Controlling the Internet:
The use of legislation and its effectiveness in Singapore[1]

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This paper will begin by establishing the role of the Internet in the economic policy of Singapore as well as its wider role in Singapore society. The paper will then move on to examine the question of the censorship of the Internet in Singapore, after which the question of the control of the Internet will be considered. The question of control will be investigated, with a focus on control through legislation and the effectiveness of this approach. The purpose of this paper is to suggest a different approach to the question of controlling the Internet through legislation.

The Internet has been a strategic part of Singapore's economic policy since the early 1980s[2]. Information Technology (IT), of which the Internet can be considered to be a part of, was

recognized for its unique economic opportunities and benefits as Singapore moved towards restructuring its economy towards higher value-added production. Singapore positioned herself initially as a hub for the production of hardware and for software development and latterly, in the 1990s, as a hub for information communication technologies (ICTs) and as a major player in global e-commerce. The adoption and use of IT was advocated in both the private and public sectors as well as across different arenas such as education, research and government services.

The incorporation of the Internet into the economic policy in Singapore began in 1986 when the National Computer Board, Singapore Telecom, the Economic Development Board and the National University of Singapore collaborated for an integrated strategy between hardware and software manufacturing as well as telecommunication services. In 1992, Singapore launched IT2000 intending to connect all the households in Singapore to a comprehensive computer network using broadband coaxial and optical fiber networks. It linked households to businesses, schools, government departments and libraries to facilitate not only shopping and other commercial and official transactions but also access to television and Internet services. Since the achievement of IT2000, several other new policies such as the Infocomm21, Connected Homes, WEAVE and Wired With Wireless have been put into place in an attempt to give Singapore as much as an economic advantage as possible[3].

These policies have been very successful. In 2003, 73.7% of the households in Singapore owned personal computers with 64.6% having access to the Internet and half of those using broadband[4]. Singapore has the third of the highest percentage of Internet users in the world with more than half of its population using the Internet[5]. Singapore has also been ranked the second most network-ready country after the United States of America[6]. It is not just computers, but connectivity as well that is the norm in both the public and private sectors as well as in places of work, play and education. The Internet in Singapore has achieved an extraordinarily high level of penetration, even into the grassroots with computer services and training in community clubs that are located in housing estates[7]. There has been an emphasis on IT in education so as to identify the future needs of Singapore as well as to arm students with future proof skills[8].

As such, the Internet has become a part of the daily practice of many Singaporeans. There have been substantial rises in the prevalence of more sophisticated Internet activities in the workplace such as uploading/downloading files, online information retrieval/search, telecommuting and the such, as businesses move to increase productivity. At home, there have

been rises in the usage of online banking, Internet telephony as well as online gaming. There have also been significant increases in the education sector with online learning and assessment[9]. Singapore also has the highest number of blogs[10] per capita and will be the first country to adopt moblogging, as part of National Day celebrations this year[11]. On a less savory note, Singapore also has the third highest number of hacking attacks in the Asia Pacific region after the United States and North Asia (China, Hong Kong and Taiwan)[12].

Singaporeans, both users and non-users of the Internet, generally have positive perceptions and attitudes towards the Internet. The Internet is seen as: 'important, useful, interesting, easy and convenient to use'[13]. These societal attitudes can in part be attributed to the promotion of ICTs as an indispensable tool for the achievement of economic success both at home and on the global market. The Internet has largely fulfilled and continues to fulfill its role as an integral part of Singapore's economic policy[14]. It has, however, had an impact beyond the economic.

The successful adoption of the Internet has opened, what is coming to be seen in some quarters as, Pandora's box as it provides an unfettered, unobstructed path into the global network of information. It facilitates global communication in an unprecedented manner, allowing users to access and create content quickly and easily. The Internet is a smorgasbord of both delectable and indelectable bytes. As such, there have been calls to censor the Internet in the name of protecting both adults and children from what is deemed to be objectionable content, while at the same time, the Internet is heralded as an electronic global agora and, as such, proclaimed by both media and political commentators as a conduit for democracy[15].

Conventionally, it has been argued that the Internet cannot be censored without imposing draconian measures that are difficult to enforce and monitor. Such measures include registration and constant surveillance, the use of technical measures such as the removal of content, the prevention of transmission, and the prevention of access through blacklisting, whitelisting or word/character search[16]. However, it is almost impossible to censor the Internet effectively, from a technological perspective efficiently, given the volume and the constant creation and updating of the content, while at the same time allowing users to reap the benefits of the technological pace of development and its potential for commerce. Furthermore, the Internet, from a technological perspective, considers censorship as damage and merely dynamically routs around it. Also, censorship can impact the workings of the Internet and undermine the faith of users in the system.

