



# CANADA-ASIA AGENDA

## Extending Censorship Controls in Southeast Asia

### Kieran Bergmann

Southeast Asia now has over 156 million Internet users in the region. The internet has become a powerful tool for information, association and expression for a growing audience, but this may be curtailed as governments hone in to extend controls over Southeast Asian cyberspace. In examining trends and concerns relating to freedom of expression and access to information in the context of Southeast Asia, Kieran Bergmann contends that as Canada engages more deeply with countries from the region, it should maintain a strong voice on internet freedom amid an overarching trend pointing towards more censorship, regulation, and control of the Internet in Southeast Asia.

On September 12, Vietnamese Prime Minister Nguyen Tan Dung publicly condemned three anonymous political blogs, adding momentum to the country's ongoing crackdown on bloggers who dare criticize the government. The message, which was broadcast by the country's state-run television company, VTV, accused the blogs of being "villainous plots by hostile forces" and called for the authors to be brought to justice.<sup>1</sup> Only one month earlier, dissident blogger Dinh Dang Dinh was sentenced to six years imprisonment for "conducting

propaganda" against the regime.<sup>2</sup> The charges related to his blog posts that covered subjects such as freedom of speech and democracy, and were critical of the government's corruption and business dealings.

These developments are a stark reminder of the threats to online freedom of expression and access to information in Vietnam. They are not, however, unique to that country. Stories like the ones above are becoming all too common in the entire Southeast Asia region.



### About The Author

Kieran Bergmann is the Google Policy Fellow at the Citizen Lab, Munk School of Global Affairs, University of Toronto. She previously worked at the Canadian Embassy to Thailand, Burma, Cambodia, and Laos and recently completed her MA in Public and International Affairs at the University of Ottawa. Kieran's research focuses on the use of digital technologies by civil society movements and the co-optation of these technologies by authoritarian governments to target dissidents and human rights activists.

For more information please visit [www.asiapacific.ca](http://www.asiapacific.ca).



This article sets out to examine emerging trends and concerns relating to freedom of expression and access to information in Southeast Asian cyberspace. It finds that many governments are increasing their efforts to censor political and social content on the Internet. There has also been a shift in the application of laws that criminalize speech from the offline to online realm, as well as the introduction of new laws and regulations that expressly apply to cyberspace. Finally, many governments are placing a greater reliance on intermediaries to censor online content, monitor Internet users, and restrict their citizens' ability to access information online.

With an overarching trend towards more censorship, regulation, and control of the Internet, this should be of concern to the Canadian government as it continues to move towards more engagement, trade, and investment with the member states of the Association of Southeast Asian Nations (ASEAN). Canada should take steps to ensure that the Internet remains free and open in the region in order to advance its strategic interests, and promote the advancement of democracy and the protection of human rights.

**Power of the Internet in Southeast Asia**

Internet penetration rates are rapidly growing in Southeast Asia and there are now over 156 million Internet users in the region.<sup>3</sup> It has provided the populations of these countries with a powerful tool to push the limits of freedom of expression, association and information that many of their governments set long ago. For a time, cyberspace remained largely untouched by many governments in this region, and the restrictive environments that citizens

encountered offline did not extend online. Now, however, most governments in Southeast Asia are realizing that they cannot ignore the economic, political, cultural, and social implications of the Internet, and are grappling with how to deal with the rapid growth of connectivity in their countries.

On the one hand, they are eager to harness the Internet for the benefits of their economies, for innovation, modernization and connectivity to foreign markets. On the other hand, they are increasingly aware of the challenges that connectivity poses as their citizens and political opponents find a new avenue to discuss contentious topics, network with like-minded individuals, and organize and mobilize opposition and protest movements. In a few countries in the region, including Singapore and Myanmar, governments have taken recent steps to relax the controls that they have traditionally placed on online content in the name of democracy or to encourage investment. In most other Southeast Asian countries, however, the need for control has outweighed the desire for openness, and the long-standing restrictions on freedom of speech that exist offline are being translated into the online realm.

