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# INTERNET LAW SESSION 4

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# FREE SPEECH AND CONTENT REGULATION



# WHAT IS FREE SPEECH AND WHERE DO WE FIND IT?

- International human rights law
- Constitutions
- Bills of rights, etc
  
- Where is free speech protected in your jurisdiction?

# ICCPR ART 19

## *Article 19*

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

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# FIRST AMENDMENT OF THE US CONSTITUTION

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**Congress shall make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech, or of the press**; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

# FREE SPEECH ONLINE – 1990S CYBERLIBERTARIAN VIEW



- The Internet as the place where free speech has been best realised?
- Very different to previous communications media

# US POSITION FROM 1990S

Today, a court ruled that the president violates users' First Amendment rights when he blocks them on Twitter because he dislikes their views.

Here's why—and why this is so important for free speech online.



- Strong US First Amendment protection
- Corporations as 'speakers'
- Intermediary liability regimes under section 230 of the Communications Decency Act

# EARLY CASE – ‘CLASH OF CIVILISATIONS’ - YAHOO FRANCE (2000)

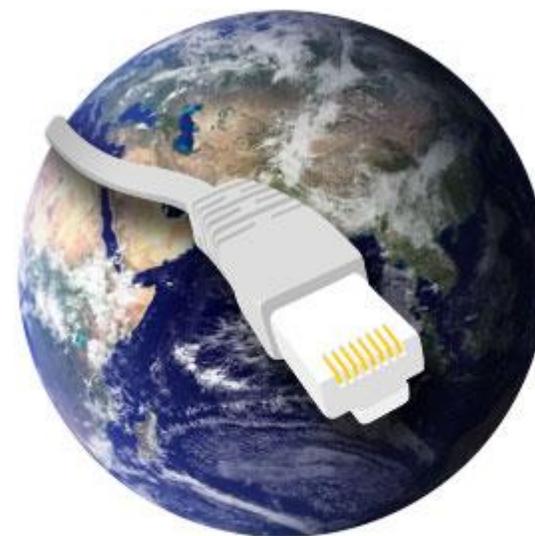


- Yahoo linking to sites auctioning Nazi memorabilia
- French domestic law prohibiting the sale or display of anything which incites racial hatred
- Yahoo sued in French courts for breaching this law
- French courts held against Yahoo, ordered Yahoo to remove links from its French site
- Litigation also followed in the US re enforcing this French decision
- In the end, Yahoo decided to remove links to such auction sites from all of its search results worldwide
- See: Greenberg (2003) for more



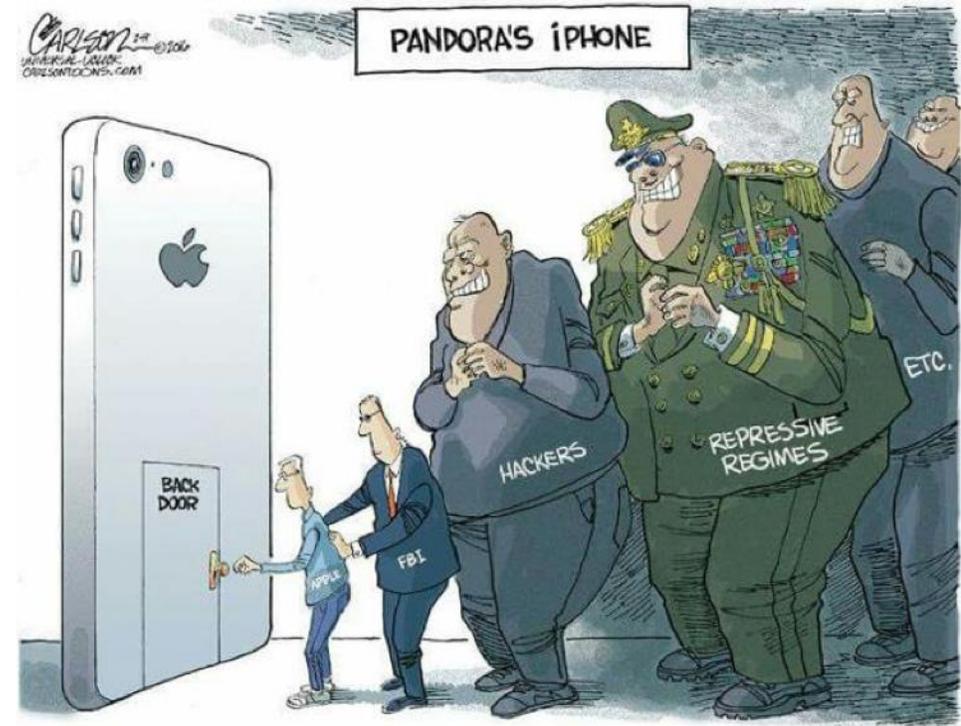
# INTERNET ACCESS AS A HUMAN RIGHT

- Internet access as a subset of free expression rights?
- Internet access as a right in itself?
- In 2016, UN Human Rights Council passed a non-binding resolution condemning states which prevent or disrupt access to the Internet – but it was opposed by Russia, China, Saudi Arabia, South Africa and India
- Other recognitions in Estonia, Costa Rica, Finland, France, Greece and Spain



