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KID GLOVES AT THE KEYBOARD

DEFAMATION CHARGES THREATEN FREEDOM OF SPEECH IN ASIA

Paul Linnarz

Concerns are growing in Asia about offensive and extremist material on the internet. New laws have been passed to remedy this, but they have collided with the ways that search engines, social networks and internet cafes run their operations. These service providers have therefore been resisting calls for self-censorship, and the media are worried that press freedom and freedom of speech will be put at risk. The threat of retribution could lead to even more content disappearing from the Web than is actually stipulated by law.

"ENEMIES OF THE INTERNET" IN ASIA

Since 12 March this year, India has been under surveillance. Asia's largest democracy has of course never failed to attract international attention, but now journalists from all over the world are closely monitoring how the subcontinent is dealing with its internet users. In its *Enemies of the Internet* report published in March each year on the World Day against Cyber Censorship, Reporters Without Borders (RWB) for the first time placed India in the category of countries that are "under surveillance".¹ The only countries that are given a worse ranking are those that gave the report its name, including Saudi Arabia, Syria, Cuba, Iran and Uzbekistan, where both internet and press freedom are equally dire.

1 | Cf. Reporters without Borders (ed.), *Enemies of the Internet: Report 2012*, <http://en.rsf.org/beset-by-online-surveillance-and-12-03-2012,42061.html> (accessed 22 Jun 2012).

In 2011, RWB ranked India 131st in its annual “Press Freedom Index”. This is by no means the worst in global terms: compared to many other Asian countries India is reasonably well-placed. The Philippines were ranked 140th and Indonesia 146th. These two island nations are, however, considered by Asian journalists to have a relatively free media landscape, with countries such as Myanmar (169th), Vietnam (172nd), China (174th) and North Korea (178th) being much more restrictive on what can be reported.

Compared to many other Asian countries India is reasonably well-placed in press freedom. The Philippines were ranked 140th and Indonesia 146th.

In this context, India would not have attracted any special mention in this year’s *Enemies of the Internet* report if it had not been for Jayant Chaudhary, MP for the northern Indian constituency of Mathura. In September 2011, in the Indian parliament, the Lok Sabha, he criticised the laws controlling the internet as being “discriminatory” and claimed that the laws passed the previous April restricted freedom of speech.²

Indeed, it seems amazing that there had not been an immediate outcry from India’s fast-growing online community at the time that these tighter laws were passed without any wider consultation. Based on the Information Technology Act of 2000, internet users are forbidden by the new regulations to “host, display, upload, modify, publish, transmit, update or share any information that [...] is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another’s privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling or otherwise unlawful in any manner whatever [...]”.³

Mr Chaudhary criticised these criteria as being “subjective”. Many journalists feel the attributes listed above could be better described as “arbitrary”. After all, how can you write a biting commentary or satirical article or draw

2 | Cf. Minutes of the parliamentary session held on 6 Sep 2011, 37, <http://164.100.47.132/newdebate/15/8/06092011/Fullday.pdf> (accessed 22 Jun 2012).

3 | Cf. Ministry of Communication and Information Technology of India (ed.), “Information Technology (Intermediaries guidelines) Rules”, 2011, 12, http://mit.gov.in/sites/upload_files/dit/files/RNUS_CyberLaw_15411.pdf (accessed 22 Jun 2012).

a political cartoon without the individuals or institutions affected automatically feeling “defamed” or “disparaged”? Without recourse to laws on press freedom and freedom of speech the allegations can hardly be rebutted.

In other areas, such as pornography or material that is invasive of another’s privacy, there were and still are laws that apply to both the internet and to “real life”. Apar Gupta says: “[An article] may offend you today, it may not cater to your taste, but at the end of the day: is it legal?” This New Delhi lawyer, who specialises in internet law, calls the new proposals a “dramatic change, not only in terms of enforcement, but also in terms of what kind of speech it will prohibit.”⁴



“He wants to be judge, jury and executioner”: Kapil Sibal, India’s Minister of Communications and Information Technology, is under fire. | Source: Eric Miller, World Economic Forum (CC BY-SA).

This not only relates to the content itself, but also to the way it is displayed. Indian newspaper journalists do not have to fear being accused of blasphemy for their print articles. But, as Chaudhary pointed out in parliament last September, as soon as the article appears online, the new laws mean that anyone who saves, publishes or shares the article can be targeted by the judiciary.

