

Transparency reporting for governments in three easy steps

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Introduction

The Internet has become a central tool for free expression, trade, commerce, creativity and research. In short, it has become part of our daily lives. The way a government regulates and surveil the Internet matters a lot to its citizens, but is often opaque and hard to follow. The laws themselves may be clear, but the extent to which these laws are applied is harder to evaluate.¹

We propose that governments report on legislation in their country that surveils and restricts access, content, or communication on the Internet. We will walk through the arguments for transparency reporting, discuss what a minimum effort looks like, how governments can then scale up and ultimately organize around transparency.² We will also touch on issues of how the idea of transparency reporting can be standardized and brought into trade and technical systems.

Arguments for transparency reporting

¹ See for more information on the state of Internet freedom the UN rapporteur Frank La Rue's work <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>

² We note that there are companies that do this. Notably Google at <http://www.google.com/transparencyreport/> providing data on government requests for user data and take downs as well as traffic graphs for its services.

Transparency is well-known for its beneficial effects on systems of governance. Organizations like Transparency International and Sunlight Foundation drive more transparency in order to ensure that citizens have more information about what their governments are doing, and they do so to keep our societies open, free from corruption and nepotism.³

This leads us to the first reason for transparency reporting: it allows for a clear and distinct boundary to be drawn between legitimate and illegitimate restrictions on access, content, and communication. We believe that where a democratically made decision to restrict any of these is made and can be challenged, we should accept the decision and argue against it.⁴ But for those countries that are unable or unwilling to report on their exercise of power in a way that is compliant with the rule of law, transparency reporting clearly calls them out in a special category. Not all limitations of Internet freedom are equally damaging. Those done without rule of law or transparency are qualitatively worse.

Second, transparency reporting will give elected politicians insight into the effect of their decisions. How many politicians today can readily say if the powers they have voted to grant law enforcement are actually used when it comes to controlling the Internet? Reporting on the use of law enforcement in general do exist, but Internet freedom is a central issue for many citizens, and many politicians as well, and we should all have the ability to assess if the powers granted by the state are used responsibly.

Third, the powers to limit Internet freedom can be evaluated first when we report and analyze on the use of those powers. What are their true effects, both intended and unintended? How efficient are they with respect to their intended objectives. That means that in order to really get the bad actors we need to make the right trade-offs between increasing net freedom and protecting legitimate interests.

Fourth, even if some of the data needed to assess restrictions of Internet freedom are already openly available, there is a great need for assistance with collection and organization. Governments and state authorities today produce a wealth of data. The data sets they are producing, often from many different sources, easily overwhelm the individual citizen who is unable to get an overview and carry out an analysis by herself. Making data available is hence not enough, it must also be compiled and synthesized. And even if we could imagine private parties organizing and visualizing data - maybe this is what happens if governments resist

³ See Transparency International at [.org/](http://www.transparency.org/) and the Sunlight Foundation at <http://sunlightfoundation.com/>. The latter has notably created the site opencongress.org for transparency in the US congress. A complete list of their projects is available here

⁴ Special safe guards like qualified majorities or minority reservations are acceptable parts of the democratic process. Free expression is after all a minority protection, not necessarily best put to majority vote.

offering the data in an organized format but just make it available - it places a special responsibility on the government to try to the best of its ability to illustrate how its powers are exercised in controlling the net.

All of these arguments make it clear, we believe, that transparency reporting would be a helpful tool in building a more accountable, better regulatory regime for the net in a democratic society.

Now, the arguments against transparency reporting are worthwhile addressing here as well.⁵ The idea that governments should be generally and not specifically transparent - i.e. that reporting on net freedom is too narrow - is basically right. We do believe that governments should be generally transparent where possible, and in many areas transparency, or at least organised information, is already available, evolved as it has over a long period of time. We believe, however, that in this area these principles have not yet been fully established due to the relative speed of development in combination with the Internet as a newly established space. With the immense value of Internet for business, society at large, and everyday life for the individual, Net freedom is an issue of great importance. It is also an issue where it would matter to the international development of freedom if democracies adopted transparency reporting.

The argument that governments should not tweak data or organize it, just make it available is also almost right. Governments should make data available *and* also make serious attempts to interpret it. The reason is that the interpretation forces a government analysis that can then be debated and discussed. By providing the data in raw format this debate can actually be evidence-based and data-driven in a way that will help get real results.