It is important to note that, given the neo-liberal economic agenda of free trade, to which Singapore subscribes is now dependant for its functioning on the Internet, and ICTs in general. Attempts at censorship, such as the blocking of access, are not looked upon with favor from her major trading partners and economic powerhouses with their emphasis on human rights and democracy as well as economic freedom[17]. Also, given that Singapore is positioning itself as a hub for ICTs and as a major player in global e-commerce, it cannot afford to have its economic objective undermined by having what may be perceived to be harsh and invasive approaches to censoring the Internet[18].

Singapore is well aware that it cannot do much to censor the Internet in any significant manner and, as such, consequently should probably have to abandon any notion of the censorship of the Internet[19]. It is often pointed out that Singapore does block access to 100 sites, but this is largely symbolic and limited to only pornographic sites. This ban is not meant to be political or to stifle the exchange of ideas between and among Singaporeans, but it is, rather, a statement of moral values[20]. It would be impossible to block all pornographic sites, and should a banned site want to beat the ban, it would only have to mirror its site elsewhere or use a different domain name or IP address.

Since the feasibility of censoring the Internet is low, the only alternative is to control the Internet. This can be done in three ways; by controlling access, through surveillance and through legislation.

Firstly, controlling access, either by limiting the number of users, ownership of hardware, or limiting access to closed networks, is not a feasible solution, as it would detract significantly from the economic potential of the Internet. Limiting users will significantly reduce the economic benefits that the Internet makes available in terms of connectivity, and diminish ease of communication, accessibility and dissemination of information.

Secondly, surveillance is neither technically nor physically any more feasible than censorship even thought it is already being practiced in some form in most schools, universities, businesses and by Internet Service Providers. The most common form of technical surveillance is through the use of proxy servers, which keep track of the users' digital footprints and activity. Physical surveillance, which involves trawling the Internet viewing sites or hacking into users computers, is feasible, but its cost would be prohibitive. The volume of information generated far outstrips the capacity for surveillance. As such, such surveillance would be more akin to

monitoring rather than genuine surveillance. Importantly, the key to the successful function of this surveillance is the users consciousness of the possibility of being watched. Should the user not be aware of this possibility, the effectiveness of the surveillance is negated significantly. Further, the executability and effectiveness of this aspect of control is limited also by the notions of privacy and democracy.

Finally, the use of legislation to regulate and/or control the Internet and its usage, has several benefits: namely, in terms of ease of execution, it is feasible, and it is legitimated by the transparency of the judicial processes[21].

Internet legislation in Singapore is analogous to a drift net in that it is wide enough to catch an ambit of transgressions as it trawls the ocean of the digital pulses. There is a deliberate vagueness and ambiguity in the language of the legislation that allows for flexibility of interpretation that is useful when dealing with technology whose developments and uses one cannot foresee[22]. An example of this ambiguity would be the Internet Code of Practice that states that '(p)rohibited material is material that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony'[23]. Conversely, however, the very drift net nature of the legislation has a potential for abuse in its interpretation and application.

As such, the successful adherence to the spirit of natural justice requires, if not makes vital, the involvement of the judiciary for the interpretation of the drift net legislature via common law.

The common law method of adjudication, in the context of the doctrine of judicial precedent, is fundamental to the protections of rights and the prevention of arbitrary determinations. The process of disputation, debate and impartial adjudication of individual disputes in which the parties present contending arguments regarding just conduct and in which the courts draw upon precedents set by rulings on previous disputes mean that judicial discretions are strictly limited to the applications or adjustment of already established norms and standards[24]. There are, thus, inbuilt restraints in the judicial methods that ensure a greater degree of certainty and fairness. The two key functions of common law, in terms of its relationship with drift net legislation, is that is enables over time a clear and consistent definition of transgressions, and it allows for the predictability of the penalties of those transgressions[25].

In short, common law draws the proverbial line in the sand, which in the case of Singapore is missing[26]. This needs to be considered seriously.