4 | Cf. Elliot Hannon, “India’s Techies Angered Over Internet Censorship Plan”, *NPR*, <http://npr.org/2011/12/28/143600310/indias-techies-angered-over-internet-censorship-plan> (accessed 22 Jun 2012).

This also includes the intermediaries of internet content. This means any person who, on behalf of another person, “receives, stores or transmits that message or provides any service with respect to that message”.⁵ The intermediaries are obliged to refer to the legal provisions that are in force and ensure they are upheld. This includes legal entities (i.e. institutions) as well as every Indian citizen. This is at least how it is construed by Kapil Sibal, the Minister of Communications and Information Technology, who the Indian press have branded a kind of supreme moral guardian: “He wants to be judge, jury and executioner”.⁶ According to Sibal, intermediaries for providing access to online information not only include internet cafes, but also search engines and social networks.

According to a report in *The New York Times*, in early December Sibal met with the Indian offshoots of Google, Microsoft, Yahoo and Facebook, apparently in the wake of other similar discussions held over the preceding weeks. None of the parties concerned were prepared to comment on any of the details. However, *The New York Times* claimed to have learned that the minister demanded that the companies carry out proactive pre-screening of internet content. In order to do this, the companies are expected to install a suitable software filter and put staff in place to search the internet for “objectionable content” and delete it before it is posted – thus, before there are any specific complaints.⁷

The New York Times claimed to have learned that Sibal demanded that the Indian offshoots of Google, Microsoft, Yahoo and Facebook carry out proactive pre-screening of internet content.

According to the *Times of India*, Yahoo did not wish to comment on the minister’s demands, and no spokesperson for Microsoft was available. However, a spokesperson for Google India commented: “We work really hard to make sure that people have as much access to information as possible, while also following the law. This means that when

5 | Cf. Information Technology Act, 2000, Section 2(1)(w), <http://indiankanoon.org/doc/123163> (accessed 22 Jun 2012).

6 | Cf. Shivam Vij, “Kapil Sibal doesn’t understand the Internet”, *India Today*, 7 Dec 2011, <http://indiatoday.intoday.in/story/kapil-sibal-for-monitoring-offensive-content-on-internet/1/163107.html> (accessed 22 Jun 2012).

7 | Cf. Heather Timmons, “India Asks Google, Facebook to Screen User Content”, *The New York Times*, 5 Dec 2011, <http://india.blogs.nytimes.com/2011/12/05/india-asks-google-facebook-others-to-screen-user-content> (accessed 22 Jun 2012).

content is illegal, we abide by local law and take it out. [...] But when content is legal and does not violate our policies, we will not remove it just because it is controversial, as we believe that people's differing views, so long as they are legal, should be respected and protected.⁸

THE INDIAN JUSTICE SYSTEM AND INTERNET COMPANIES ARE PLAYING PATBALL

The hostile attitude of Google in India of course not only comes down to a desire to promote diversity of opinion.

For example, how can content that includes the word "sex" be deleted when it also has the meaning of "gender" on online forms?

There are also some very concrete technical problems involved in meeting the demands of the Minister for Communications. For example, how can content that includes the word "sex" be deleted when it also has the meaning of "gender" on online forms? Mr Sibal has of course recognised this problem, which is why he is also insisting on human filters to work alongside software filters. The technology is not yet sophisticated enough to filter content intelligently and in context.

In China, where half a billion people currently surf the net under strict surveillance, it is claimed that there are already tens of thousands of "cyber police" acting as human filters. At the moment, India "only" has a little over 100 million internet users, but they already produce a huge amount of search results, blog entries and Facebook posts. So if the Minister's demands are to be met, the online companies will have to invest heavily in extra staff. And regardless of how strict the controls may be, there would be no light at the end of the tunnel for the internet companies. Just like in China, India's online community is growing at breakneck speed: in three years there are likely to be 300 million Indians online. This would mean the companies' outlay for content filtering would quadruple.

8 | "Kapil Sibal warns websites; Google says won't remove material just because it's controversial", *The Times of India*, 6 Dec 2011, <http://timesofindia.indiatimes.com/tech/news/internet/Kapil-Sibal-warns-websites-Google-says-wont-remove-material-just-because-its-controversial/articleshow/11008985.cms> (accessed 22 Jun 2012).