**Extending Censorship Controls**

A number of Southeast Asian countries have taken steps to extend the controls they exercise against free speech offline to the realm of cyberspace by actively censoring, blocking, or filtering online content. Often this is done under the guise of national security, social cohesion, or cultural sensitivity. Rarely is it done in a transparent manner, with proper judicial oversight or respect for due process.

	Internet Users (as of December 31, 2011)	Facebook Users (as of March 31, 2012)	Population (2011 Est.)	Internet Penetration (% of population)
Canada	27,757,540	17,113,220 (Dec. 31. 2011)	34,030,589	81.60%
Indonesia	55,000,000	48,523,740	245,613,043	22.40%
Malaysia	17,723,000	12,365,780	28,728,607	61.70%
Myanmar	110,000	n/a	53,999,804	0.20%
Singapore	3,658,400	2,602,880	4,740,737	77.20%
Thailand	18,310,000	14,235,700	66,720,153	27.40%
Vietnam	30,516,587	3,173,480	90,549,390	33.70%

From Internet World Stats: <http://www.internetworldstats.com/>



Indonesia primarily targets its censorship at religious and social issues. In 2008 an anti-pornography law was passed that prompted the government to begin filtering the Internet and blocking access to pornographic websites.<sup>4</sup> In the lead up to Ramadan this past July, the Ministry of Information and Communication blocked more than one million pornographic sites, and made it clear that it would not necessarily be unblocking that content when the holy month came to a close (it should be noted that the filtering of porn in the countries has generally received widespread public support).<sup>5</sup> Prior to this, in October 2011, the Ministry announced that it had blocked 300 websites, but gave no indication which sites were blocked, except to say that they were “radical” and “extremist.”<sup>6</sup> The escalation of the control of online content in Indonesia seems to coincide with the expanding Internet usage in the country, which is home to the third largest number of Facebook users in the world.

Malaysia, on the other hand, has traditionally been opposed to implementing controls in cyberspace. In its 1996 Bill of Guarantees, it recognizes the necessity of harnessing the power of the Internet in order to fulfill a vision of Malaysia as a “major global ICT hub” and therefore guarantees that there will be “no censorship of the Internet.”<sup>7</sup> Former Prime Minister Mahathir Mohamad, who ran the country for 22 years until 2003, repeatedly pledged that Malaysia would never censor the Internet, and current Prime Minister Najib Razak echoed these sentiments as recently as April 2011.<sup>8</sup> Now, however, both men are going back on their promises. In a recent interview, Mahathir stated, “countries should implement some form of regulatory control on the Internet to block ‘filth’ and punish those who corrupt people’s minds.”<sup>9</sup> The current Information, Communications and Culture Minister, Datuk Seri Utama Dr Rais Yatim, subsequently expressed agreement with this view stating that the “cyberworld should now be subjected to perusal by society.”<sup>10</sup>

Conversely, some countries appear to be loosening their tight grip on the Internet. Singapore, which has traditionally enforced strict control over speech and the media, and suppressed political activism, has recently loosened many of its restrictions. This change became particularly pronounced last year when support for the governing People’s Action Party hit an all-time low. The opposition’s relative success can be partially attributed

to its inclusive campaign that utilized the Internet as a way to open the race to previously unheard voices and an unprecedented level of debate.<sup>11</sup> The ruling party now wants to be seen as engaging civil society to gain some support in the polls and at the same time, it is actively trying to attract foreign investment and talent. The Internet has propelled this newfound freedom of expression, providing Malaysians with a platform to criticize government and discuss previously taboo social issues that are rarely, if ever, discussed in the mainstream media.

Myanmar is experiencing a similar reversal of Internet control. Prior to the recent wave of reforms instituted by the new quasi-civilian government, websites, including those of the exiled Burmese media, the international media, and social networking tools, were systematically blocked, as was access to circumvention tools that might allow people to access these or other blocked sites. In 2007 during the “Saffron Revolution”, the regime even went so far as to shut off the Internet completely for close to two weeks in order to stop the flow of images and video of the demonstrations and the government’s brutal crackdown on protesters from reaching an international audience.<sup>12</sup> They recognized the potential power and impact of the Internet, and the need to keep that power out of their opponents’ hands.



