

Internet rights and wrongs

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Abstract

With a rise in PILs for unwarranted censorship, do we need to step back and inspect if it's about time unreasonable trends are checked?

Over the last few weeks, there have been a number of cases of egregious censorship of websites in India. Many people started seeing notices that (incorrectly) gave an impression that they may end up in jail if they visited certain websites. However, these notices weren't an isolated phenomenon, nor one that is new. Worryingly, the higher judiciary has been drawn into these questionable moves to block websites as well.

Since 2011, numerous torrent search engines and communities have been blocked by Indian internet service providers (ISPs). Torrent search engines provide the same functionality for torrents that Google provides for websites. Are copyright infringing materials indexed and made searchable by Google? Yes. Do we shut down Google for this reason? No. However, that is precisely what private entertainment companies have done over the past five years in India. Companies hired by the producers of Tamil movies Singham and 3 managed to get video-sharing websites like Vimeo, Dailymotion and numerous torrent search engines blocked even before the movies released, without showing even a single case of copyright infringement existed on any of them. During the FIFA World Cup, Sony even managed to get Google Docs blocked. In some cases, these entertainment companies have abused 'John Doe' orders (generic orders that allow copyright enforcement against unnamed persons) and have asked ISPs to block websites. The ISPs, instead of ignoring such requests as instances of private censorship, have also complied. In other cases (like Sony's FIFA World Cup case), courts have ordered ISPs to block hundreds of websites without any copyright infringement proven against them. High court judges haven't even developed a coherent theory on whether or how Indian law allows them to block websites for alleged copyright infringement. Still they have gone ahead and blocked.

In 2012, hackers got into Reliance Communications servers and released a list of websites blocked by them. The list contained multiple links that sought to connect Satish Seth-a group MD in Reliance ADA Group-to the 2G scam: a clear case of secretive private censorship by RCom. Further, visiting some of the YouTube links which pertained to Satish Seth showed that they had

been removed by YouTube due to dubious copyright infringement complaints filed by Reliance BIG Entertainment. Did the department of telecom, whose licences forbid ISPs from engaging in private censorship, take any action against RCom? No. Earlier this year, Tata Sky filed a complaint against YouTube in the Delhi High Court, noting that there were videos on it that taught people how to tweak their set-top boxes to get around the technological locks that Tata Sky had placed. The Delhi HC ordered YouTube “not to host content that violates any law for the time being in force”, presuming that the videos in question did in fact violate Indian law. They cite two sections: Section 65A of the Copyright Act and Section 66 of the Information Technology Act. The first explicitly allows a user to break technological locks of the kind that Tata Sky has placed for dozens of reasons (and allows a person to teach others how to engage in such breaking), whereas the second requires finding of “dishonesty” or “fraud” along with “damage to a computer system, etc”, and an intention to violate the law—none of which were found. The court effectively blocked videos on YouTube without any finding of illegality, thus once again siding with censorial corporations.

In 2013, Indore-based lawyer Kamlesh Vaswani filed a PIL in the Supreme Court calling for the government to undertake proactive blocking of all online pornography. Normally, a PIL is only admissible under Article 32 of the Constitution, on the basis of a violation of a fundamental right (which are listed in Part III of our Constitution). Vaswani’s petition—which I have had the misfortune of having read carefully—does not at any point complain that the state is violating a fundamental right by not blocking pornography. Yet the petition wants to curb the fundamental right to freedom of expression, since the government is by no means in a position to determine what constitutes illegal pornography and what doesn’t.

The larger problem extends to the now-discredited censor board (headed by the notorious Pahlaj Nihalani), as also the self-censorship practised on TV by the private Indian Broadcasters Federation (which even bleeps out words and phrases like ‘Jesus’, ‘period’, ‘breast cancer’ and ‘beef’). ‘Swachh Bharat’ should not mean sanitising all media to be unobjectionable to the person with the lowest outrage threshold. So who will file a PIL against excessive censorship?

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