This is why the commercial online service providers are vehemently opposed to having to completely block offensive content, saying that it strikes at the heart of their business model. In January, a lawyer for Google's Indian unit argued in court that: "The search engine only takes you till the website. What happens after that is beyond a search engine's control".⁹ Similar positions have been taken by Facebook, YouTube, Yahoo and Microsoft, saying that as intermediaries they are not responsible for external online content; this burden falls on the users and the operators of the external websites. Judge Suresh Kait remained unimpressed by their arguments: "Like China, we will block all such websites", he warned, by which he was not referring to the originators of offensive material but the search engines and social networks that often allow it to attract a great deal of attention.¹⁰

In early March, first Microsoft then Yahoo managed to win separate cases, not with arguments based on principles but thanks to a legal detail: the lawyers for the two companies were able to prove that the controversial content that was the subject of the lawsuit had in fact never appeared on Microsoft or Yahoo websites. This meant the charges had to be dropped.

In April, Google also posted a victory. But again, it was not about the basic question of whether intermediaries are also responsible for illegal external content, but came down to a formality: the civil action was dropped because the Indian Google unit operates as "software developers" in the local market. However, the US parent company was deemed to be responsible for the publication of internet content. So while Google India is off the hook for the time being, the civil action against Google in the USA is still pending.¹¹

The civil action was dropped because the Indian Google unit operates as "software developers" in the local market.

9 | Cf. Arup Roychoudhury, "REFILE-Internet giants oppose Web Control in India Court", *Reuters*, 16 Jan 2012, <http://reuters.com/article/2012/01/16/india-websites-idUSL3E8CG2OK20120116> (accessed 22 Jun 2012).

10 | "We'll do a China, HC warns Facebook, Google", *Hindustan Times*, 12 Jan 2012, <http://hindustantimes.com/StoryPage/Print/796243.aspx> (accessed 25 Jun 2012).

11 | Cf. John Ribeiro, "Court drops Google India from objectionable content case", *IT World*, 13 Apr 2012, <http://www.itworld.com/internet/267644/court-drops-google-india-objectionable-content-case> (accessed 25 Jun 2012).

The Facebook case could take a similar route, depending on the role that the local subsidiary plays within the group as a whole. As at the end of April, the Indian version of the social network and the American parent company were being targeted by the Indian courts. Facebook and other Indian websites are also facing criminal charges in parallel to these civil actions.

The criminal lawsuits of course are being viewed by large swathes of the media and by international NGOs as an attack on press freedom and freedom of speech. It has been made all the more juicy by the fact that it was filed by an Indian journalist. Vinay Rai holds a senior position at the weekly newspaper *Akbari* in New Delhi. The content that is the subject of the case "seeks to create enmity, hatred and communal violence" and, according to him, "will corrupt minds".¹²

Just like Kapil Sibal, India's Minister for Communications, Vinay Rai sees his challenge not as a plea for greater censorship, but as a necessary alignment with international protective mechanisms. The 39-year-old journalist claims that "the West has proper mechanisms in place regarding posting material on the internet, but it does not practice a similar system in India".¹³ He says that the right to freedom of expression is important to him, but says: "It's not use, but abuse of freedom which I am against".¹⁴

THE INTERNET IS OFTEN CONTROLLED MORE EFFECTIVELY IN OTHER ASIAN COUNTRIES AND IN THE WEST

Despite all his protests to the contrary, Vinay Rai is now known in the media as the "Censorship Crusader".¹⁵ But it is easy to overlook the fact that he is actually doing the social networks and search engines, perhaps even the internet

12 | Complaint on 15 Dec 2011: "Vinay Rai v. Facebook India and Ors.", *Outlook*, 20 Feb 2012, <http://outlookindia.com/article.aspx?279956> (accessed 25 Jun 2012).

13 | Cf. Danish Raza, "Vinay Rai vs Facebook: Govt uses courts to censor the Internet", *Firstpost*, 13 Jan 2012, <http://firstpost.com/india/vinay-rai-vs-facebook-govt-uses-courts-to-censor-the-internet-181603.html> (accessed 25 Jun 2012).

