

Swedish Attempts to Regulate the Internet

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Abstract

The Swedish government has tried to regulate the Internet through the Data Act and the BBS act. These acts could be used to stop almost all usage of the Internet, but few people obey them, and therefore Internet can still be used in Sweden. This paper reviews Swedish attempts to regulate the Internet before the year 1999.

INTERNET REGULATION IN OTHER COUNTRIES

Many countries are trying to find ways of controlling the Internet through legislation, or through the application of already existing laws. Well-known examples are some countries (Singapore, China) who block downloading of politically unacceptable information from the net, and the Communications Decency Act in the U.S.A., which, among other things, wanted to require Internet service providers to ensure that “indecent” information is not distributed to minors. The Supreme Court repelled this law as unconstitutional. Some American states are trying to pass various kinds of similar laws.

TRADITIONAL ACTS WHICH INFLUENCE THE INTERNET

Freedom of Speech

The Swedish constitution [1] specifies freedom of speech: The right to freely express thoughts, ideas and feelings in speech, print, pictures or other media. But the constitution also specifies protection against invasion of privacy through computer data bases. These two clauses are a base of conflict, as will be described below. The constitution allows certain restrictions to freedom of speech in areas like national security, libel, and privacy and to stop crimes. In deciding on such restrictions, the constitution says that freedom to express ideas in political, religious, scientific and cultural areas should be specially safeguarded.

Public Documents

Another important part of the Swedish constitution is the part about public documents [2]. This part specifies that all documents, handled by the government, should be freely available for any citizen to look at. Exceptions must be clearly specified by law, and are allowed in areas like national security, personal medical information, etc.

Since most public documents are stored in computers, one could conclude that people should be able to find and look at public documents by computers. However, the law has not been interpreted in this way. People asking to see public documents have often been refused to search for them and view them from computers, and only been allowed to look at printouts on paper. One reason quoted for this is that it is not possible to safeguard that people can modify data which they can view through computers. Another reason has been to restrict the export of names and addresses from government data bases for use in marketing.

Slander (libel), racial agitation, etc.

The laws against slander (libel), racial agitation [3], etc. will of course apply equally when these crimes are performed by computer. Court precedents show that (before the BBS law, see below) only the person entering the illegal information into the data base can be prosecuted, not the person maintaining the data base.

Copyright

The Swedish copyright law [4] allows people to make personal copies for their private use of copyrighted material. This right is however not available for computer programs or digitally stored information. Like in most other countries, it is very difficult to find and prosecute people who have made illegal personal copies of copyrighted information. Prosecution occurs mainly when illegal copies are sold commercially or distributed on a large scale. One important court precedence, upheld by the highest Swedish appeals court, found that the owner of a BBS was not responsible if his BBS stored and made available copyrighted software – only the person who had entered the information into the BBS could be prosecuted. The main reason for the BBS law described below was to change this and put some responsibility on the person who manages the BBS.

DATA ACT

History of the data act

The first version of the Swedish data act [5] was passed by the parliament in 1973. The intention of this law is to protect personal privacy. It controls data bases of personal information. Such data bases can only be used by permission from a special government agency, and storage of information about people's political and religious opinions, ethnical groups, medical problems and sexual preferences are only allowed in exceptional circumstances.

The law has been changed several times, and the requirement for permission in advance, before establishing a new data base, has been removed because it became too time consuming when computers were used more and more.

Applying the data act to the Internet

The problem with the data act and the Internet is the very wide definition used in the data act for what is “storage of personal information in computer data bases”. The act includes every single occurrence of any kind of information about an individual person, even mention of a person in ordinary text or in a picture. This means that almost all usage of the Internet is illegal according to the data act. It is very surprising that politicians have passed new versions of the data act many times, but not changed this anomaly.

In 1978 [7], one of the first Swedish BBSes (Bulletin Board Systems, a kind of small Internet) was forbidden according to the data act. The act, at that time, said that every data base with personal information must have a specification of what kind of information is stored in it. Thus messaging, where people are allowed to write messages about topics not specified in advance, could not be allowed. In 1979, the same BBS was allowed but with very severe restrictions. No political or religious opinions could be discussed (because of the rule in the data act restricting storage of information about political and religious beliefs), personal e-mail must be erased after one month, and public and group messages must be erased after two years.

The people who used this BBS never followed these rules. Political and religious issues were discussed, and no one tried to uphold the law. The rule that all messages must be erased

after two years, can be compared to a law that all books in libraries, which are older than two years, must be burned. I have personally kept a magnetic tape with the public discussions in this BBS; no one has prosecuted me for this direct violation of the rules set down by the permission for this BBS according to the data act.

Most of the use of the Internet is illegal according to this law, and almost all use of e-mail is certainly illegal. But the law has not been upheld. The government agency which is responsible for checking that this law is upheld, has done it on only a few random cases. One of this was a person who wanted to write a book with a computer, and include personal information in the book. He was refused by the agency, but on appeal the government said that in this case, freedom of speech was more important than the data act. Another case was a local government in a Swedish city, which wanted to provide protocols (from meetings with various local government bodies) on the World Wide Web. Yet another case was an extreme right wing political organization, it was obvious that the data act was just used as an excuse to try to restrict their freedom of speech. Whether it is right to use a law like this to persecute a group with certain opinions is of course very questionable, there are other laws like those against racial and ethnical agitation, which would have been more suitable in this case.

Political controversy

In 1982, when the data act was to be revised, I contacted a Member of Parliament, whom I know, and he entered a motion in the parliament saying that the data act should not be allowed to be used to restrict the freedom of speech. This motion was denied by the parliament without any reason specified.