Monks Protesting During Saffron Revolution, Photo Credit: racoles

Since President Thein Sein took over in April 2011, however, the government has taken steps to ease this control and expand freedom of expression and access to information online. In September, the regime claimed to have lifted restrictions on 30,000 previously blocked websites, providing Internet users with unfettered access to sites such as The Democratic Voice of Burma, Radio Free Asia, the BBC, YouTube, Facebook and Twitter for the first time.<sup>13</sup> The Ministry of Communications also recently announced that it is in the process of liberalizing communications networks with a goal of substantially increasing mobile and Internet penetration, and encouraging foreign investment in the country. To date, poor infrastructure and prohibitively high costs have left only 0.2 percent of the country's 60 million people with Internet access.<sup>14</sup>

### Legal and Regulatory Measures

To compliment these more informal restriction efforts, many governments are using legal measures to criminalize online speech, applying existing criminal laws to cyberspace and creating new laws and policies. The laws are often open to broad interpretation by authorities and subject offenders to incredibly harsh punishments.

Thailand's repressive *lèse-majesté* laws have been combined with the equally stifling 2007 Computer Crimes Act (CCA) to extend the criminalization of anti-monarchy speech into cyberspace. The use of these two legal instruments in conjunction has exponentially broadened the pool of potential *lèse-majesté* criminals. The laws no longer appear to merely protect the much-revered monarchy from abuse, but are increasingly applied in ways that suppress freedom of speech and encourage citizens to censor themselves and others, particularly on the Internet.

Thailand has recently found itself criticized in international arenas for its increasingly frequent application of these laws, and the harsh prison terms and fines that tend to accompany charges. The UN Special Rapporteur on the right to freedom of opinion and expression has condemned the recent surge in prosecuted cases, urging the country to hold public consultations on amendments to Article 112 of the Criminal Code, which contains the draconian *lèse-majesté* provisions, and the CCA.<sup>15</sup> In October, at Thailand's Universal Periodic Review at the

Human Rights Council, Canada was joined by thirteen other states in calling for a repeal or review of these laws.<sup>16</sup> Thus far, however, the government has made no indication of bowing to international pressure.



*@istockphoto.com/domin\_domin*

Meanwhile, in Vietnam where an increasingly bold blogosphere is enraging authorities, the government has drafted the Decree on Management, Provision and Use of Internet Services and Information Content Online in an effort to further control online content. The proposed law will amplify the ongoing crackdown on online content by imposing even more severe restrictions against publishing slanderous or critical material.<sup>17</sup> The government already routinely censors or blocks blogs containing content critical of the government or "politically sensitive" material, as well as those that provide information on how to bypass government firewalls. The authors of such blogs are targeted for harassment and assault by authorities, and face harsh prison sentences and fines. According to Reporters Without Borders, Vietnam has the third highest number of imprisoned netizens. Aspects of the draft Decree, including its requirement that all Internet users post real names and personal information, is likely to make this already hostile environment even more so.

### Intermediary Liability

Governments are more frequently outsourcing their content control to intermediaries, including Internet Service Providers (ISPs), private companies, and webmasters. These intermediaries are being held accountable for third party content and face punishment



for failing to censor the Internet, even if they did not create or publish the content themselves.

