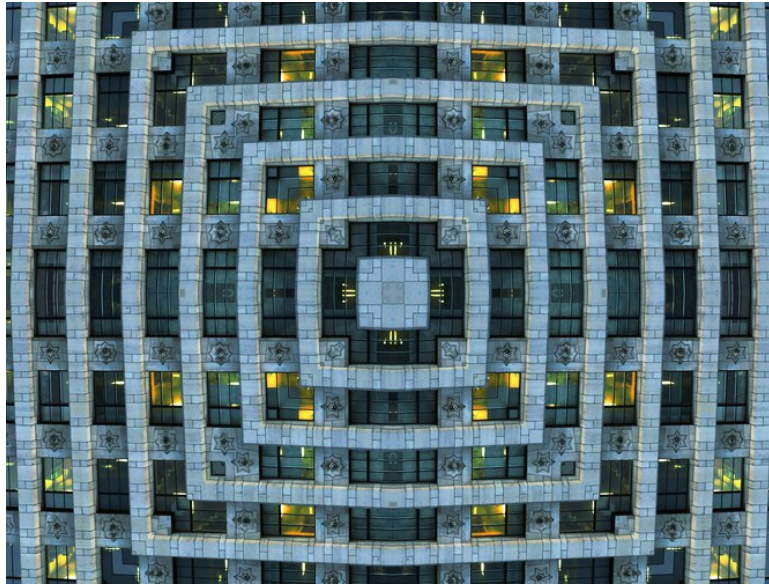


DAVEY ALBA BUSINESS 07.07.17 07:00 AM

# THE WORLD MAY BE HEADED FOR A FRAGMENTED 'SPLINTERNET'



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**THE RULINGS ON** online speech are coming down all over the world. Most recently, on June 30, Germany passed a law that orders social media companies operating in the country to delete hate speech within 24 hours of it being posted, or face fines of up to \$57 million per instance. That came two days after a Canada Supreme Court ruling that Google must scrub search results about pirated products. And in May a court in Austria ruled that Facebook must take down specific posts that were considered hateful toward the country's Green party leader. Each of those rulings mandated that companies remove the content not just in the countries where it was posted, but globally. Currently, in France, the country's privacy regulator is fighting Google in the courts to get the tech giant to apply Europe's "right to be forgotten" laws worldwide. And, around the world, dozens of similar cases are pending.

The trend of courts applying country-specific social media laws worldwide could radically change what is allowed to be on the internet, setting a troubling precedent. What happens to the global internet when countries with different cultures have sharply diverging definitions of what is acceptable online speech? What happens when one country's idea of acceptable speech clashes with another's idea of hate speech? Experts worry the biggest risk is that the whole internet will be forced to comport with the strictest legal limitations.

"There's a risk of a race to the bottom here," says Vivek Krishnamurthy, assistant director of Harvard Law School's Cyberlaw Clinic, who specializes in international internet governance. "Anything that's mildly controversial is probably illegal in some authoritarian country. So we could end up with a really sanitized internet, where all that's left is cute cat photos."

## When Global Reach Overreaches

healthy, vibrant, controversial discourse, too. If the national laws and mores of two different places are in direct opposition, the risk is that discourse in the less strict nation will be limited by the rules of the stricter place. In the worst case scenario, entire events could be wiped from the online record.

“For example, while Europeans might feel comfortable with having a right to be forgotten, Latin Americans—who are just now starting to read the worst pages of their recent history, trying to find out what really happened in their military dictatorships—don’t want to give dictators and their allies the right to delete what they did from the internet,” says Gus Rossi, global policy director at the public interest group Public Knowledge. “Different people might have different expectations about the same issue. It’s not ideal when one part decides for the other without taking that part’s views into account.”

Laws or court orders with a global reach could also unintentionally create a global standard. Krishnamurthy points to the Canadian court ruling, which cited the European Court of Justice’s rationale on its “right to be forgotten” laws. And another court case in Hong Kong cites the Canadian case. The way this spirals out of control is if companies end up adapting to the most restrictive regime when country after country continually one-ups each other.

This problem is made worse by the fact that individual court rulings are not designed to be tools for global internet governance in the first place. Court rulings are reactive by nature, not the result of a discussion of all relevant parties involved. “Ideally, countries, users, and companies could sit at the same table and agree on how to govern freedom of expression online,” says Rossi. “In absence of such mechanisms, it would be best if countries at least restrained from passing global reach legislation or court orders.”

## The ‘Splinternet’

This is all fairly new. “For a long time, the preferred response when content was illegal in one place was simply to geoblock it,” Krishnamurthy explains, with the practice going all the way back to 2000 when France and Germany were asking Yahoo to take down content and materials that paid homage to Nazism. Eventually, the company came to the solution of banning content on a country to country basis, blocking content based on a user’s IP address.

But this ended up not being satisfactory for a couple of reasons. First, IP-based blocking is only about 95 percent effective, Krishnamurthy says, meaning there were still some people in those countries who were able to access the offending material. And there was also a universalizing claim that was put forward by the French in particular. “The claim was ‘hey, everyone enjoys the right to privacy,’” Krishnamurthy says, “and if someone in the US gets to see this material that we in France say violates the rights of a Frenchman, then that Frenchman isn’t getting to enjoy his full rights.” But while applying global execution to a local court ruling clearly isn’t the ideal, a splintering of the internet—where what you see depends on the cultural differences across national borders—would also be disagreeable, or downright dystopian.