When the Swedish government in the beginning of the 1990s put up the first data base on the Internet with government information, someone pointed out that this data base was not legal according to the data act. The government rapidly passed a rule, making its own Internet information legal, but did not seem to be aware that almost all other usage of the Internet was also illegal.

A law, which is often not upheld, can be dangerous, because it can be used, when there is a need to persecute someone for some other reason. It can also be a basis of corruption. This happened to me on one occasion, when a high boss in the government agency to safeguard the data act called me and complained about my criticism of the data act and his

agency. He also said, “you have an application for permission waiting for approval by us”. It was obvious to me that he was threatening me, saying in fact that if I wanted them to give me the needed approvals, I should stop criticize him. He did not say so explicitly, but this meaning is the most reasonable conclusion of what he meant. However, I continued to criticize him, and he had to give the approval anyway, so the threat was found to be empty.

The person mainly responsible for upholding the law, the director of the Data Inspection Agency, was recently (1998) asked whether it was reasonable with a law which did not permit people to post information about other people on the Internet. She then answered that we will only prosecute abuse, not proper use. There is no definition in the law about what is abuse and proper use. Total arbitrariness will thus govern what kind of free speech will be allowed and not allowed.

The last time the data act was changed was in the spring of 1998. The law was then extended to cover use of personal information, also without the use of computers. The law then specified that it should not be used to restrict the freedom of speech for journalists, authors and artists. Thus, the law can still be used against freedom of speech by any person who is not a journalist, author or artist. It is very surprising that the Swedish government seems to believe that these are the only people who are to be allowed freedom of speech.

When this law was handled by the parliament, several politicians and parties on the non-socialist side moved not to accept the new law. The conservative and liberal party wanted, instead, a law, which only specifies those uses of personal information, which really are illegal, and not write the law so that almost all usage of the Internet becomes illegal.

The majority in the parliament, however, passed the law, arguing that they had to do this in order to comply with an EU directive on protection of privacy. It would have been better to pass a law, which does not stop freedom of speech on the Internet, and then check whether the EU really would force us to change the law. I do not think they would!

BBS ACT

History of the BBS act

As described above, several Swedish court precedents had clarified that only the person who put illegal information into a computer could be prosecuted for slander, copyright

infringement, racial agitation, etc. But in several cases it was very difficult to find out who this person was. The government thus wanted a law, which put some responsibility on the provider of the “electronic bulletin board”. Electronic bulletin board was defined so that all storage of data on the Internet would be covered, with the exception for personal e-mail which is only stored in the mailboxes of individual persons. All web pages, archives, different-time discussion groupware, etc. is thus covered by the law.

In Sweden, new laws are developed by government committees. The committee responsible for the BBS Act had several hearings with people representing Internet service providers. As a result of this, the law was changed so that it would be easier to uphold.

Principles of the BBS act

The act [6], as passed by the parliament, says that it only covers information in data bases which obviously are illegal according to certain listed laws: Racial agitation, telling people to commit crimes, child pornography, illegal violence descriptions and copyright infringements.

An important difference, compared to the U.S. Communications Decency Act, was that the Swedish act does not specify what is illegal except by reference to other existing laws. Since the vague definition of “decency” was one reason the U.S. Act was repelled, this problem will thus not occur with the Swedish law.

The act only covers service providers who store information, not those who only provide connections to the Internet. They have to stop distribution of *obviously* illegal information. Thus, they do not have to decide in doubtful cases. The explanations of the law made by the government says that in computer areas where illegal messages often occur, the service providers must check what is stored. In other computer areas, it is enough that the service providers checks when someone complains that something illegal has been stored.

Rather surprisingly, the law says that the service provider must be allowed to go into closed groups and check the information they store. This does not seem right to me, it would be better to let someone belonging to the closed group take over this responsibility. Closed groups should be allowed to store information for use within the group, which is not available to outsiders. I wrote about this to some members of the parliament, when the law was handled there, but the law was still passed.

Applying the BBS Act to the Internet

The BBS act will probably mean that some Usenet News groups, in which illegal information like child pornography or racial agitation often occurs, will have to be closed down in Sweden. For other discussion groups, it will probably be enough to provide a means for people to complain of illegal messages, and to remove messages when there is a complaint regarding them.

Political Controversy

The BBS law was not passed unanimously by the parliament. Several non-socialist parties did not want the law to be accepted, arguing that the free discussions in BBSes and on the Internet was important to democracy, and that the law would make the provision of such services more difficult.

CONCLUSIONS

My conclusions from this is that the Swedish government has been very unwilling to accept that there are freedom of speech issues with legislation controlling discussions and information exchange through computers. This has become slightly better in the 1990s, when at least some political parties begin to understand that the Internet is something which should be protected, not restricted. Before the 1990s, almost all parties accepted laws forbidding political and religious discussions on the net. However, these laws are fortunately seldom upheld. Everyone ignores them, except in a very few cases. What the meaningfulness is of having laws, which no one adheres to, is something I cannot understand.

Why have the politicians in Sweden been willing to make laws which so seriously infringe on the freedom of speech? Some guesses:

- Sweden has no constitutional court of appeal which can test whether laws are constitutional or not.
- Politicians are afraid that the freedom of distribution of ideas on the Internet threatens their control of public opinion through traditional channels like societies and newspapers.

- Technical people are more highly represented on the Internet, and technical people have a low value on the political value scale, thus, it is felt acceptable to restrict their freedom of speech more than for example journalists or authors.

The fact that left-wing parties have favoured these controls more than middle and right-wing parties tends to support these conclusions, since probably the Internet users on average less often have left-wing views than those who do not use the Internet.

REFERENCES

The laws in the reference list have URLs to their Swedish-language text.

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