

## Protecting The Internet From Government Censorship Is Key To The Future Of Global Trade

*Chris Cox, who has had a distinguished career in the public sector, brings up a critical subject that isn't yet on most people's radar screen: Internet freedom is under attack, and we must make protecting it a fundamental priority in future trade negotiations.*

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**As the U.S.** and China wrestle over tariffs, public attention naturally focuses on manufacturing. But for years manufacturing's share of global trade has been shrinking, while trade in services has been growing. The economy of the future will be leveraged on the exchange of knowledge and intellectual property. This should make commercial services sold via the internet central to any new U.S. trade agreements.

Today America is both the world's largest exporter and importer of services. Not coincidentally, this sector of the global marketplace has the fewest barriers to competition. Services via the internet are unhindered by many of the obstacles to trade in manufactured goods—from geographic distance to national borders to limited economies of scale.

What's more, governments haven't yet had time to erect the kinds of global regulatory barriers that have accreted over many years in the non-internet economy. Every day new digital services disrupt another area of traditional commerce. Already in the retail, telecommunications and information sectors, physical goods and services ranging from movies, music and books to advertisements and knowledge seminars have been mostly replaced by digital goods. With national regulators unable to keep up, cross-border trade has flourished in a relatively frictionless environment.

Because America's current trade advantage is centered on this fiercely competitive sector with the lowest barriers to entry, every other nation has an opportunity to gain share. Maintaining a level playing field should therefore be a priority for every member of the World Trade Organization. Moreover, because the internet is the engine that drives this global trade through its seamless, borderless and nearly cost-free transmission of information, protection of the internet itself should be front and center in new trade agreements.

But doing this will not be as easy as might appear.

Will some nations object to incorporating into trade agreements the principles that make America's free and open internet possible? The answer is yes. Not a few of the world's trading nations view their citizens' commercial activities on the internet as an opportunity for state surveillance. Internet traffic is closely monitored and overseas sites are blocked by more than a dozen WTO members for purposes that include controlling discussion about the ruling regime, suppressing critics and punishing opponents. Imposing this level of control requires censorship and the outright blocking of entire websites. These actions can't be taken without interfering directly in internet commerce.

A bedrock principle of the global trading system created by the WTO is treating foreigners and locals equally. Foreign goods and services must receive treatment at least equal to that given their domestic equivalents. When a nation censors foreign websites or bans them outright, it is restricting the supply of the services offered by those sites. This violates the market-access commitments that are made in every trade agreement worth its salt. From a legal standpoint, however, enforcement of global trading rules in the rapidly evolving context of internet commerce is likely to produce years of inconclusive arguments and a dearth of remedies.

By far, the better route is to articulate mutual expectations about internet freedom in bilateral or regional trade agreements. Especially because the motivations for user surveillance, censorship and content blocking vary from country to country, negotiating these sensitive topics separately with each trading partner will provide the greatest opportunity for pro-competitive results.

For the U.S., there is much to be gained by routinely including provisions that protect internet freedom in its trade agreements. Doing so will help maintain the competitive conditions in the global services market that have enabled U.S. commerce in services to thrive. For Americans who use the internet, promoting global norms proscribing censorship and surveillance of online speech and content creation will protect their privacy.

For over 20 years U.S. policy, enshrined in federal law, has encouraged user-created content on the internet. The fact that America, the birthplace of the internet, decided early on to “maximize user control over what information is received by individuals . . . who use the Internet” established norms that were emulated in countries around the world. But now, as other nations backtrack on internet freedom, it will take more than citing the internet’s creation story as the paradigm.

Ideally, U.S. trade agreements will follow the example of the U.S.-Mexico-Canada Agreement signed by all three countries last November. Article 19.17 of the agreement closely parallels the governing provision of U.S. law, colloquially known as Section 230. It makes clear that websites, including those, such as Wikipedia, that are banned in many countries around the world, are free to rely on content posted by their users without themselves being punished as content creators.

This policy is every bit as good for the counterparties to U.S. trade agreements as it is for the U.S. itself. The American lead in digital services trade is supported by a domestic legal framework that has enabled a remarkable level of individual creativity and expression online. Internet commerce is heavily reliant on user-created content, from product reviews to how-to videos to emergency assistance after a disaster. This abundance of content provided by customers and internet users themselves follows directly from the certainty provided by Section 230, without which web platforms such as eBay, Yelp!, Wikipedia and Google simply wouldn’t exist.

Just as the phone company doesn’t eavesdrop on callers and isn’t liable for what is spoken over the telephone, web platforms are not forced by U.S. law to police material posted online and report suspected violations. The legal responsibility for user-generated content rests with the person who created the content. That said, the policy in Section 230 makes certain that a website will be liable for its users’ content if the website itself takes a hand in creating it. And a website will always be liable for third-party content that is in some way criminal.

Winning approval for these policies in trade agreements with countries that, unlike Mexico and Canada, rely upon government supervision and control of user-created content on the internet will always be difficult. But attacking the problem patiently and incrementally in each new trade agreement will help to reduce the overall threat to the global trading system. It’s a reasonable ambition to extend Section 230’s guarantees for social media, news sites and email in every nation where people wish to benefit from a truly worldwide web. Many among the WTO’s 164 members will agree.

—Chris Cox