The adoption of the CCA in Thailand has criminalized the hosting of offensive content, and has often been used to hold intermediaries liable for lèse-majesté content posted by others. The case of Chiranuch Premchaiporn, the director and editor of Prachatai, a popular Thai online news site, demonstrates this.<sup>18</sup> Chiranuch was found guilty of neglecting her role as an intermediary by failing to remove ten alleged lèse-majesté posts from Prachatai's web board in a timely fashion. Each of these ten counts carried a maximum sentence of five years imprisonment or a fine of no more than 100,000 Baht (approximately C\$ 3,300)—a harsh penalty for any crime, but seemingly disproportionate in this case. In fact, Chiranuch did remove all of the posts in question despite the mass amount of posts that the web board was receiving at the time she was charged—between twenty and thirty thousand new posts each day on three hundred new daily topics. On May 30, she was sentenced to one year in prison, which was subsequently reduced to eight months and then suspended, and a 20,000 Baht (approximately C\$644) fine. Her relatively lenient sentence is likely a response to her guilty plea, cooperation with the prosecution, and willingness to delete user comments on her web board when requested by the authorities. Nonetheless, the guilty verdict sends a chilling message to intermediaries in the country—censor content or you will be held responsible.

# Prachatai<sup>en</sup>

Photo Credit: <http://www.prachatai3.info/english/>

Thailand's government has also enlisted the help of intermediaries outside of the country, including Google and Facebook. Google recently released its fifth bi-annual Transparency Report, detailing requests from governments to remove content between July and December of 2011. In this period, Google received requests from Thailand's Ministry of Information and Communications Technology to remove 149 YouTube videos that were allegedly insulting to the monarchy—a huge increase from any



previous reporting period.<sup>19</sup> As a policy, Google must comply with local laws in countries where it operates and it therefore removed seventy percent of these videos from view in Thailand. On November 24, 2011, the Minister of Information and Communications Technology announced that since August the government had requested that Facebook remove the URLs of 86,000 user accounts that contained lèse-majesté comments, photos, audio clips, or videos.<sup>20</sup> Facebook does not publicly release its takedown requests, and it is therefore unclear how many of these requests the company complied with.

In Indonesia, Canadian company Research In Motion caved to the governments demand that it filter pornographic content on Indonesian BlackBerrys last winter after the country threatened to revoke its license to operate in the country.<sup>21</sup> The government has also requested access to user data for law enforcement purposes.

Vietnam has expressed its intention to follow suit with the release of its draft Internet decree, which is expected to become law this summer. The decree compels site administrators, foreign companies like Google and Facebook, and any other individual that provide online services in Vietnam to cooperate with the government to filter or remove any content deemed to oppose the Socialist Republic of Vietnam, undermine the unity of the people, or undermine the customs and traditions of the nation.<sup>22</sup> It would also force these intermediaries to report any of this prohibited online activity to the authorities.

### Implications for Canada

To date, Canada has remained largely silent as governments in Southeast Asia vie to gain or maintain dominance over their citizens in cyberspace. Ensuring that the Internet remains free and open in the region will contribute to

the evolution of democracy and the protection of human rights, as well as promote security and economic growth. **Canada should therefore be a strong voice for Internet freedom in Southeast Asia, if not for its self-described commitment to the promotion of democracy and respect for human rights, then to advance the strategic interests that it has in the region.** Canada has recently expressed its interest in increasing engagement with Southeast Asian nations as it is one of the fastest growing economic regions in the world. In 2011, merchandise trade between Canada and ASEAN was valued at \$15.5 billion, and the stock of Canadian investment reached \$7.9 billion in 2010, an increase of 18.1 percent from the previous year.

An open Internet is critical to the continued growth of trade and investment between Canada and ASEAN, and the efforts by governments to restrict the flow of information online seriously threaten this relationship. Governments that limit, block, remove, or otherwise control online content impede Canada's ability to access these markets, and reduces the associated benefits to Canadian exports, employment, and innovation. It is in Canada's best interest to ensure that the Internet remains free and open, yet secure in Southeast Asia. There are a number of steps that Canada can take in this direction.

First and foremost, Canada must get its own house in order. Thailand wasn't the only country requesting that Google remove content, Ottawa did as well. What is most notable, and quite frankly troubling, about Canada's takedown requests is that an increasing number were not accompanied by a court order, but rather fell into Google's category of "other" requests from the "executive, police, etc".<sup>23</sup> This demonstrates that the government is increasingly bypassing formal and lawful processes in their attempts to get the compliance of private sector companies in their Internet censorship activities. Meanwhile, the government continues to resurrect Bill C30 despite widespread condemnation. The proposed electronic surveillance law would give the

government unprecedented access to Canadians' private online information without the requirement of a warrant. If the Canadian government fails to respect freedom of expression, the right to privacy, and the rule of law in our own country, how can it expect other countries to do so in theirs?

