

## **Content control as digital trade restriction**

Daniëlle Flonk

Hertie School

flonk@hertie-school.org

The purpose of this think piece is to conceptualize content control as a digital trade restriction. First, I define content control. Second, I set out the challenges for identifying content control as a trade restriction. Third, I set out what role content control plays in the context of the WTO Joint Statement Initiatives (JSI) on domestic services regulation and e-commerce.

### *Defining content control*

I define content control as the process by which actors with a given identity use different technologies, policies, and justifications to influence or limit access to internet content for a given purpose.<sup>1</sup> Content is a layer of the internet that is mainly concerned with the texts, images, and sounds that travel across the internet (Haggart et al., 2021, p. 2). I argue that four aspects constitute control of this content.

First, there are three layers of content control: (1) methods and techniques, (2) policies, and (3) frames and justifications. The first layer refers to methods and techniques, such as filtering content, blocking websites, DDoS attacks, and surveillance. The second group refers to policies, such as intermediary liability, defamation laws, registration legislation for ISPs and websites, and law enforcement with regard to cybercrime. The third group refers to frames and justifications for content control, such as the protection of property rights, protecting national identity and uniformity, protecting children, and national security. An overview of these different layers can be seen in Figure 1.

Second, content control is an act pursued by actors with a given identity. These actors can be governments, whether they are authoritarian or democratic. They can be private companies that attempt to limit or promote content. They can also be individual users themselves if they engage in self-censorship or DDoS attacks. There are a plethora of other actors who are capable of controlling content, such as NGOs, forum moderators and administrators, or online communities.

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<sup>1</sup> This definition is partly derived from Deibert and Crete-Nishihata, who define information controls as “actions conducted in and through cyberspace that seek to deny, disrupt, manipulate, and shape information and communications for strategic and political ends” (2012, p. 343)

3.	Frames and justifications	Protection property rights Protection national identity Protection children National security
2.	Policies	Intermediary liability Defamation laws Registration ISPs and websites Law enforcement cybercrime
1.	Methods and techniques	Filtering content Blocking websites DDoS attacks Surveillance

**Figure 1.** The three layers of content control by countries with examples.

Third, the aim of content control should be to influence or limit content. Influencing content is about adapting content itself by changing its message. With regard to limiting content, actors can do two things: they either hide it or remove it (Gillespie, 2018, p. 175). Hiding content is about retaining content but limiting its delivery to certain users, with or without their knowledge (Gillespie, 2018, pp. 177–178). Removing content is an often-used approach since it is deemed effective and saves human resources for continuous moderation. However, it is also the most rigorous approach since it renders content invisible: “(r)emoval is a blunt instrument, an all-or-nothing determination, removing that content for everyone, not just for those who are offended.” (Gillespie, 2018, p. 176)

Fourth, content control takes place for a certain purpose. Hence, it is applied in order to achieve strategic, social, economic, political, and legal goals. Examples of content (which could be categorized in several ways) include sexually explicit content, hate speech, self-harm, misogynistic content, racist content, homophobic content, trolling, harassment (Gillespie, 2018, pp. 36–37), gambling, and intellectual property rights (Pearce et al., 2017; Ververis et al., 2019, p. 2). Of our interest is content related to the (information) economy. For instance, there is evidence that countries that are more invested in intellectual property production are also more likely to protect that property (Meserve & Pemstein, 2018, p. 259). Other economic interests also play a role in the push for more content control, such as the protection of communication services (e.g., countering Voice over IP) and gambling state monopolies (Breindl & Kuellmer, 2013, p. 372; Deibert et al., 2012), or the promotion of local content. In other words, countries

that have a high interest in the information economy have a higher demand for controlling this content.

Hence, there are several purposes of content control and some are seen as more legitimate than others, depending on the country in which it takes place. As a consequence, content control is not only reserved for authoritarian regimes, since all countries exercise some degree of control over internet content. Content control is not a dichotomous concept (Bambauer, 2009, p. 6) but a continuum on which the conception of appropriate control varies between actors with a given identity.

