E-books are easier to ban than books

Pranesh Prakash

2012-01-27

Outlook India

Abstract

Indian law promotes arbitrary removal and blocking of websites, website content, and online services — making it much easier than getting offline printed speech removed

---

Without getting into questions of what should and should not be unlawful speech, let's take a look at how Indian law promotes arbitrary removal and blocking of websites, website content, and online services, and how it makes it much easier than getting offline printed speech removed.

Pranesh Prakash works with the Centre for Internet and Society, Bangalore, which first published this article.

Contrary to what Mr. Sibal's recent hand-wringing at objectionable online material might suggest, under Indian laws currently in force it is far easier to remove material from the Web, by many degrees of magnitude, than it is to ever get them removed from a bookstore or an art gallery. To get something from a bookstore or an art gallery one needs to collect a mob, organize collective outrage and threats of violence, and finally convince either the government or a magistrate that the material is illegal, thereby allowing the police to seize the books or stop the painting from being displayed. The fact of removal of the material will be noted in various records, whether in government records, court records, police records or in newspapers of record.

By contrast, to remove something from the Web, one needs to send an e-mail complaining about it to any of the string of 'intermediaries' that handle the content: the site itself, the web host for the site, the telecom companies that deliver the site to your computer/mobile, the web address (domain name) provider, the service used to share the link, etc. Under the 'Intermediary Guidelines Rules' that have been in operation since 11th April 2011, all such companies are required to 'disable access' to the complained-about content within thirty-six hours of the complaint. It is really that simple.

"That's ridiculous," you think, "surely he must be exaggerating." Think again. A researcher working with us at the Centre for Internet and Society tried it out, several times, with many different intermediaries and always with frivolous and flawed complaints, and was successful six out of seven times. Thus it is easier to prevent Flipkart or Amazon from selling Rushdie's *Midnight's*

Children than it is to prevent a physical bookstore from doing so: today Indira Gandhi wouldn't need to win a lawsuit in London against the publishers to remove a single line as she did then; she would merely have to send a complaint to online booksellers and get the book removed. It is easier to block Vinay Rai's Akbari.in (just as CartoonsAgainstCorruption.com was recently blocked) than it is to prevent its print publication. Best of all for complainants: there is no penalty for frivolous complaints such as those sent by us, nor are any records kept of who's removed what. Such great powers of censorship without any penalties for their abuse are a sure-fire way of ensuring a race towards greater intolerance, with the Internet — that republic of opinions and expressions — being a casualty.

E-book bans cannot be challenged

In response to some of the objections raised, the Cyberlaw Division of the Department of Information Technology, ever the dutiful guardian of free speech, noted that if you have a problem with access to your content being 'disabled', you could always approach a court and get that ban reversed. Unfortunately, the Cyberlaw Division of the Department of Information Technology forgot to take into account that you can't contest a ban/block/removal if you don't know about it. While they require all intermediaries to disable access to the content within thirty-six hours, they forgot to mandate the intermediary to tell you that the content is being removed. Whoops. They forgot to require the intermediary to give public notice that content has been removed following a complaint from person ABC or corporation XYZ on such-and-such grounds. Whoops, again.

So while records are kept, along with reasons, of book bans, there are no such records required to be kept of e-book bans.

E-book censors are faceless

Vinay Rai is a brave man. He is being attacked by fellow journalists who believe he's disgracing the professional upholders of free-speech, and being courted by television channels who believe that he should be encouraged to discuss matters that are sub judice. He is viewed by some as a man who's playing politics in courts on behalf of unnamed politicians and bureaucrats, while others view him as being bereft of common-sense for believing that companies should be legally liable for not having been clairvoyant and removing material he found objectionable, though he has never complained to them about it, and has only provided that material to the court in a sealed envelope.

I choose, instead, to view him as a scrupulous and brave man. He has a face, and a name, and is willing to openly fight for what he believes in. However, there are possibly thousands of unscrupulous Vinay Rais out there, who know the law better than he does, and who make use not of the court system but of the Intermediary Guidelines Rules, firmly assured by those Rules that their censorship activities will never be known, will never be challenged by Facebook and Google lawyers, and will never be traced back to them.

Challenging invisible censorship

Dear reader, you may have noticed that this is a bit like a trial involving Free Speech in which Free Speech is presumed guilty upon complaint, is not even told what the charges against it are, has not been given a chance to prove its innocence, and has no right to meet its accusers nor to question them. Yet, the Cyberlaw Division of the Department of Information Technology continues to issue press releases defending these Rules as fair and just, instead of being simultaneously Orwellian and Kafkaesque.

These Rules are delegated legislation passed by the Department of Information Technology under s.79 of the Information Technology Act. The Rules were laid before Parliament during the 2011 Monsoon session. We at CIS believe that these Rules are ultra vires the IT Act as well as the Constitution of India, not only with respect to what is now (newly) proscribed online (which in itself is enough to make it unconstitutional), but how that which is purportedly unlawful is to be removed. We have prepared an alternative that we believe is far more just and in accordance with our constitutional principles, taking on best practices from Canada, the EU, Chile, and Brazil, while still allowing for expeditious removal of unlawful material. We hope that the DIT will consider adopting some of the ideas embodied in our draft proposal.

As Parliament passed the IT Act in the midst of din, without any debate, it is easy to be sceptical and wonder whether Rules made under the IT Act will be debated. However, I remain hopeful that Parliament will not only exercise its power wisely, but will perform its solemn duty — borne out of each MP's oath to uphold our Constitution — by rejecting these Rules.