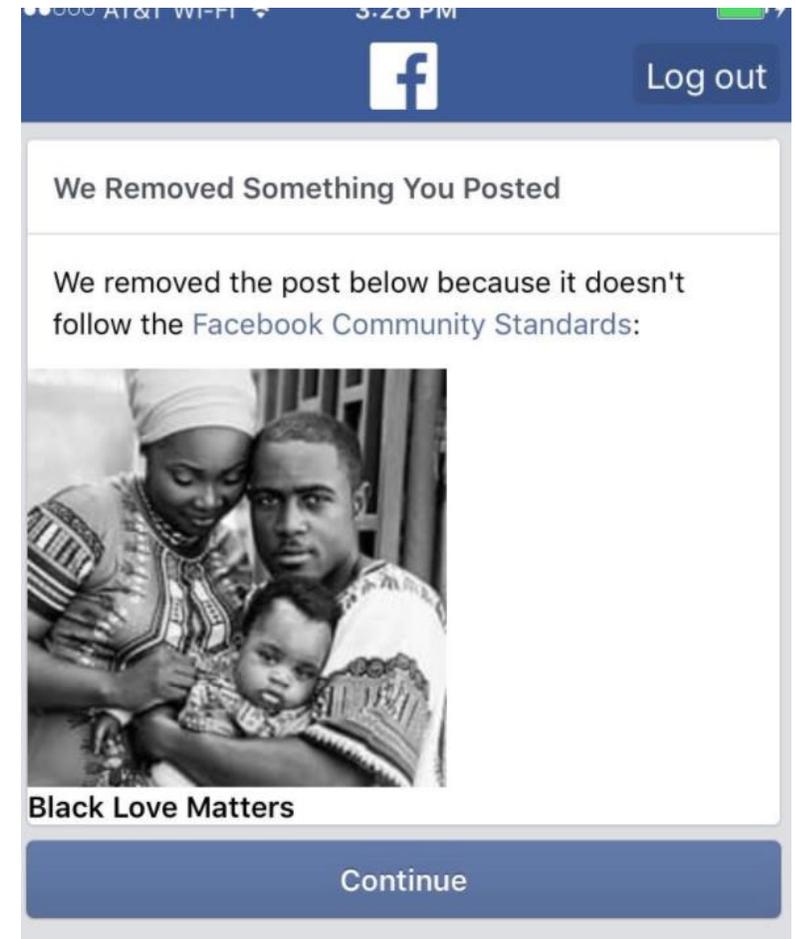
**BASIC HUMAN RIGHT  
INTERNET  
ACCESS FOR ALL**

# PRIVACY VS FREE SPEECH // PRIVACY & FREE SPEECH



# GOVERNANCE BY PLATFORMS - GILLESPIE

- ‘nearly all platforms impose their own rules, and police their sites for offending content and behavior. In fact, their ceaseless and systematic interventions cut much deeper than the law requires’
- Most have some rule prohibiting or limiting the following:
  - sexual content and pornography
  - representations of violence and obscenity
  - harassment of other users
  - hate speech
  - representations of or promotion of self-harm
  - representations of or promotion of illegal activity, particularly drug use
- Lots of issues with ‘false positives’ i.e. content being removed which is legitimate



# CONTENT REGULATION ON PLATFORMS



**Terms of service –and some specific content moderation guidelines e.g. Facebook’s Community Standards:**  
<https://www.facebook.com/communitystandards/>



**Platforms may also moderate content on the basis of requests regarding illegal conduct**



**Nic Suzor’s work on digital constitutionalism:**  
<https://digitalsocialcontract.net/@nicsuzor>



# MAJOR ISSUES/CLASHES INVOLVING FREE SPEECH

# INTERNET SHUTDOWNS

## ■ Access Now:

<https://www.accessnow.org/keepiton/>

## ■ See in India:

<https://www.internetshutdowns.in/>

## ■ <https://www.youtube.com/watch?v=S7L0brpne9w>

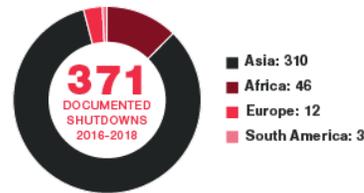
## Internet Shutdowns in Context

Insights from the Shutdown Tracker Optimization Project (STOP)