14 | Cf. Anmol Saxena, "Q&A with 'censorship crusader' Vinay Rai", *Aljazeera*, 18 Jan 2012, <http://aljazeera.com/indepth/features/2012/01/2012118614062262.html> (accessed 25 Jun 2012).

15 | Ibid.

community as a whole, a favour. He is lobbing the ball back to the Indian legislature and judicial system, a theory that is supported by Google's *Transparency Report*.¹⁶

Broken down into countries and six-month periods, the report provides figures relating to content removal requests for the period from mid-2009 to mid-2011.¹⁷ This relates to requests made to the search engine operators to remove certain content from their company's internet pages. In the case of Google, this also includes content posted by their subsidiaries YouTube, Orkut, Blogger and Picasa.

In its report, Google combines all these requests under the heading "government requests". But this does not tell the whole story, as it is not only governments and state authorities that are making the requests, but in some countries they also come from the courts and law enforcement agencies. This might include the police, the public prosecutor, the customs authorities and the tax investigation office.

Along with the number of requests made by each country, the report also provides details of how many individual items were included in these requests. In the case of Thailand, a single government request in the second half of 2010 included 43 individual items (see table 1). Conversely, several requests can be made relating to the same item, but this is not clear from the statistics.

The *Transparency Report* also lists the percentage of government requests that the company has fully or partially complied with. For example, according to Google, many of the 139 requests in South Korea came from the Korean Information Security Agency. These requests related to over 30,000 items, which were all fully or partially removed (see table 1).

At first glance, the large amount of internet content removed in South Korea corresponds to the fact that the latest RWB report on *Enemies of the Internet* places the country alongside India as being "under surveillance". But on closer inspection it becomes clear that the latest

16 | Cf. *Google Transparency Report*, <http://google.com/transparencyreport> (accessed 25 Jun 2012).

17 | Valid at time of writing, no information available for the next period.

Reporters Without Borders report and Google's *Transparency Report* cannot be considered interchangeable. Whereas the Google report is based exclusively on its own statistics, the NGO also takes into consideration the legal and political circumstances of the countries in question, including attacks on or arrests of critical internet journalists and bloggers. In the Asia-Pacific region, Thailand, Malaysia, Kazakhstan, Sri Lanka and Australia are all "under surveillance" by RWB, whereas Google has received no or very few content removal requests from these countries (see table 1).

Google is not allowed to publish all the details. For example, China treats all requests from its censorship authorities to media companies and internet service providers as state secrets.

In light of this imprecision, the data in the *Transparency Report* should be viewed with some caution. It should also be borne in mind that Google is not allowed to publish all the details. For example, China treats all requests from its censorship authorities to media companies and internet service providers as state secrets. As a result, the report only lists a few figures for China in the first six months of 2011 because the Chinese google.com.cn has now limited itself to censorship-free activities such as music and translation, and these are only accessible via its Hong Kong address (google.com.hk).

But despite these limitations, the *Transparency Report* is still very revealing. The first thing that stands out is the fact that Google also receives content removal requests from countries that enjoy a high level of press freedom. For example, in the first six months of 2011, the number of content removal requests and affected items in Germany were much higher than in the countries of the Asia-Pacific region (see table 1). In the same period in the USA, Google received 92 requests and had to remove 757 items from its pages – again, more than in most Asian countries.¹⁸

It is also striking that Google complied with 97 per cent and 86 per cent of requests in Germany (see table 1). The internet giant also complied with 96 and 78 per cent of requests from the authorities in France and with 89 and 82 per cent of requests in the UK.

18 | Cf. *Google Transparency Report*, <http://google.com/transparencyreport/governmentrequests/US> (accessed 25 Jun 2012).