Clear guidelines must be established for Canadian companies to ensure they respect human rights when dealing with foreign governments. The growing trend of international companies seems to be to remove online content or provide personal information first, and ask questions later. Canada must ensure that these types of activities adhere to due process, Canadian law and international standards, such as those outlined in the United Nation's guiding principles for business and human rights.

The Canadian government should use traditional diplomatic avenues to support freedom of expression, particularly by having Canadian diplomats advocate for journalists, dissidents, and online authors who have been arrested or harassed by repressive regimes. It should also try to persuade foreign governments to liberalize restrictions on online content. This will be particularly important in the case of Myanmar, where in July Foreign Minister John Baird announced the government's intention to open a Canadian embassy. The increased diplomatic presence in the country will hopefully be used as an opportunity to encourage and assist Myanmar as it continues to adopt democratic reforms and advance human rights. The Canadian government should also take a stand for Internet freedom at the various regional and international forums where this topic is gaining prominence. This includes ASEAN, the G8 and G20, and the Internet Governance Forum. Perhaps this will even have the added benefit of improving our role and reputation in the international community, which has suffered in recent years.

- <sup>1</sup> Marianne Brown, "PM's Ire Sparks Debate Over Political Blogs in Vietnam," *Voice of America*, September 14, 2012 at <http://www.voanews.com/content/prime-ministers-ire-sparks-debate-over-blogs-in-vietnam/1508097.html>
- <sup>2</sup> Gwen Ha, "Dissident Blogger Jailed," *Radio Free Asia*, August 9, 2012 at <http://www.rfa.org/english/news/vietnam/blogger-08092012145526.html>
- <sup>3</sup> Data from Internet World Stats, at <http://www.internetworldstats.com/stats3.htm>
- <sup>4</sup> Helmi Noman, "In the Name of God: Faith-Based Internet Censorship in Majority Muslim Countries," *OpenNet Initiative*, August 1, 2011 at [http://opennet.net/sites/opennet.net/files/ONI\\_NameofGod\\_1\\_08\\_2011.pdf](http://opennet.net/sites/opennet.net/files/ONI_NameofGod_1_08_2011.pdf)
- <sup>5</sup> Melody Zhang, "Indonesia increases censorship for Ramadan," *Herdict*, July 30, 2012 at <http://blogs.law.harvard.edu/herdict/2012/07/30/indonesia-increases-censorship-for-ramadan/>
- <sup>6</sup> Kate Lamb, "To Fight Extremism, Indonesia Blocks Radical Web Sites," *Voice of America*, October 4, 2011 at <http://www.voanews.com/content/indonesia-ban-on-extremist-sites-131132003/146187.html>
- <sup>7</sup> [http://www.mscomalaysia.my/msc\\_malaysia\\_bill\\_of\\_guarantees#bog7](http://www.mscomalaysia.my/msc_malaysia_bill_of_guarantees#bog7)
- <sup>8</sup> Clara Chooi, "Najib repeats promise of no Internet censorship," *The Malaysian Insider*, April 24, 2011 at <http://www.themalaysianinsider.com/malaysia/article/najib-repeats-promise-of-no-internet-censorship/>
- <sup>9</sup> The Malaysian Insider, "Dr M: Rethink absolute freedom on Net," June 3, 2012 at <http://www.todayonline.com/World/EDC120604-0000056/Mahathir-now-backs-Net-censorship>
- <sup>10</sup> Lisa J. Ariffin, "Rais backs Dr M call for curbs to Internet freedom," *The Malaysian Insider*, June 5, 2012 at <http://www.themalaysianinsider.com/malaysia/article/rais-backs-dr-m-call-for-curbs-to-internet-freedom>
