

Legal Issues of Dealing with Online Censorship and Monitoring

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Two of the most discussed issues around the world today is censorship and monitoring online. Both of these have a direct impact on the rights of people. Since these have an issue on the rights of many people, ethical and legal issues arise from these topics. More specifically, with the rise of social media like Twitter, Instagram, and TikTok censorship and monitoring has now rapidly increased. Different countries have different ways they approach censorship as well as monitoring. Some may be strict on these compared to other countries. For example, censorship and monitoring in China is drastically different compared to here in the United States. In this paper, how censorship and monitoring affect United States citizens will be looked at as well as how the United States is different from other countries.

### **What is Censorship and Monitoring**

Censorship is the act of suppressing opinions or viewpoints on the basis of fear. This fear can be good or bad. An example of censorship being good would be what happened with *To Kill a Mockingbird* by Harper Lee. In *To Kill a Mockingbird*, there are many racial themes and wording which may not be appropriate for many interested in reading this book. It is important to make sure audiences are aware of what information they are going to take in to not be offended. However, censorship also has the possibility to be used for bad. An example of this would be what is occurring in North Korea. In North Korea, their government severely restricts any foreign media access (Rubinfeld, 2018). The North Korean government does not want foreign media present because it can drastically change the landscape of North Korea. North Korea is a totalitarian dictatorship so any influence from other countries might be enough for North Koreans to decide to fight for change. In North Korea now, North Koreans view Kim Jong Un as a god. As long as they censor foreign influence, this will likely remain the same for the foreseeable future.

Monitoring is the act of watching through technology. Examples of technology that is used to monitor would include security cameras, drones, and thermal imaging cameras. Monitoring has become a legal issue because how far the government can monitor without violating privacy has come into effect. It is absolutely imperative to have restrictions on monitoring to not violate privacy.

### **Relevant Legislation to Censorship**

When thinking of relevant legislation to censorship in the United States, one immediately comes to mind. This is the First Amendment of the United States Constitution. The First Amendment states: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble (U.S. Const. amend. I). The part of this Amendment that directly relates to censorship would be abridging freedom of speech and of the press. Within the past few years, censorship has been rampant on social media. However, censorship has been around for a while.

During World War I, the United States government proposed to the American people how joining the war would lead to positive outcomes and economic growth. While this was partially true, they were not properly showing the true negative outcomes into joining this war. The negative outcomes were censored by law. The Espionage Act of 1917 introduced by the United States attempted to completely remove any anti-war propaganda in the press (Engelman & Shenkman, 2022). The law was implemented to criminalize information deemed false or dangerous by the government that affected the war efforts. This is a direct violation of the citizens First Amendment rights of freedom of press because the United States government was controlling the narratives of the World War I. This was the first real effort of censorship at a great

scale in American history. Anti-war rallies and demonstrations could also be met with harsh retaliation from the government and made many United States citizens view anti-war citizens as anti-American.

### **Relevant Legislation to Monitoring**

There are multiple relevant legislations in the United States relating to monitoring. Two of these legislations are the Fourth Amendment and the USA Patriot Act of 2001. The Fourth Amendment relates heavily into what the United States government can monitor online. It states: “The right of the people to be secure of their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation (U.S. Const. amend. IV). The part of the Fourth Amendment that relates to online monitoring would be protecting citizens from unreasonable searches and seizures.

With technology abilities rapidly increasing by the minute, the ability to search and seize has become drastically easier. However, that does not mean the United States government has automatic access to search and seize. The first task the government has to do is to establish probable cause. Once probable cause is established, then law enforcement must go upon a judge to request a warrant. In this warrant request submitted by law enforcement, they must include what parameters they will be looking at in their possible search. They cannot search outside of the parameters requested or else the information gathered will be inadmissible to the court. In rare circumstances, consent could be given to widen the parameters of the search. However, a person has the ability to withdraw consent at any point during the search. If the judge reviews the warrant request and views it as reasonable, then law enforcement will be able to search and seize

what they requested to search or seize. However, not everyone is protected by the Fourth Amendment.