Part of the problem is that only a handful of American tech companies control so much of what we see online, and there is still no centralized forum for internet governance. There are a few international groups, such as the United Nations’ International Telecommunication Union or the Internet Governance Forum or

by all. These issues are up to the companies and the governments themselves," says Cynthia Wong, a senior internet researcher at the nonprofit Human Rights Watch.

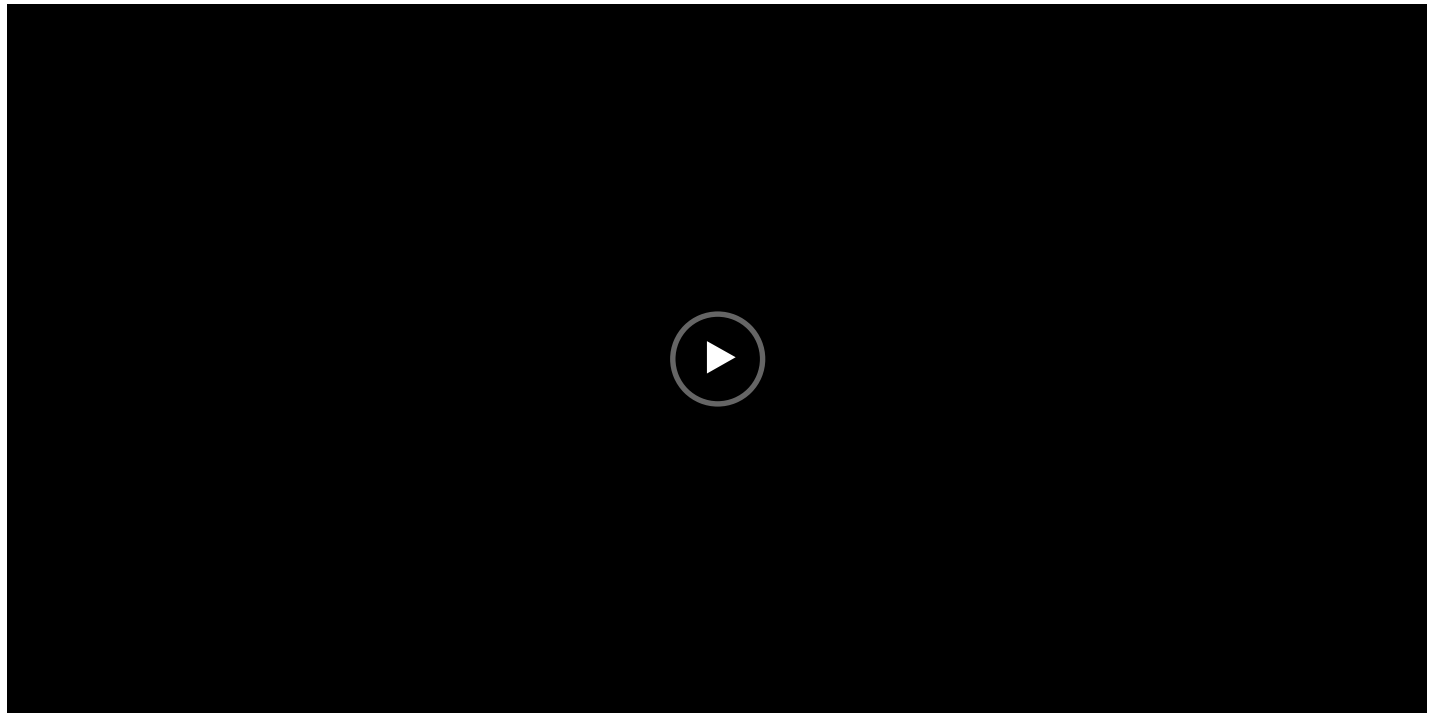
At least for right now, the tenuous relationships between companies and governments, advertisers and users, are keeping free speech alive. "The genie is staying in the bottle in part because these players face multiple kinds of pressures," says Krishnamurthy. Advertisers now balk at the idea of inadvertently funding hate speech. Users can leave a platform if its policies get too pernicious. These recent court rulings act as mere patches while the bigger question of what the global internet *should* look like is worked out by its stakeholders.

"The way the trend is going, there is a lot of pressure directed at breaking the internet, this global network, into a national network with interconnections," says Krishnamurthy. "It could change what the internet looks like in five or ten years." If internet users, tech companies, governments, and advertisers want to keep that from happening, now's the time to come together and conceive a plan.

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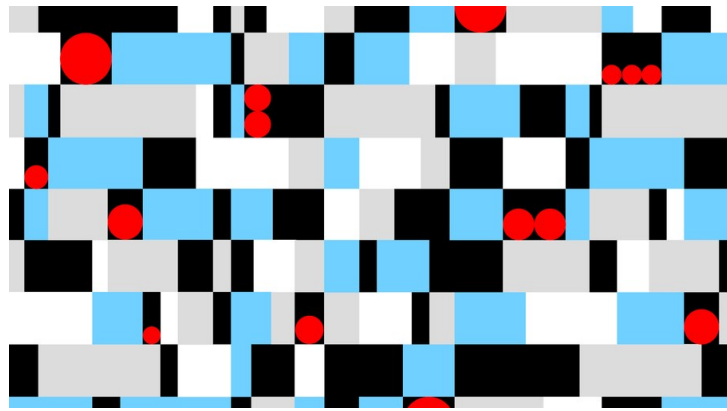
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