "soft" censorship constitute state action, or even "censorship." However, there is little question that what Bambauer refers to as the government's "toolkit" for influencing the content Americans and others have access to on the Internet contains a set of "soft" components; these will become increasingly important in terms of online content control in the years to come. Methods of "soft censorship" will not likely result in absolute suppression of content. One of the things the government is learning is that content does not simply disappear from the Internet, even when the speaker is jailed or executed. However, both soft and hard forms of regulation can still have a significant effect on the free flow of online information. Bambauer's article is important insofar as it nudges us to think more carefully about different forms of content control in cyberspace.

---

Article printed from Concurring Opinions: <http://www.concurringopinions.com>

URL to article: <http://www.concurringopinions.com/archives/2011/10/censoring-the-internet.html>

URLs in this post:

[1] reports: <http://www.nytimes.com/2011/10/25/world/europe/blocks-on-wikileaks-donations-may-force-its-end-julian-assange-warns.html>

[2] Orwell's Armchair: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1926415](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1926415)

[3] forthcoming article: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1905046](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1905046)

Copyright © 2010 Concurring Opinions. All rights reserved.