Therefore, content control as a trade restriction can be conceptualized as *the process by which governments use different technologies, policies, and justifications to influence or limit access to internet content for economic purposes.*

An example of content control as a trade restriction is geo-blocking. Geo-blocking is a way of controlling content based on someone's geographical location, often based on someone's IP address (Mueller, 2017, pp. 80–81). Geo-blocking can be used to restrict access to content, most notably in the area of online distribution of video and audio material, such as movies and music. Often, this blocking follows copyright licenses that follow jurisdictional boundaries (Mueller, 2017, p. 81). When geo-blocking occurs, copyright owners can wall off their content from people in different jurisdictions. For instance, the streaming service Hulu is only available in the US, and the BBC player is only available in the UK (Mueller, 2017, p. 81). Hence, the purpose of geo-blocking is the protection of copyright and content creators in a specific country or region. This allows for price discrimination across countries and regions (Mazziotti, 2015).

#### *Challenges for identifying content control as a trade restriction*

There are three important challenges when it comes down to identifying content control as a trade restriction. First, there is inherent friction and overlap between purposes for content control. It is difficult to determine whether certain content regulation is solely for a political purpose or an economic purpose. And even when content regulation has an economic purpose, it might still have political consequences. Furthermore, there might be several purposes for content regulation. Hence, differentiating between purposes is meaningful, but can be challenging. Second, there is an inherent friction between the purpose of content regulation and the frames and justification used for legitimizing such regulation. Even though governments might frame a policy as an economic policy, the actual purpose might have been political. Third, there is friction between the purpose and the effects of content regulation. For instance, even

though the purpose of regulation might be to limit political content, its consequences might be economic, leading to a restriction in the trade regime. Hence, distinguishing between purposes, justifications, and effects of content control is meaningful, but can be challenging in practice.

### *Content control in the context of the WTO JSI*

Content control as a digital trade restriction is cross-cutting among several issues and sub-issues discussed at the WTO JSI negotiations. The JSI co-convenors drafted a proposal and revised proposal in December 2020, which formed the basis for negotiations in 2021 (World Trade Organization, 2020). A number of these broader themes involve content control as a trade restriction. First, several issues on openness and e-commerce were mentioned. With regard to the flow of information, countries are currently discussing the cross-border transfer of data and information by electronic means. The localization of computing facilities and more specifically of financial computing facilities are important topics (Ismail, 2021, p. 10). Second, a key topic is about internet and data access. For instance, countries are negotiating about the degree of openness of government data. There is also discussion about the open internet more broadly, mainly on the principles of access to the internet for electronic commerce and digital trade (Ismail, 2021, p. 10).

Additionally, ten small groups are discussing specific sub-issues, a number of which are related to content control. First, a small group is negotiating the minimization of spam, which is seen as unsolicited commercial messages (Ismail, 2021, p. 12). By the start of 2021, the small group had finalized a text on the matter (World Trade Organization, 2021). Second, a small group discusses the topic of open access, focusing on non-discriminatory access to the internet by internet service providers. Third, a small group deliberates on open government data, focusing on facilitating public access to data or information held by governments, focusing on how this data should be used and disclosed to the public (Ismail, 2021, p. 13).

The issues of internet openness, internet and data access, spam, and open government data can be all put under a content control umbrella. There are two obstacles to these negotiations. First, the digital trade issues under discussion are often complex and technical, limiting members to effectively engage in discussions (Aaronson & Struett, 2021; Ismail, 2021, p. 14). Second, member positions regarding content control and the openness of the internet vary significantly, making it challenging to reach an agreement. For instance, liberal countries take on a more human rights-centered position in internet governance debates than authoritarian countries (Flonk et al., 2020). Within the liberal country coalition, there is also disagreement to the extent of this approach, whereby the EU member states emphasize a role of the state in

protecting human rights and the US promotes the free flow of information for business purposes (Ismail, 2021, p. 14; Manak, 2019; Titievskaja, 2020). A group of developing countries criticized that new rules would constrain their domestic policies and their ability to industrialize. They especially condemned proposals on free data flows, bans on forced technology transfers, and disclosures of source code (Titievskaja, 2020). Hence, whereas there are areas where there is significant progress such as spam, it is often more challenging for countries to agree over core principles such as the openness of the internet and the free flow of information. The outcomes of these debates are still open-ended, but will certainly influence the extent of content control policies as digital trade restrictions.

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