- <sup>11</sup> Seth Mydans, "Opposition Makes Inroads in Singapore," *The New York Times*, May 7, 2011 at <http://www.nytimes.com/2011/05/08/world/asia/08singapore.html>
- <sup>12</sup> Nart Villeneuve and Masashi Crete-Nishihata, "Control and Resistance: Attacks on Burmese Opposition Media," in Ronald J. Deibert, John G. Palfrey, Rafal Rohozinski, and Jonathan Zittrain, eds., *Access Contested: Security, Identity, and Resistance in Asian Cyberspace* (Cambridge: MIT Press, 2011), p.153
- <sup>13</sup> Lewis Macleod, "More press freedom for Burma's media," *BBC News*, July 23, 2012 at <http://www.bbc.co.uk/news/world-asia-pacific-18814045>
- <sup>14</sup> Data from Internet World Stats, at <http://www.internetworldstats.com/stats3.htm>
- <sup>15</sup> United Nations Office of the High Commissioner for Human Rights, "UN expert recommends amendment of lèse majesté laws," October 10, 2011 at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11478&LangID=E>
- <sup>16</sup> Article 19, "UN: Spotlight on Thailand's Lèse-Majesté Law and Computer Crimes Act," October 6, 2011 at <http://www.article19.org/resources.php/resource/2761/en/un-spotlight-on-thailand-s-lèse-majesté-law-and-computer-crimes-act>
- <sup>17</sup> Human Rights Watch, "Vietnam: Clinton Should Spotlight Internet Freedom," July 9, 2012 at <http://www.hrw.org/news/2012/07/09/vietnam-clinton-should-spotlight-internet-freedom>
- <sup>18</sup> Political Prisoners in Thailand, "Chiranuch Premchaiporn," at <http://thaipoliticalprisoners.wordpress.com/decidedcases/chiranuch-premchaiporn/>
- <sup>19</sup> Data from Google Transparency Report, at <http://www.google.com/transparencyreport/removals/government/TH/?p=2011-12>
- <sup>20</sup> Shawn W. Crispin, "Royal Contradictions in Thailand," *Asia Times Online*, December 13, 2011 at [http://www.atimes.com/atimes/Southeast\\_Asia/ML13Ae01.html](http://www.atimes.com/atimes/Southeast_Asia/ML13Ae01.html)
- <sup>21</sup> Andreas Ismar, "RIM Starts Internet Filters in Indonesia," *The Wall Street Journal*, January 21, 2011 at <http://online.wsj.com/article/SB10001424052748704881304576093174017705238.html>
- <sup>22</sup> Human Rights Watch, "Vietnam: Clinton Should Spotlight Internet Freedom," July 9, 2012 at <http://www.hrw.org/news/2012/07/09/vietnam-clinton-should-spotlight-internet-freedom>
- <sup>23</sup> Data from Google Transparency Report at [https://docs.google.com/spreadsheet/ccc?key=0ArW94EKkSH\\_dFVvNDRDZ0U4c0JUu1XQU5Bd0VYc1E&pli=1#gid=0](https://docs.google.com/spreadsheet/ccc?key=0ArW94EKkSH_dFVvNDRDZ0U4c0JUu1XQU5Bd0VYc1E&pli=1#gid=0)

*The opinions expressed in Canada-Asia Agenda are those of the author and are published in the interests of promoting public awareness and debate. They are not necessarily the views of the Asia Pacific Foundation of Canada. While every effort has been taken to verify the accuracy of this information, the Asia Pacific Foundation of Canada cannot accept responsibility or liability for reliance by any person or organization on the use of this information. This Canada-Asia Agenda issue may be copied whole or in part and/or re-distributed with acknowledgement to "the Asia Pacific Foundation, Canada's leading independent resource on Asia and Canada-Asia issues". Archive issues of Canada Asia Agenda, and its predecessor, Asia Pacific Bulletin, may be found at <<http://www.asiapacific.ca/canada-asia-agenda>>. APF Canada is funded by the Government of Canada and by corporate and individual donors.*