

Internet Governance during Crisis: The changing landscape of Thailand

Irene Poetranto and Adam Senft

The Citizen Lab, Munk School of Global Affairs, University of Toronto

Abstract

This article will explore how Thailand's ongoing political crisis has impacted the ways in which the Internet is governed in the country. In particular, it will examine how both the 2006 and 2014 coups have been drivers for significant changes to Internet governance in the country, how these changes have been used to strengthen the post-coup government's hold on power, and the resulting impact on human rights in the country. Given the overlapping and intersecting sources of authority in Internet governance—be they political, legal, technical or economic—it is important for research to cross disciplinary boundaries to develop a holistic understanding of these issues. Using a mixed-methods approach, we combined legal and policy analyses with network measurements to argue that Thailand is an important case for highlighting how Internet governance is affected by political conflict and its consequences on human rights.

Introduction

In May 2014, Thailand underwent a military-led coup d'état, deposing the elected government of Yingluck Shinawatra. The coup, the nineteenth in the country since 1932, was in many ways a continuation of the instability and deeply polarized political conflict that has characterized modern Thai politics. Just eight years prior, Yingluck's brother Thaksin was similarly deposed as Prime Minister in a military coup. While coups may not be new phenomena in Thailand, the growing role of the Internet in these conflicts is. Since the 2006 coup, the media, civil society, and citizens alike increasingly express their discontent in the online sphere, where vibrant online communities have emerged to debate, protest and organize. As a result, the responses of both post-coup governments (2006 and 2014) have been to reshape Internet governance in ways that restrict speech, criminalize forms of dissent, and better enable surveillance. From a relatively unregulated online environment in the early 2000s, the current ongoing

political struggle has resulted in a more heavily regulated, monitored, and controlled environment.

The state has historically been the key driver of Internet development in Thailand, with state-owned Internet Service Providers (ISPs) dominating the industry in the years following the Internet's introduction. Civil society groups, meanwhile, have largely been excluded from Internet governance decision making processes. As the importance of the Internet to political mobilization grew at the same time as the political conflict began to escalate, successive governments used these moments of crisis to reshape Internet governance in the country. Control over information and communications technologies is a significant political tool in a deeply divided society. This is the case in Thailand where the post-coup "reforms" have been primarily aimed at increasing government control, minimizing dissent, and reshaping institutions to further entrench the junta's power—all of which have had negative consequences for human rights.

This paper will trace the history of Internet development and governance in Thailand, particularly the impact of the 'twin coups' of 2006 and 2014. Our findings suggest that this development and governance has been highly influenced by the aftermath of the two coups, and as a result it is impossible to separate the policymaking process from the deeply divisive nature of the country's political landscape.

Key Stats

The Kingdom of Thailand, with a population of 67 million people, has one of the fastest growing Internet usage rates in the world. The 2015 Digital, Social, and Mobile Report revealed that the country had around 23.9 million active Internet users or an Internet penetration of about 37 percent of the population.¹ The lower cost of smartphones, affordable mobile phone packages, and availability of 3G networks have made Thailand a mobile-first country. Thailand's National Broadcasting and Telecommunications Commission estimated that, as of December 2015, the country had 110 million mobile subscribers, which was expected to rise to 150 million by 2016.² Thais are also avid

¹ Fairfield, J (2015, January 01). A complete guide to Internet and social media usage in Thailand. *Thaitech*. Retrieved from <http://tech.thaivisa.com/complete-insight-internet-social-media-usage-thailand/3147/>.

² (2015, December 29). Telecoms, Internet, come up strong. *Bangkok Post*. Retrieved from <http://www.bangkokpost.com/print/809572/>.

users of social media and messaging apps, particularly Facebook, LINE, and YouTube.³ The ITU's ICT Development Index, which takes into account Internet use and other factors such as access and the skills, ranked Thailand 74th in the world, behind Singapore (19th) and Malaysia (64th), but ahead of the Philippines (98th) and Indonesia (108th).⁴

The Internet's Development in Thailand

1980s to early 2000s: Establishing Internet Access

The history of Internet access in Thailand can be traced back to the late 1980s, with the establishment of the Inter-University Network Project by the National Electronics and Computer Technology Center (NECTEC), an organization overseen by the National Science and Technology Development Agency (NSTDA) at the Ministry of Science, Technology, and Environment.⁵ As more academic and research institutions joined the network, it became known as the Thai Social/Scientific, Academic and Research Network (ThaiSARN).⁶ By 1994, the ThaiSARN had connected 27 institutes at 34 sites.⁷

In 1995, NECTEC, together with two state-owned enterprises (SOE)—the Communications Authority of Thailand (CAT) and the Telephone Organization of Thailand (TOT)—jointly planned to provide Internet services.⁸ It resulted in the establishment of Internet Thailand Company Limited (INET-TH).⁹ KSC Commercial Internet was founded soon after as the first commercial Internet service provider (ISP) in Thailand, which was a joint venture between the Internet Knowledge Center Co., Ltd.