THE **STOP** SHOWS INTERNET SHUTDOWNS ARE **ON THE RISE**



ASIA AND AFRICA ARE THE MOST AFFECTED REGIONS AROUND THE WORLD



**230 days of shutdown**

IN ANGOLOPHONE REGIONS OF CAMEROON BETWEEN JAN 2017 AND MAR 2018

WHAT THE AUTHORITIES SAID VERSUS WHAT WE THINK CAUSED THE SHUTDOWNS (2016-2018)



Updated on Dec 13, 2018 | Contains data from 2016 to 2018

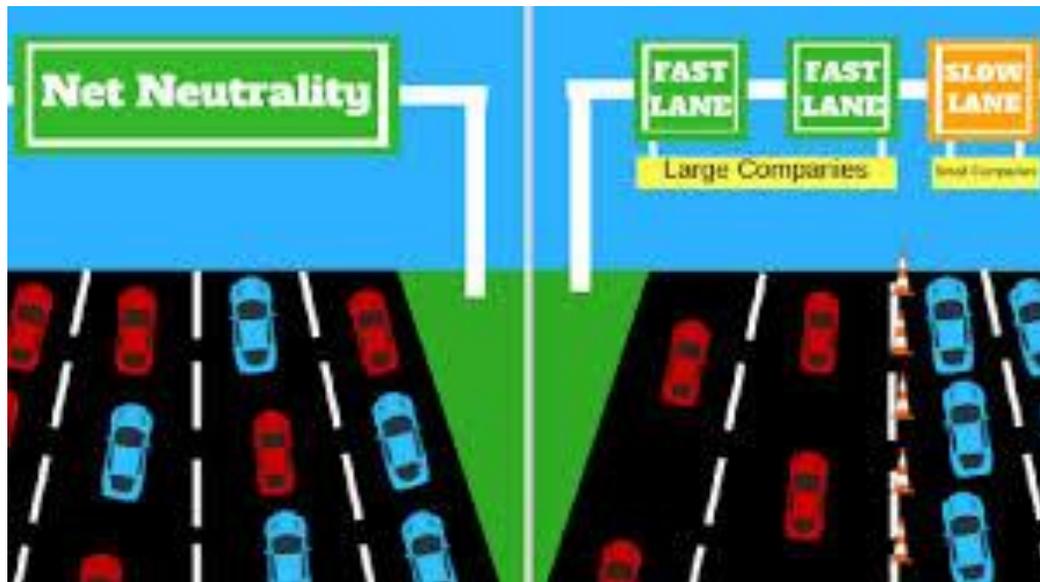


<https://www.accessnow.org/keepiton/>

# FILTERING AND BLOCKING



# NET NEUTRALITY



- Idea that Internet Service Providers treat all traffic ‘equally’ and do not discriminate by blocking, speeding up, slowing down data travelling from one user or another => net neutrality
- <https://www.youtube.com/watch?v=zq-2Yk5OgKc>
- Strong net neutrality laws in e.g. EU and India
- Some include zero-rating as a form of net neutrality violation e.g. India
- Ongoing saga with NN in the US – measures were passed under Obama, repealed under Trump, litigation ongoing

# LEBANON PROTESTS TRIGGERED BY WHATSAPP TAX!



# HATE SPEECH/HARASSMENT



UK Government Online Harms White Paper: <https://www.gov.uk/government/consultations/online-harms-white-paper>

WHEN CENSORSHIP DOESN'T WORK...  
UK PORN BLOCK ABANDONED



# FAKE NEWS



- Filtering/blocking fake news -> free speech implications
- European Commission: Tackling Online Disinformation policies
- Singapore's Fake News law came into effect this month (October 2019)

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Hong Kong

### Hong Kong protests: bring back app or risk 'complicity' in repression, Apple told

US lawmakers including Ted Cruz and Alexandria Ocasio-Cortez write to Tim Cook urging him to restore HKMapp app

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HOW SHOULD WESTERN INTERNET COMPANIES DEAL WITH CHINA'S DIFFERENT STANDARDS ON CONTENT MODERATION?

## IN SUMMARY



Free speech online, especially through platforms' content moderation, is an enormous issue in Internet Law



Like collection of use of data/data protection/privacy, it underlies a lot of the main cases/tensions that have arisen in the Internet Law/policy sphere



Issues of jurisdiction and transnational platforms adhering to different countries' laws are also a major component of this issue



With ongoing battles over fake news, pressure from old media, escalating problems with online hate speech and harassment, these problems will continue to endure



QUESTIONS?



THANK YOU

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