Table 1

Google Transparency Report

	Content Removal Requests		Items requested to be removed		Removal requests fully or partially complied with (in per cent)	
	Jul - Dec 2010	Jan - Jun 2011	Jul - Dec 2010	Jan - Jun 2011	Jul - Dec 2010	Jan - Jun 2011
Australia	< 10	10	<10	10	80	40
Cambodia	0	0	0	0	0	0
China	0	3	0	121	0	67
Germany	118	125	1.932	2.405	97	86
Hong Kong	< 10	0	<10	0	100	0
India	67	68	282	358	22	51
Indonesia	0	< 10	0	< 10	0	0
Japan	26	0	38	0	50	0
Kazakhstan	0	0	0	0	0	0
Malaysia	< 10	< 10	< 10	< 10	50	0
New Zealand	< 10	< 10	< 10	< 10	100	60
Pakistan	< 10	< 10	< 10	< 10	0	0
Singapore	< 10	0	< 10	0	0	0
South Korea	139	88	32.152	646	100	84
Sri Lanka	0	< 10	0	< 10	0	100
Taiwan	< 10	69	< 10	115	25	12
Thailand	1	2	43	225	100	100
Vietnam	< 10	0	< 10	0	0	0

Source: *Google Transparency Report*, n. 16.

The figures support the assertion of Vinay Rai, India's "Censorship Crusader" that the West not only has proper mechanisms in place regarding posting material on the internet, but also practices them. In contrast, in the first six months of 2011, Google only complied with half of all removal requests in India. This means that for every second request, the company told the relevant authorities in India

that it had no problem with the online content and therefore was not prepared to remove it. In the preceding six months, the number of requests fully or partially complied with was just 22 per cent. It is not hard to imagine how India's Minister of Communications, Kapil Sibal, reacted to Google's very independent sense of justice.

But why does this happen? Why does Google comply fully or to a large extent with the content removal requests in many Western countries, and also in Thailand and South Korea, (see table 1), while the requests of countries like India and Taiwan just seem to be hitting a brick wall? The *Transparency Report* also provides us with a few clues in this respect.

COMPLAINTS AGAINST OBJECTIONABLE INTERNET CONTENT OFTEN ON SHAKY GROUND

For Germany, the report names the Federal Department for Media Harmful to Young Persons (Bundesprüfstelle für jugendgefährdende Medien, BPjM) as the originator of the complaints. The content removed by Google as a result of these requests "violates German youth protection law, like

content touting Nazi memorabilia, extreme violence or pornography".¹⁹ In Thailand, the only country with a 100 per cent compliance rate for both periods of the report, Google states that the removal requests came from the Ministry for Information, Communication

and Technology. All the complaints related to content that was "mocking or criticizing the king in violation of Thai lèse-majesté laws".²⁰ Google users in Thailand were then blocked from accessing this information, but it remained available to users outside the country.

For India, on the other hand, according to the *Transparency Report* requests had been received from "various law enforcement agencies". These related to a blog and YouTube videos criticising leading politicians and the Chief Ministers

In Thailand, the only country with a 100 per cent compliance rate all the complaints related to content that was "mocking or criticizing the king in violation of Thai lèse-majesté laws".

19 | Cf. *Google Transparency Report*, <http://google.com/transparencyreport/removals/government/DE/?p=2011-06> (accessed 25 Jun 2012).

20 | Cf. *Google Transparency Report*, <http://google.com/transparencyreport/removals/government/TH/?p=2011-06> (accessed 25 Jun 2012).

of some of the federal states. According to Google's own statements, it did not comply with these requests in the second six months of 2010. In the following six months the Indian subsidiary continued to receive removal requests from various law enforcement agencies, again relating to YouTube videos that allegedly insulted religious leaders. Again, Google largely failed to remove this content, though the company claims that it blocked local access to some of the videos, particularly in cases "that appeared to violate local laws prohibiting speech that could incite enmity between communities".²¹

The aim of this article is not to cite each individual complaint and Google's response to them. The *Transparency Report* can, however, provide an indication of who has made what complaints in which country. The high compliance with content removal requests in Germany, Thailand and South Korea display some common criteria: in all three countries the majority of requests were sent to Google by a single authority or government office. In contrast, the Indian requests came from various law enforcement agencies. In Thailand, Germany and South Korea the notifications related to national laws covering the whole country, whereas in India they were also linked to local regulations. In Germany (and also South Korea) the facts left little room for interpretation. The internet content in question related to Nazi memorabilia, extreme violence and pornography, and Google would have had no chance of winning an appeal in court.

In Thailand, Germany and South Korea the notifications related to national laws covering the whole country, whereas in India they were also linked to local regulations.