This lack of common law with regards to the Internet can be approached in two ways. The first approach can be illustrated with the case of Singapore Internet Community (Sintercom)[27]. Sintercom was a website launched in 1994 began by Tan Chong Kee with the objective 'to build and maintain an Internet home where all Singaporeans, whatever their concerns are, can meet and feel at home[28]'. It was immensely popular among Internet users and even held up as an example of the freedom of expression[29]. The government-run Singapore InfoMap even provided a link to it. However, on 5th July 2001, Tan received a letter from the Singapore Broadcasting Authority (SBA)[30] asking him to register Sintercom under the 'Singapore Broadcasting Authority (Class License) Notification 1996' and explained that registration was a procedural requirement the intention of which was to emphasize the need for content providers to be responsible and transparent when engaging in Singapore's political issues. The SBA refused to enter into a dialogue with Tan about the content of Sintercom insisting that he register with them as required. The main issue was the ambiguous wording the SBA Act, which left him in a vulnerable legal position. The SBA refused to elaborate or examine his current content to provide a more concrete application of the SBA Act. It was the beginning of the end of Sintercom. After a lengthy correspondence, Tan examined his options and decided to shut Sintercom down on 20th August 2001. Tan suggests that the ambiguity of the drift net legislation would either leave him to self-censor – hold back or remove any content that could offend presumptively – or, more ominously, would place him a situation where he 'could be hauled into court anytime, depending on how someone in power has decided to interpret (the) content'[31]. This illustrates the importance of the interpretative function of common law when dealing with drift net legislation. An opportunity to draw the proverbial line in the sand was missed, and this missed opportunity continues to give power to the legislation. The fixing of the parameters of the legal and illegal would have meant that after that 'nailing down' of the legislation, users would know what was legal and illegal content.

The second approach to the lack of common law would be to embrace the simple argument on the importance of common law such that its lack renders the legislations nugatory. A number of jurists, in particular legal realists, would argue that the lack of common law has serious implications on the legislation. Proponents of legal realism reject the idea that judges can be constrained by rules, but instead maintain that judges create new law through the exercise of

lawmaking discretion considerably more often than commonly acknowledged[32]. Indeed, from the legal realist perspective, law is essentially the product of judicial activity. Arguably, the law, with respect to a particular set of facts, is a decision of a court with respect to those facts and until a court has passed a decision on those facts, no law on that subject is yet in existence. Prior to such a decision, the law relating to that person and to those facts was either real law, as to a specific past decision, or probable law, the opinion of lawyers as to a specific future decision. So, it is only after the decision that the law is fixed[33]. Indeed, some jurists have even argued that a piece of legislation is not law until interpreted by a court and that law is the sum of rules administrated by the courts[34].

The first approach to the lack of common law not only disempowers the users, but significantly, allows for the legislation to be used as a mechanism to control the Internet. This can be evidenced by, firstly, the dearth of common law itself, which, unfortunately, and perhaps by very reason of the embryonic trauma of the Internet legislation coupled with the inherent unwillingness of users and content providers to challenge the actions of the statutory bodies, fails to demarcate the boundaries of acceptable and unacceptable conduct. Secondly, the approach of the research around the question of Internet censorship in Singapore itself, which positions the users as the judges of the content rather than following judicial convention that requires the accusers to prove that the content is prohibited – 'objectionable on the grounds of public interest, public morality, public order, public security, national harmony'. This is evidence to the success of the missing line in the sand. Arguably, this negative and defeatist approach has become a self-fulfilling prophecy of disempowered users and resigned researchers.

There is a need to realize that the issue of censorship and control of the Internet needs to be approached from a different tangent. One reason that the legislation is considered to have an influence in previous approaches, such as self-censorship and auto-regulation[35], is that there has been no clarification or interpretation of the ambiguity of the legislation. The previous research has been important and is still applicable, but there is a need for a different perspective – one that subverts the entrenched paradigms such that the impetus of control can be reconfigured and perhaps even reclaimed. Firstly, there is a need to realize that the lack of common law can actually be conceptualized as emancipatory as the legislation is rendered nugatory due to the lack of common law. Secondly, there is a need to be cognizant of the fact that the burden of proof, which the ambiguity of the legislation makes hard to prove, is on the accuser and not the accused. Lastly, should a line in the sand be drawn, this only bodes well for future excursions into the

Internet as it would only serve to demarcate what is allowable and what is not. Then, users will be able to approach the Internet with a sense of emancipation and empowerment instead of negativity and malaise. It is time to take an approach that encourages, instead of discourages, an unencumbered, adventurous and even playful attitude towards the Internet.

