

The Freedom of the Internet

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From America to Pakistan, people are standing up to fight against proposed laws they believe threaten the “free and open Internet.” Internet freedom has served as a powerful rallying cry to galvanize millions of people who successfully defeated controversial efforts to regulate the Internet. Perhaps the most dramatic example was the defeat of the controversial copyright bill the Stop Online Piracy Act (SOPA), which many people believed would have instituted a regime of online censorship in the United States, notwithstanding the SOPA sponsors’ explanations to the contrary. In a historic protest on January 18, 2012, the Internet was nearly brought to a standstill. A dramatic “blackout” of the Internet involving Wikipedia, thousands of other websites, and millions of people stopped SOPA from certain passage, defeating strong bipartisan support and millions of dollars in Hollywood backing.

Although people and governments around the world frequently champion “Internet freedom,” the contours of the freedom remain inchoate and undefined. While tied to the freedom of speech and of the press, the freedom of the Internet appears to encompass several *sui generis* protections or concerns, such as to its technological structure that allows an open platform and to its governance under a multi-stakeholder, non-governmental approach.

This Article provides a comprehensive theory to explain the development of the freedom of the Internet as a legal concept or right, a topic that remains surprisingly under-theorized in legal scholarship. The Article argues that the freedom of the Internet is best understood as an example of popular constitutionalism in which people are asserting basic individual rights in their use of the Internet. People, not courts or legislatures, are the primary definers and defenders of Internet freedom. And because it is not expressly recognized in any constitution of any country in the world, the freedom of the Internet is a right still in the making—or imagination. There is no guarantee it will succeed.