In contrast, "defamation" in the legal sense is not a "matter of taste", but often it inevitably leads to conflict with press freedom and freedom of speech. Whether everything that is claimed to be *lèse-majesté* in Thailand actually disparages the royal family remains to be seen. But one thing is clear: the Thai justice system is very sensitive to any form of *lèse-majesté* but also – more seriously – it imposes very severe penalties. Anyone convicted of insulting the king will end up spending many years behind bars. Tens of thousands of websites in Thailand have been blocked

21 | Cf. *Google Transparency Report*, <http://google.com/transparencyreport/removals/government/IN> (accessed 25 Jun 2012).

or removed over recent years because of the country's lèse-majesté laws. So it is hardly surprising that Google has meekly complied with all the content removal requests made by the Ministry of Information in Bangkok. However, outside of Thailand, where the internet giant is protected from Thai justice, there is more diversity of opinion about the king and the royal family and the controversial content remains accessible. This is also how Google operates in India.

In cases where the laws only apply to a particular federal state, then only local users are blocked, while the content remains available in the rest of India.

In case the legal situation is relatively clear-cut and the internet company can expect a complaint to be upheld in court, Google makes sure objectionable material disappears from its sites. In cases where the laws only apply to a particular federal state, then only local users are blocked, while the content remains available in the rest of India. And when the legal department at Google India believes a complaint is on shaky ground and can be contested, then the company regularly refuses to remove the content on the basis of freedom of expression.

The fact that complaints from the Indian law enforcement agencies are often "blown off" by Google compared to other countries in Asia and the West leads to the conclusion that the sub-continent's legal system deals with allegations of defamation in a different way to, say, Thailand with respect to its king. It certainly seems that Google, Facebook, Twitter, Yahoo and Indian website operators who have also come under attack are often able to prevail when such cases go to court.

The whole issue is complicated by the fact that the stricter regulations introduced last year apply to internet content but not to the traditional media. The question has arisen as to why newspapers, radio and television are still allowed to operate relatively freely and are immune from such complaints. In Thailand, cases of lèse-majesté are always prosecuted, irrespective of whether they occur on the internet, in a newspaper article or at a rally in the town square.

It is precisely for this reason that the Indian journalist Vinay Rai has done the sub-continent's online community a favour by lodging his recent complaint. The above-cited

examples show that Google tends to make its decisions on a case-by-case basis. Like the other search engine operators and social networks, it obviously takes action (despite its emphasis on the primacy of diversity of opinion) when the legal situation makes it unavoidable, the laws are clear, potential penalties would be painful and when it seems pointless to file an objection. The question of which laws actually back up the action against illegal content is immaterial.

Unlike Reporters Without Borders, Google, Facebook & Co. do not assess the laws and penalties imposed by the various countries in line with overriding criteria. From an in-

From an international point of view, the Thai laws on lèse-majesté compromise press freedom and freedom of speech.

ternational point of view, (and also increasingly in the country itself), the Thai laws on lèse-majesté compromise press freedom and freedom of speech. Many international observers feel the rigid application of the law and the attendant draconian penalties violate Article 19 of the Universal Declaration of Human Rights on the right to freedom of opinion and freedom of information. But Google would not wish to use this argument as a reason to withdraw from the Thai market. It would take a lot more than that.

Google has certainly given up the fight in China, pointing to the censorship demands made in 2010, but nobody should be under the illusion that this step was taken solely for reasons of protecting pluralism of opinion. It was the filtering process that the government in Beijing so intractably demanded from Google that was the problem, as it threatened the company's entire business model. If filters are applied too strictly, it is then impossible to identify what really interests the user. And if Google is unable to find this out, it can no longer target its advertising effectively. However, the situation in Thailand and India is still a long way off reaching this point.

In these two countries, as everywhere else in the world, the search engines, microblogging services and social networks first and foremost want to make money, and they are prepared to make use of all their legal "wiggle room". So why should Google and its domestic and international competitors immediately give in to every complaint? The benefit to the company of avoiding a few court cases would

not outweigh the damage caused to their business by complying too readily with restrictions to the range of information they provide. Google, Facebook & Co. have to first of all reject all complaints that are not 100 per cent legally watertight but that could still reduce customer value. This is just the way it is, and they should not be condemned for it.