³ Leesa-Nguansuk, S (2016, May 18). Thai firms lead region for clever use of social media. *Bangkok Post*. Retrieved from

<http://www.bangkokpost.com/tech/local-news/977249/thai-firms-lead-region-for-clever-use-of-social-media>.

⁴ International Telecommunication Union (2015, November 30). Measuring the Information Society Report 2015. Retrieved from

<http://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2015/MISR2015-w5.pdf>.

⁵ Koanantakool, H.T (1995). The Internet in Thailand: Our Milestones. National Electronics and Computer Technology Center. Retrieved from <http://www.nectec.or.th/users/htk/milestones.html>.

⁶ Mephokee, C (2004), p. 137. Information Technology: Some implications for Thailand. In Kagami M, Tsuji M, Giovannetti E (Eds.), *Technology Policy and the Digital Divide*. Edward Elgar Publishing.

⁷ Koanantakool, H.T (1995). The Internet in Thailand: Our Milestones. National Electronics and Computer Technology Center. Retrieved from <http://www.nectec.or.th/users/htk/milestones.html>.

⁸ Ibid.

⁹ Internet Thailand Public Company Limited, LinkedIn profile page. Accessed at <https://www.linkedin.com/company/internet-thailand-public-company-limited>.

(IKSC) and CAT.¹⁰ The Information and Communication Technologies (ICT) sector grew rapidly during that decade, resulting in eighteen commercial ISPs, four non-commercial Internet hubs, two national Internet exchanges, and one international Internet gateway.¹¹ This growth was made possible by a number of factors, including economic and political developments that occurred in the late 1980s and the establishment of a concession system known as Build-Transfer-Operate (BTO).¹² Despite the proliferation of service providers, international access for ISPs was monopolized by CAT, who as an SOE had to compete with other SOEs and government agencies for their share of the national budget.¹³ As a result of this monopoly, the ICT sector in Thailand was underdeveloped.

Thailand had made several attempts to liberalize the telecom market.¹⁴ In the 1990s, the government outlined two measures toward this endeavour:¹⁵ Committing to the World Trade Organization's General Agreement on Trade in Services in 1997 to liberalize the telecommunications sector by 2006¹⁶ and publishing the "Telecommunications Master Plan 1997-2006." The goal of the Master Plan was to end the government's monopoly over the telecom industry through its state-owned enterprises (i.e., CAT and TOT), and open the market to competition. The adoption of these commitments, however, was plagued with challenges.¹⁷

¹⁰ Thailand Internet (2013, January 01). KSC Commercial Internet. Retrieved from <http://www.thailandinternet.com/ksc-commercial-internet.html>.

¹¹ Mephokee, C (2004), p. 137. Information Technology: Some implications for Thailand. In Kagami M, Tsuji M, Giovannetti E (Eds.), Technology Policy and the Digital Divide. Edward Elgar Publishing.

¹² McCargo D., and Pathmanand U. (2005), p. 24. The Thaksinization of Thailand. Nordic Institute of Asian Studies Press.

¹³ Blasko, J.C (1998), p. 515. Overcoming the Legal and Historical Obstacles to Privatization: The Telecommunications Sector in Thailand. Case Western Reserve Journal of International Law, 30 (20), 507-539.

¹⁴ Low P, and Mattoo A (2000), p. 24. Is there A Better Way? Alternative Approaches to Liberalization under GATS. In Sauvé P, and Stern R.M (Eds.) GATS 2000: New Directions in Services Trade Liberalization. Washington D.C: Brookings Institution Press and Harvard University.

¹⁵ Meshor G., and Jittrapanun T., (2004) p. 95. Thailand's Long Road to Economic Reform. ASEAN Economic Bulletin, 21(1), 94-105.

¹⁶ World Trade Organization (1999, December 10). Trade Policy Review - Thailand 1999. Retrieved from https://www.wto.org/english/tratop_e/tpr_e/tp122_e.htm.

¹⁷ Siengthai, S., Tanlamai, U. and Rowley, C. (2008), p. 201. The changing face of human resource management in Thailand, in Andrews T., Siengthai S. (Eds.) The Changing Face of Management in Thailand. Taylor and Francis.

The government changed eight times between 1988 and 1997, and each of these coalition governments formed alliances with telecom companies.¹⁸ As a result, the telecom sector resisted reform. Thailand also adopted a new constitution in 1997. Known as the “People’s Constitution,” its drafters aimed for wide-ranging reforms by implementing “a fully elected Senate, a party list system, and independent watchdog agencies.”¹⁹ The constitution also created a new regulatory framework for the telecommunications sector, such as for the establishment of an independent regulator to allocate spectrum and monitor and regulate communications.²⁰ However, the constitution was also seen as facilitating Prime Minister Thaksin Shinawatra’s consolidation of power. Thaksin was the owner of Shin Corp (now known as Intouch Holdings Plc), a major player in the telecom industry, who founded the Thai Rak Thai Party in 1998 and became Thailand’s prime minister in 2001—the first election held after the adoption of the 1997 Constitution. Furthermore, the 1997 Asian economic crisis resulted in telecom companies going into deficit, except Thaksin’s, as he had smaller debts compared to his rivals.²¹

