Freedom of speech not guaranteed in the U.S.

By Dan Gillmor, Columbia Journalism Review

In December 2010, the major payment systems used to buy goods and services online decided that Wikileaks was no longer an acceptable customer. Mastercard, Visa, and PayPal summarily cut off service, putting Wikileaks into deep financial trouble and further marginalizing an organization that had become an object of fear and loathing inside the U.S. government and other centers of wealth and power.

While many in the new media world sounded an alarm, the response of journalists from legacy news organizations was mostly silence, except to take note of what had happened. By ignoring the implications of what had happened—a financial blockade of an organization engaged in recognizably journalistic pursuits—traditional media people demonstrated how little they understood or appreciated the information ecosystem in which they also exist. And by failing to object, loudly, they gave tacit assent to tactics that should chill people who genuinely believe in free speech.

It was not the first time traditional journalists failed to grasp a fundamental reality: Governments and businesses are creating choke points inside that emerging ecosystem—points of control where interests unfriendly to journalism can create not just speed bumps on the fabled information highway, but outright barricades.

This is not just an issue for journalists in places like China or Saudi Arabia or Russia, where governments are creating more and more stringent restrictions on what people can say and do online. It is an American matter as well. In the developed world, Hollywood and other corporate interests have taken the lead in threatening the Internet’s freewheeling nature—and they’ve had plenty of help from government.

The Obama administration has pushed gratifyingly hard to open up speech for dissidents in dictatorships, and decried censorship elsewhere. Yet the US government has also acted to curb online communications it deems objectionable. While this clampdown is often in service of the copyright lobby, the tactics have sometimes smacked more of authoritarian regimes than of the American tradition. The administration’s campaign against Wikileaks and prosecutions of journalists’ sources highlight the vulnerability of journalism, and the public’s right to know, in this networked age, what government is doing in our names and with our money. Years ago, when mass media had achieved economies of scale that created significant barriers to entry, media critics worried about consolidation of a different kind. A small number of giant companies increasingly owned the media most Americans read, watched, and listened to each day. This was a legitimate fear, and while Congress allowed significant concentration it didn’t allow utter dominance by any single corporate entity. Even so, journalism was dominated by newspaper monopolists at the local level and a cozy oligopoly nationally.

In theory and, so far, mostly in practice, the Internet broke things open. We all came to own a printing press, we believed, and we could make what we created available to a potentially global audience.

But a new kind of corporate oligopoly is emerging. Coupled with increasingly controlling activities by government, often in concert with corporate interests, the new choke points threaten to re-centralize media, or at least return control to a few dominant parties. Who are they?

Start with telecommunications carriers. There are two main kinds: wired-line and mobile. Among the former, in most American communities there are, at most, two “broadband” service providers: the cable and phone companies. Keep in mind that both were at one time monopolies established with government protection. (Also keep in mind that cable is vastly superior in bandwidth in most places, in part due to the lack of fiber investment by the phone industry, and is rapidly becoming the de facto broadband provider where it's available.) These wired-line carriers believe that they should be able to decide what bits of information get delivered in what order and at what speed, if they get delivered at all. Think about what that means: the ability to play favorites in content. Most broadband carriers have instituted bandwidth caps; Comcast has even canceled the service of those who've used too much. Carriers are also becoming content providers themselves, as Comcast did when it bought NBC Universal, creating a plain conflict of interest.

This is why a principle called "network neutrality" has emerged in recent years. It essentially says that the carriers should not favor one kind of content, or conversation, over another. The carriers have challenged the Federal Communications Commission's tiny moves toward network neutrality, and it's not hard to see why. If they can have a duopoly, with little incentive to truly compete, they can use that dominance to cut deals with big content companies at the expense of smaller players, including what startup media operations might want to provide. And as the carriers become content providers themselves, the incentive to make these choices grows. Comcast says that its own streaming video service won't count against its bandwidth cap, unlike streaming video services it doesn't own; a loophole in the FCC's already-weak regulations may give the cable giant cover. (Note: I own a small number of shares in Netflix, which offers a video streaming service that does count against the cap.)

The serious potential for problems with wired-line broadband is nothing next to the actual situation with mobile carriers. They've already won the FCC's approval to discriminate in their network practices, and they have bandwidth limits a fraction the size of wired-line carriers' limits. Clearly they cannot handle the kind of traffic that a cable or DSL line can bear, given network limitations, but they're using relative scarcity to create customer-controlling business models. Recently, AT&T's mobile arm declared its interest in charging some application developers for preferred connections to their customers. Who could afford that? Companies like Facebook, certainly, but smaller players would be hard-pressed to compete in such an environment.

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