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# Freedom of Expression, Indirect Censorship & Liability for Internet Intermediaries

**Trans-Pacific Partnership Agreement**

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TPP article 16.3 mandates a system of ISP liability that pushes a framework beyond ACTA and possibly the spirit of the DMCA, since it opens the doors for:

- **Three-strikes policies** and laws that require Internet intermediaries to terminate their users' Internet access on repeat allegations of copyright infringement
- Requirements for Internet **intermediaries to filter all Internet** communications for potentially copyright-infringing material
- ISP obligations **to block access to websites** that allegedly infringe or facilitate copyright infringement
- Efforts to force intermediaries to **disclose the identities** of their customers to IP rightsholders on an allegation of copyright infringement.



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## GLOBAL CENSORSHIP CHOKEPOINTS

TRACKING INTERNET CENSORSHIP PROPOSALS WORLDWIDE



Global Chokepoints is an online resource created to **document and monitor global proposals to turn Internet intermediaries into copyright police**. These proposals harm Internet users' rights of privacy, due process and freedom of expression, and endanger the future of the free and open Internet.

<https://globalchokepoints.org/>



The Internet is one of the most **vibrant platforms** for enhancing communication the world has seen since Gutenberg's press revolutionized the science of printing.



Jost Amman, 1568

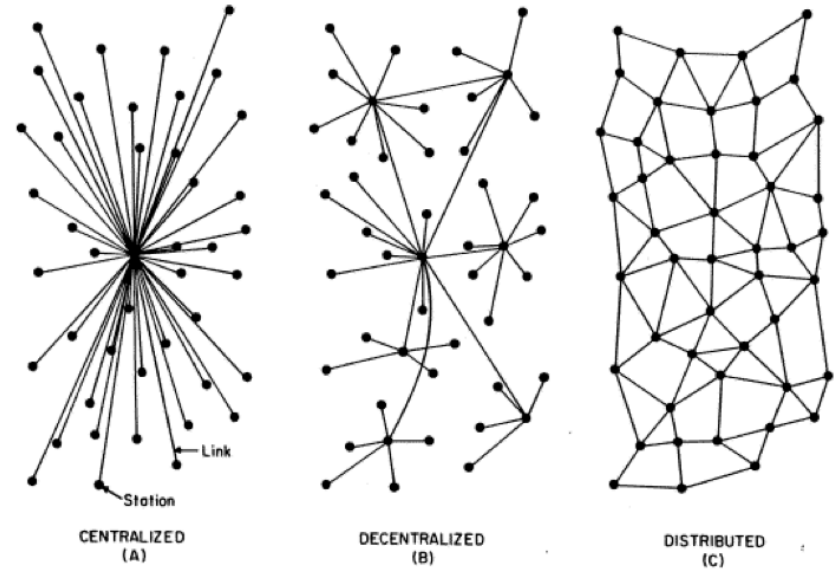
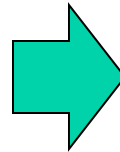
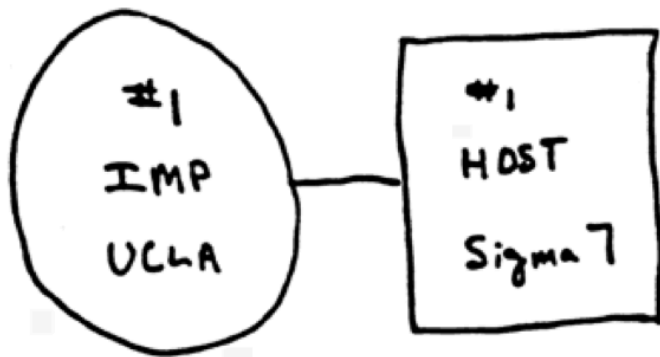


FIG. 1 - Centralized, Decentralized and Distributed Networks



## World Wide Web

The WorldWideWeb (W3) is a wide-area [hypermedia](#) information retrieval initiative aiming to give universal access to a large collection of information. Everything there is online about W3 is linked directly or indirectly to this document, including an [executive summary](#) of the project, [Frequently Asked Questions](#).

### [What's out there?](#)

Pointers to the world's online information, [subjects](#), [W3 servers](#), etc.

### [Help](#)

Information on the browser you are using

### [Software Products](#)

A list of W3 project components and their current state. (e.g. [Line Mode](#), [X11 Viola](#), [NeXTStep](#), [Servers](#), [Tools](#), [Mosaic](#))

### [Technical](#)

Details of protocols, formats, program internals etc

### [Bibliography](#)

Paper documentation on W3 and references.

### [People](#)

A list of some people involved in the project.

### [History](#)

A summary of the history of the project.

### [How can I help?](#)

If you would like to support the web..

### [Getting code](#)

Getting the code by [anonymous FTP](#), etc.