The argument that this will help the bad actors is simply wrong. Bad actors will gain very little from knowing the numbers of requests to reveal user accounts, take down content, and restrict communications. As long as they do not know the actual criteria for doing this they will be in the dark when it comes to assessing the risk they are facing. And to add to this the real bad actors - governments that are censoring the Internet - are actually helped by there *not being any transparency reporting in the good states*. This is an instance where the silence of the good actors harms everyone.

⁵ Well-known Internet scholar Lawrence Lessig in 2009 published a paper called "Against Transparency" in the New Yorker. His thesis was that transparency without context leads to a general defeatism and disgust before the political process. This thesis is not wrong, but as Lessig's later projects show transparency can be a powerful component in contextualizing political systems -- see eg Lessig, L *Republic Lost* (2011)

It should also be mentioned that the data we are speaking of is aggregated and anonymous, so the privacy concerns around the data should be minimal.⁶

A minimum requirement - step 1

We believe that it is *more important to get started* for governments here than to be complete. That means that we believe in iterating and growing the transparency report over time. We propose that a government has taken the first step in transparency reporting when it reports, on a public website, the following three items:

1. What restrictions on access, content and communication the government allows.
2. On what basis the government allows them - identifying individual regulations, laws and rules.
3. How those laws can be changed and how decisions made under them can be appealed.

Once a government can detail these three things it has taken the first important step to transparency reporting. These three items of information should be made available under a special webpage and whenever new legislation is passed a quick review to check if it should be included should be done as a matter of course.

Data reporting - step 2

The next stage of transparency reporting is to actually start reporting on the use of the tools that the government can employ for controlling access, content and communication on the net. Here the important part is to make a thorough inventory of what data is already available. Examples include things like:

- Subpoenas for user data from email service providers
- Court decisions to remove material
- Court decisions to wiretap email or chat or similar communication channels online
- Number of users wiretapped
- Web sites and protocols filtered out by legal mandate or other means

For every country this basic set will be different, and the best way to find a basic set is to set out to find a small core set of data that can be the seed of a discussion about what comes next.⁷

Organizing around transparency - step 3

The next step is for governments to actively encourage data reporting whenever a new measure is put in place, or to encourage agencies to separate out data that previously has been bundled with other data sets. This requirement for tagging data that is related to the net and to Internet freedom will have to be designed carefully so that it allows for a central repository to receive and store the data sets. It is at this point a standard will become necessary.

⁶ Transparency reporting that also lists who has been the subject of wiretaps, user data requests et cetera could conceivably be very privacy invasive. That is not what we are proposing.

⁷ A core set for Sweden is available at xxx

Organizing data reporting so that it is in consistent, standardized and open formats is a vast task, and we only want to suggest here that it figure in the long term plans for governments who undertake this.

After having accomplished the first steps, it will be helpful to develop standard conceptual map for transparency reporting. Such an effort needs to at least address the following issues:

- What different categories of transparency data should we operate with?
- How do we reconcile different legal categories in different jurisdiction? I.e. the concept of wiretapping is not consistent across different jurisdictions.
- Is there a need to agree on certain data formats as well?
- How is the data authenticated?

The W3C may be a suitable partner for developing a standard for transparency reporting.

Transparency reporting and trade

We believe that transparency reporting when it has become a strong tool also should be introduced into the trade dialogues. Just as we today look at a number of different indices in the future the transparency reporting of a country - both the practice and the actual numbers - should serve as a helpful data point about the suitability of that country as a trade partner. Today we use intellectual property indices and other measures of how mature and well-developed an economy is. Transparency reporting would add to that a new dimension that will show how well a country protects free flow of information.

Concluding remarks

The idea of a transparency report for governments is just a small step towards a political organization that is more transparent, open and empowering for citizens. As the information society develops one of the major innovations in political organization will have to be around not only providing access to information, but also organizing it so that it is useful for citizens that want to make informed choices. The two go together: governments should allow open access to data about how they are exercising power, but also organize that data so that it becomes possible to analyze. The checks provided by the ability of others to organize the data will allow for a productive discussion and control that the government is not tweaking the data to their advantage.⁸

⁸ There is almost a division of power issue at stake here. Dividing the power to organize and visualize the data from the control over the access of the data is a way to ensure that the government does not misrepresent its use of power.

