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COMMENT: A First Amendment for the internet

 By Eli Noam, Financial Times
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Today, the United Nations' world summit on the information society is opening in Tunis. Much of the attention has centred on reducing American control over the internet.

European countries are leading the charge, together with developing countries in need of more resources. Opponents of the US role have had a hard time identifying concrete misdeeds. But the issue has taken on a life of its own.

That is too bad, because the real question is not so much who regulates the overall aspects of the internet, but to what purpose. One of the fundamental questions is whether and how to regulate television programmes that are delivered over the emerging broadband internet.

There are three basic models. The first is to treat the providers of broadband services, such as cable TV and telephone companies, like a print publisher. Like the Financial Times, they would have the right to determine what content they wanted to carry and what other information providers could be accessed from their websites. Market forces are supposed to generate access to providers of information. This is the approach the Federal Communications Commission set for the US.

The second approach is that of "common carriage", which has been the basic system for telecommunication carriers. Users can access any lawful content or application and the broadband provider cannot be a gatekeeper. This approach is known as "net-neutrality" and is advocated by public interest groups. It is also the traditional way in which the internet has functioned so successfully. But it is not entirely non-regulatory in that the broadband providers are legally obliged to keep their connections open and non-discriminatory.

Both these models have solid free-speech arguments in their favour, the difference being whose rights are given priority: those of the network providers or those of the users. But the third approach is one of state intervention. It is to treat TV over the internet just like a variant of regular broadcast TV, to require its licensing by a governmental body or adherence to various rules.

This is the approach taken by South Korea, the world's leader in broadband internet, which requires government licensing of internet TV providers. It has not issued such licences yet, perhaps to protect cable TV. It is also the policy that the European Commission is developing. Brussels intends to require commercial internet protocol TV providers to follow rules on impartiality, decency, accuracy, right of reply and content import quotas.

The licensing and regulation of over-the-air broadcasting had a reason - there were only a few frequencies available for TV and they had to be allocated with public interest conditions. But for TV over the internet, no such rationale exists. An unlimited amount of content is possible, just as it is for the print press, which is under no obligation of impartiality or content quotas. Thus, these rules, while in pursuit of laudable public goals, establish the broadcast regulatory model for non-broadcast media, instead of the other way around. If the future of all media is on broadband, that future will be one of media regulation.

Sovereign countries can restrict their internet media, and many do so, including the summit's host country, Tunisia. But the internet offers a loophole: content can be readily provided from across borders. The closing of that

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loophole by firewalls could be legitimised by the rules of an international regulator of the internet. Thus, the stakes in this debate are much higher than web address systems.

For that reason, it is important that any international internet regulation be based in advance on constitution-like principles. What is needed is a strong rule against governmental restrictiveness on the international flows of information over the internet, such the First Amendment of the US constitution, which protects free speech and press in America. Such a rule must be clear and unambiguous. Anything less will be undermined since it will be easy to find an international majority to support various qualifications.

This gives the US a constructive opportunity. Instead of clinging to the status quo in internet governance it should move forward to pursue positive goals. Thus, any new international system of internet governance, as contemplated now at the summit in Tunis, should be conditional on a clear declaration of freedom for the global flow of all internet content. If such a resolution is passed, the US can declare victory for its First Amendment principles of free information flows and their expansion into the international arena, and make way for a broader international body. But if such a declaration is unachievable, it should give supporters of international democracy pause about what it is that they stand to gain from displacing the US from continuing to set the tone for the internet. They may be helping to establish the global internet media system of the future as one of state licensing and controls, which is vastly more troubling than temporary American over-representation.

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