# breakthrough



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# Conscious Choice To Be Open



- **User generated content** has democratized media, culture and education;
- Persons with diverse ideas can find online communities of like-minded individuals;
- Global internet **removes geographic boundaries**





- Diverse sources of information and online communities enhance the democratic process
  - allow **better informed choices**
  - allow organization with others to **effect positive change**
  - Improve communications **between government and the governed**



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- November 15th, 2010**  
Interview: Lynda D'Amico (PSC) - How to Drive College Costs Down & Quality Up in TX and CA: Emerging Textbook Solutions [More](#)
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# Networked Information Economy\*

- Network of connectivity enables new forms of productive activity
  - Large-scale, distributed collaboration
  - Non-market, commons-based peer production or social production
  - User-driven innovation
- Nature of digital information goods
  - Non-rival, non-excludable
- “Replicability” of digital goods
  - near zero marginal cost of reproduction
- Disintermediation

\* Benkler, Y. 2006. *The Wealth of Networks: How Social Production Transforms Markets and Freedoms*. New Haven: Yale University Press



## Policies to Enhance Freedom of Expression

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 19 of the Universal Declaration of Human Rights



## Policies to Enhance Freedom of Expression

To allow people to hold *opinions without interference*, and *to seek, receive and impart information*, it is critical to have the policy infrastructure that does not impose liability on internet intermediaries for user actions



## Policies to Enhance Freedom of Expression

### Role of Internet intermediaries:

- Facilitate communication
- Protect freedom of expression
- Provide avenues for democratic participation





## Policies to Enhance Freedom of Expression

- U.S has two primary internet liability protection laws
  - Section 512 of the Digital Millennium Copyright Act
    - Protects ISPs against copyright claims
    - Notice and takedown without judicial review
  - Section 230 of the Communications Decency Act
    - Protects ISPs against state laws and most federal laws





## Policies to Enhance Freedom of Expression

- Section 512 of the Digital Millennium Copyright Act
  - Result of political process, balancing interests of the copyright industry with the telecommunications industry
  - Requires ISP to register with the Copyright Office to receive protection
  - Copyright holders can send notice to ISP to demand a takedown
  - ISP must remove for 10 to 14 days
  - Content restored if user counter-notices -- unless copyright holder files a lawsuit.



## Policies to Enhance Freedom of Expression

- Section 512 has had unintended consequences
  - While it has procedural safeguards, it has resulted in the removal of significant amount of non-infringing material
  - Allows for short-term censorship, without any judicial input
    - Campaign videos
    - Media criticism
    - Personal non-commercial videos
  - Many smaller sites fail to register with Copyright Office and lose advantages



## Policies to Enhance Freedom of Expression

- Economics of intermediaries are dependent on scale.
- Benefit for an individual post is trivial
- Cost to have an employee assess the legality of speech exceeds the profit from hosting that speech.



## Policies to Enhance Freedom of Expression

- To maximize information availability, allow posting without ex ante review
- User generated content websites cannot function with delay (e.g.OER)
- Liability rules should allow services to edit and moderate content without taking on liability
- Filtering is ineffective
  - Network level filtering impacts privacy



## Policies to Enhance Freedom of Expression

- Ex post review requires **due process**
- Notice and takedown risks **creating censorship regime**
  - Even short downtime impacts freedom of expression
- Most appropriate role is forwarding notices of alleged infringement and then **allowing the judicial system to work**
  - This include protecting the privacy of posters



## Policies to Enhance Freedom of Expression

- Heavy regulation can vastly increase costs beyond the ability of startups.
- Even if large companies have technical and financial capacity to take some actions, small startups do not





## Policies to Enhance Freedom of Expression

- To keep the pace of innovation, **policy needs to reduce costs for startups**
- For jurisdictions who are trying to develop and **grow an online industry**, policy structure is even more important.



## Privacy and Anonymity

- Due process for anonymous speech is critical for freedom of expression
- Forced "identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance"
- "Anonymity is a shield from the tyranny of the majority," that "exemplifies the purpose" of freedom of expression: "to protect unpopular individuals from retaliation...at the hand of an intolerant society."





## Privacy and Anonymity

- Why is anonymity important?
- Wide variety of reasons
  - Criticism of political figures, corporations, bureaucrats
  - Stigma or embarrassment
- Opposition parties, victims of violence, AIDS sufferers, survivors of abuse can use Internet to share sensitive and personal information anonymously without fear of embarrassment or harm



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“On the Internet, nobody knows you’re a dog”



*"On the Internet, nobody knows you're a dog."*

Peter Steiner, *On the Internet, No One Knows You're a Dog*, *The New Yorker*, (Vol.69, no. 20) (July 5, 1993)



## Privacy and Anonymity

- Internet intermediaries **do** know who's a dog
- When a user posts content, third parties may want to sue the user
- To sue the user, plaintiff must first identify the user
- Due process should protect identify users
- ISPs best practice is to provide notice to users, and give time to allow for court review



## Conclusion

- In the 15th century, Gutenberg's printing press formed the initial basis for the knowledge-based economy
- As we enter the 21st Century we have the opportunity to realize the full benefits of this knowledge economy by adopting a legal framework supports and enables the tools necessary for free expression, privacy and innovation.



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Thank You!  
¡Gracias!  
cảm ơn bạn !  
terima kasih!



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