Endnotes

[1] This paper was presented to the 15th Biennial Conference of the Asian Studies Association of Australia in Canberra 29 June-2 July 2004. It has been peer-reviewed and appears on the Conference Proceedings website by permission of the author(s) who retain(s) copyright. The paper may be downloaded for fair use under the Copyright Act (1954), its later amendments and other relevant legislation.
[2] For further and detailed discussion of the history of the Internet in Singapore as well as its role in the economic policy, refer to Tan (nd), Quah 1996 and Choo 1997.
[3] Details of these and other policies can be found at IDA Programmes 2003.
[4] Annual Survey on Infocomm Usage in Households and by Individuals for 2003
[5] Measuring Globalization 2004.
[6] Global Information Technology Report 2003-2004 2003.
[7] Bringing Information Technology Closer To The Community 1995
[8] Further details can be found at IT in Education – Masterplan 1997.
[9] The information in this and the preceding sentences can be found in the Annual Survey on Infocomm Usage in Households and by Individuals for 2003.
[10] A blog, is short for weblog, which is basically a journal that is available to all users on the Internet. Moblogging, is short for mobile blogging, which is a blog where content is posted from a mobile device like a cellular phone.
[11] S'pore NDP 2004 launches world's first national mobile blogging, 9 June 2004
[12] Choudhury 2003
[13] Kuo et al 2002, p.105
[14] Singapore has begun to export its technology to countries like China, Burma and Vietnam, refer Sitathan 2004 and Boyd 2004. Also, the growth of e-commerce has prompted the Singapore Department of Statistics to being to measure its vectors, refer Wong 1999.
[15] For an in-depth discussion of the points raised in this paragraph, refer to Shapiro 1999.
[16] Further details and elaboration of these methods and their effectiveness and ineffectiveness can be found in Hogan 1999
[17] Garry Rodan as cited in Erickson 1998.
[18] Furthemore, apart from a council that sets technical standards, there is no central controlling body for the Internet and any attempts at censorship have to consider the international dimensions. The standard of censorship has to juxtapose local standards with global ones.
[19] Wang 1999, p.285
[20] Zerega 2000.
[21] There are three specific pieces of legislation that are relevant to the attempt to regulate and/or control the Internet and its usage in Singapore; the Media Development Authority of Singapore Act (in particular, the codes of practice – which are subsidiary legislation), the Broadcasting Act and the Computer Misuse Act. This paper will not be examining in depth these laws or those related indirectly to the Internet such as the Sedition Act, Public Order (Preservation) Act, Internal Security Act and the such as, while they are not Internet specific, they can however be

interpreted to apply to the Internet. Instead this paper will focus on the effectiveness of the use of legislation to control the Internet, in particular, the provision of content.

[22] Endeshaw 1996 p.213

[23] MDA Internet Code of Practice Para 4.1

[24] Refer to Harris 1990, pp.167-168, David and Brierley 1996, pp.161-176, and Laster 1997, pp.376-386.

[25] The common law doctrine is not without its problems or critics. Refer to Davies 1994, pp.48-55, and Brett 1975, pp.49-71.

[26] Other than for the possession and distribution of pornographic material and commercial misconduct, both which are covered by the Penal Code.

[27] The details of the Sintercom story as well as the correspondence between Tan and the SBA can be found at Singapore Internet Community 2001. Also refer to George 2000, pp.133-138.

[28] Our Philosophy 1994

[29] Ellis 2001.

[30] The Singapore Broadcasting Authority, the Singapore Film Commission and the Film and Publications Department has since 1 January 2003 been incorporated into the Media Development Authority of Singapore.

[31] Sintercom to register with the SBA 1996.

[32] Milovanovic 2003, pp.114-119.

[33] But only to a limited extent as it is a decision in a specific situation, with regards to a specific person and specific facts and may in part be still open to further questioning.

[34] It would not be incorrect to say that statutes, legislations passed by parliament, and common law, the judiciary's interpretation of those statutes, have a dependant but unequal relationship, as common law is subservient to statutes. Now, when considering the pace of technological developments and users abuse of technology, common law, which is dependant on appropriate litigation coming before the courts, may not respond quickly enough. In these circumstances, it is necessary for the creation of safeguards by legislative action.

[35] Gomez 2000 and Lee 2001a, 2001b and 2001c

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