An issue with the Fourth Amendment is who would classify under its protection and who would not. In *United States v. Verdugo-Urquidez*, it was determined a person must have sufficient connections to the United States of America to be protected by the Fourth Amendment (Kerr, 2015). Internet surveillance has risen in many countries due to cybercrime and issues with cybersecurity. Governments want to be in front of any potential dangers to their systems and data. Monitoring potential risks is important to the United States, however they have to restrict how they monitor by the parameters set by the Fourth Amendment. These restrictions are not in place in many countries around the world which makes it drastically easier for monitoring and surveillance to occur.

While the USA Patriot Act does not directly tie to online monitoring, it brought up significant debates and issues of how far the United States government can monitor their citizens. After the horrific 9/11 Attacks, the United States government realized they needed to drastically increase the monitoring of their citizens to protect them from potential risks. In 2001, the United States believed there were going to enter an extremely difficult war with Afghanistan. More specifically, the United States was going to fight Al-Qaeda and the Taliban. The first order of action after the 9/11 attacks was to severely monitor airports. Airport security at this point in time was drastically different compared to after 9/11. The only security set in place was occasional ID checks and the use of metal detectors. Now, if someone wants to travel on a plane it requires then to go through numerous hoops to then allow them to be on a plane. The United States developed a risked-based approach to counter potential threats (Herbelles & Lawrence, 2023). Risked-based approaches prioritize identifying potential threats and putting in place

measures to combat them before they happen. However, many people have argued it has come with an invasion of privacy. This then set into motion the question of just how far the United States government was allowed to go for monitoring.

### **Sanctions**

Sanctions play a significant factor into a how a countries tackle the issues of censorship and monitoring online. The United States has recently set in place a TikTok ban proposal due to issues about privacy and danger from influence from China (MSUToday, 2025). The United States does not want to ban TikTok, however they want ByteDance to sell TikTok to an American buyer. ByteDance is a Chinese company that has created many different video apps but there most popular is TikTok. The influence from the Chinese government worries the United States government because the collaboration between ByteDance is alarming when so many Americans have their information on the app. Also, the Chinese government could have some impact onto what is being displayed to an individual TikTok feed. The United States inability to censor what is being displayed to users on TikTok has allowed most of the propaganda and hate speech to flow rampant.

### **Differences in Enforcement in the United States vs the World**

The United States drastically differs in enforcement of censorship and monitoring online compared to other countries around the world. This is mainly because both Democratic and Republican parties abide by the United States Constitution. They may ask for some change to some of the Constitution, but they take an oath to protect and defend the Constitution of the United States. This oath requires them to follow the rules the Constitution hold which makes enforcement on censorship and monitoring online extremely difficult. However, in countries like

China, their enforcement of monitoring and censorship is drastically different and invasive compared to the United States.

China is the second biggest country in the world in terms of their population. They have extremely loose laws in terms of what surveillance and censorship they do. One of the biggest issues arising in China is what many people believe to be an absolute invasion of privacy. China now has extremely advanced facial recognition technologies they have implemented across the country. These technologies are so advanced they are able to detect an individuals' body temperature (Su et al., 2022). While these were implemented to prevent the spread of COVID-19 across China, it sparked the debate on just how advanced technology systems are becoming in China and how invasive they can be.

### **Pros and Cons of Current Technology in the United States**

Technology advancements have made online censorship and monitoring for the United States severely more difficult. Pros of current technology for the United States is using firewalls and IP blocking. Firewalls help the United States censor and monitor online traffic deemed too dangerous for United States citizens to see. To the average American, firewalls are basically impossible to bypass. Bypassing government firewalls is a criminal offense so many will not find it worth it. IP blocking works by seeing if an IP address is linked to the United States of America and bans it if the government restricts its access. This technology is pretty effective and limits undesired traffic.

Technology use for censoring and monitoring has also come with plenty of cons. For some, buying and using a VPN could bypass any government restrictions. VPNs are private networks where its users can bypass restrictions set by a government. An example of this would

be a VPN user from Germany. In Germany, many videos about Hitler have been banned from being able to be seen from the public. However, a user can set their location to a country like Sweden on a VPN and watch any restricted videos from Germany.