It is incumbent upon the law-makers to set clear rules so that the judiciary knows what decisions it has to make. Then even a huge company like Google cannot get around them without risking losing its licence in particular countries. It all comes down to the question of "Is it legal?" in that particular location. With his complaint, the newly-crowned "Censorship Crusader" Vinay Rai really touched a sore spot, because in India, as in many other Asian countries, there is a lack of clear rules in this respect.

The situation in Malaysia is strikingly similar to that in India, perhaps with the difference that the Malaysian "netizens" have been more sensitive and reacted much more quickly.

Malaysia is also grappling with this problem at the moment. The situation there is strikingly similar to that in India, perhaps with the difference that the Malaysian "netizens"

have been more sensitive and reacted much more quickly. They are now also fighting against a tightening of the existing laws. The main bone of contention is the amendment to the Evidence Act of 1950 that was passed in April by the parliament in Kuala Lumpur. The new paragraph 114a²² stipulates that "A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved". This also expressly applies to any person who publishes or republishes this information in a "network service" – which means Facebook and Twitter users. And according to the new laws, anyone who owns or controls a computer that is used to put information on the Web is responsible for the publication and republication of the relevant material unless proven otherwise, so this would affect internet cafes, for example.

22 | Cf. Malayan Parliament, Evidence Act 1950, <http://www.parlimen.gov.my/files/billindex/pdf/2012/DR162012E.pdf> (accessed 25 Jun 2012).

In Malaysia, as in India, the new law is designed to prevent the circulation of defamatory, libellous or extremist content on the internet. The government in Kuala Lumpur is particularly keen to deal with illegal information that is posted anonymously or under a pseudonym. But in Malaysia too, there are doubts as to whether the right way to do this is through self-censorship of internet companies and users, as is the case with the new regulations.

Referring to the still-valid paragraphs in the law relating to the telegraphic transmission of messages, *The Star* has asked why court proceedings cannot be initiated against those sending messages using the old transmission methods while it is now allowed against those sending e-mails or writing blogs. According to *The Star* it is much easier these days to tamper with an e-mail than it was to alter a telegram in the past. Internet users now had to turn to "computer forensics" to prove their innocence in court.²³ In an online petition, the Malaysian Centre for Independent Journalism has argued against the new laws, saying that hackers and cyber criminals can now shift the responsibility onto the user of a computer that has been tampered with: "The more skilled you are at hacking, the more the law protects you by assuming the party being hacked is guilty of the offence."²⁴

One of the thorniest problems faced by Malaysia and India alike is the fact that it is simply not possible to monitor 24/7 what is published and shared by the virtual friends and followers of blogs and forums and on Facebook and Twitter. With this in mind, the online edition of the Malaysian daily newspaper *The Sun* asks: "Is there a reasonable timeline to allow people to remove offensive, libellous or seditious comments? If something is posted by others on your wall [on Facebook] and you remove it within say, 24 hours, will you still be liable? Or is there no grace period?"²⁵

23 | Cf. Dzof Azmi, "The burden of proof", *The Star*, 10 June 2012, <http://thestar.com.my/lifestyle/story.asp?file=/2012/6/10/life/focus/11445363&sec=lifefocus> (accessed 25 June 2012).

24 | Cf. "Netizens against Evidence (Amendment) (No2) Act 2012", Centre for Independent Journalism, 31 May 2012, <http://gopetition.com/petitions/1million-malaysians-against-evidence-amendment-no2.html> (accessed 25 Jun 2012).

25 | Cf. Oon Yeoh, "Uncertainties of the Evidence Act", *The Sun Daily*, 6 Jun 2012, <http://thesundaily.my/news/399289> (accessed 25 Jun 2012).

Restaurant operators in Kuala Lumpur should also be worrying about this issue. Since January, restaurants larger than 120 square metres are required to provide their customers with wireless internet access. According to radio journalist Jeff Sandhu, these restaurants also fall under the new paragraph 114a: "If you are running a restaurant in Kuala Lumpur and, by law, you are required to have public WiFi, you might as well walk to jail or walk to the cops and say 'Arrest me!'"²⁶

Article current as at 16 June 2012.

26 | Cf. "WiFi providers caught between Evidence Act, DBKL", *Yahoo News*, 13 May 2012, <http://my.news.yahoo.com/wifi-providers-caught-between-evidence-act-dbkl-050810238.html> (accessed 25 June 2012).