Technology advancements have made opportunities for cybercriminals to create disaster. When data or information is in the hands of the wrong people, they can monitor and censor what they should not have access to. An example of this would be someone doing a DoS attack. In a DoS attack, a user overwhelms a network in order to possibly take control or severely slow down traffic (Amiri & Soltanian, 2015). People do this in hopes of obtaining a profit for blackmail or for personal grudges.

### **Current State of Affairs**

The current state of affairs in the United States censoring and monitoring is very confusing. While the United States have Amendments in place protecting citizens from punishment for using their rights, private companies have different rules set in place. They have the ability to censor anything online as long as no lawful wrongdoing has occurred. Also, private companies are able to monitor their employees to ensure workplace efficiency. They use information systems to monitor workplace efficiency. Bring Your Own Device complicates this, however when a user connects to the Wi-Fi, then a private company can see what they want to see.

A big issue in censorship today in the United States is censoring relating to medicine. Many of the big medical companies rely on prescriptions for their profits. Since they rely on these for profits, medical companies may overexaggerate symptoms and give medications that an individual may not need. Online many people share different ways to counteract certain

sicknesses or injuries naturally or with supplements. However, this advice is typically censored and severely monitored for the ability to make more money off of prescriptions. It is vital to find ways to make people fully understand other possible solutions to help their body rather than go to immediate medication.

### **Potential Changes**

Potential changes to censorship and monitoring in the United States online will definitely change in the foreseeable future. With technology advancement rapidly increasing, potential changes must keep up with the times. A few potential changes that will be seen in the United States will be artificial intelligence implementation and policy changes due to public scrutiny. AI implementation will change the way private companies can censor by making it easier to control systems that provide censorship. Policy changes have recently begun to face heavy criticisms through social media, most specifically on Twitter. There have been a few instances where companies face criticisms online from viral online post which then puts the company in a vulnerable position. In this vulnerable position, private companies may have to change the policies then have in place. This is because the number one most important factor to a business is their customer's respect and trust.

### **Conclusion**

In conclusion, the United States has many pros and cons in terms of their censorship and monitoring online. Compared to many other countries around the world, there are laws set in place that protect United States citizens from unreasonable punishments. However, these protections by the United States Constitution do not extend to private companies. It is absolutely

imperative to discuss the issues of censorship and monitoring and ensure the rights of United States citizens are not violated.

## References

Amiri, I. S., & Soltanian, M. R. K. (2015). *Theoretical and experimental methods for defending against ddos attacks*. Elsevier Science & Technology Books.

Engelman, R., & Shenkman, C. (2022). *A century of repression: The espionage act and freedom of the press*. University of Illinois Press.

Herbelles, N., & Lawrence, A. (2023). Lessons Learned from 11th September 2001 (9/11): A Comparison of Aviation Security and Health Crisis Response. *Journal of Airport Management*, 17 (2), 149-160. <https://doi-org.proxy.lib.odu.edu/10.69554/ubqx7989>

KERR, O.S., 2015. THE FOURTH AMENDMENT AND THE GLOBAL INTERNET. *Stanford Law Review*, 02, vol. 67, no. 2, pp. 285-329 ABI/INFORM Collection. ISSN 00389765.

Rubinfeld, S. (2018). *U.S. Targets North Korean Censorship With Sanctions; Move comes alongside a State Department report on human-rights abuses and censorship in North Korea*. Dow Jones & Company Inc.

Su, Z., Cheshmehzangi, A., McDonnell, D., Bentley, B. L., Claudimar Pereira, d. V., & Yu-Tao, X. (2022). Facial recognition law in China. *Journal of Medical Ethics*, <https://doi.org/10.1136/medethics-2022-108130>

U.S. Constitution | Constitution Annotated | congress.gov | Library of Congress. (n.d.). <https://constitution.congress.gov/constitution/>

*US Supreme Court Tiktok Ban Case: MSU experts Can Comment.* MSUToday. (2025, January 17). <https://msutoday.msu.edu/news/2025/us-supreme-court-tiktok-ban-case-msu-experts-can-comment>