Two independent bodies, the National Telecommunication Commission (NTC) and the National Broadcasting Commission (NBC), were created to fulfill the new telecom framework.²² The NTC was tasked with formulating regulation for the telecommunications industry, particularly with regard to the liberalization process, while the NBC was responsible for regulating the media. The selection process for NTC members, which began in August 2000, was criticized as being flawed from the start because the candidates consisted of those who were closely affiliated with telecom companies or had other known associated interests. The Administrative Court annulled the selection process at the beginning of 2002 and the re-selection process did not proceed until December 2003, when the Prime Minister’s Office once again provided a short list of names for the Senate to choose from.²³ When the new board of the NTC

¹⁸ McCargo D., and Pathmanand U. (2005), p. 32. *The Thaksinization of Thailand*. Nordic Institute of Asian Studies Press.

¹⁹ Kuhonta, E.M. (2008). *The Paradox of Thailand’s 1997 “People’s Constitution”: Be Careful What You Wish For*. *Asian Survey*, 48 (3), 373-392.

²⁰ McCargo D, and Pathmanand U (2005), p. 34. *The Thaksinization of Thailand*. Nordic Institute of Asian Studies Press.

²¹ McCargo D, and Pathmanand U (2005), p. 23. *The Thaksinization of Thailand*. Nordic Institute of Asian Studies Press.

²² McCargo D, and Pathmanand U (2005), p. 45. *The Thaksinization of Thailand*. Nordic Institute of Asian Studies Press.

²³ McCargo D, and Pathmanand U (2005), p. 311. *The Thaksinization of Thailand*. Nordic Institute of Asian Studies Press.

was announced, however, it still contained names from the original group.²⁴ This faulty process led to allegations that Thaksin had manipulated the Commission's creation in particular and purposely stalled the liberalization process in general to benefit his family's telecom business.²⁵

2002 to 2006: Regulating the Web

From the introduction of commercial Internet access in the 1990s up to the early 2000s,²⁶ there were no Internet-specific regulations or regulators.²⁷ The 2002 establishment of the Ministry of Information and Communication Technology (MICT) changed the Internet governance landscape in Thailand and brought about the country's first Internet filtering policy.²⁸ Civil society groups challenged MICT's censorship directives as lacking legal grounds and argued that they infringed on constitutional provisions guaranteeing the right to free expression. Section 39 of the 1997 Constitution protected an individual's right to "express his or her opinion, make speeches, write, print, publicise, and make expression by other means," and prohibited "[t]he closure of a pressing house or a radio or television station."²⁹ While the Internet was not specifically mentioned, some argued that the Internet is a form of mass media and therefore should be accorded the same protection.³⁰ Despite MICT's restrictive policy, the Internet remained relatively free compared to other forms of media.³¹

The issue of Internet governance and regulation became entangled with the protracted political conflict that followed the September 2006 coup which ousted Thaksin. He had become unpopular due to allegations of corruption, particularly after the tax-free sale of

²⁴ McCargo D, and Pathmanand U (2005), p. 46. *The Thaksinization of Thailand*. Nordic Institute of Asian Studies Press.

²⁵ Mutebi, A.M (2006), p. 312. *Thailand's Independent Agencies Under Thaksin: Relentless Gridlock and Southeast Asian Affairs*, 303-321.

²⁶ Koanantakool, H.T (1995). *The Internet in Thailand: Our Milestones*. National Electronics and Computer Technology Center. Retrieved from <http://www.nectec.or.th/users/htk/milestones.html>.

²⁷ Palasri S, Huter S.G, Wenzel Z, (1998). *The History of the Internet in Thailand*. Retrieved from <ftp://ftp.cs.ait.ac.th/pub/pdf/ENPRINT.PDF>. Network Startup Resource Centre: University of Oregon Books.

²⁸ Ramasoota, P. (2011). Internet politics in Thailand after the 2006 coup: Regulation by code and a contested ideological terrain. In R. Deibert, J. Palfrey, R. Rohozinski, & J. Zittrain (Eds.), *Access Contested: Security, Identity, and Resistance in Asian Cyberspace* (pp. 83–114). Cambridge, MA: MIT Press.

²⁹ Constitution of the Kingdom of Thailand 1997. Retrieved from <http://www.asianlii.org/th/legis/const/1997/1.html>.

³⁰ Ramasoota, P. (2011). Internet politics in Thailand after the 2006 coup: Regulation by code and a contested ideological terrain. In R. Deibert, J. Palfrey, R. Rohozinski, & J. Zittrain (Eds.), *Access Contested: Security, Identity, and Resistance in Asian Cyberspace* (pp. 83–114). Cambridge, MA: MIT Press.

³¹ Ibid.

his family's Shin Corporation telecommunications firm to Temasek Holdings, the investment arm of Singapore's government. In the coup's aftermath, Thaksin's supporters (known as the "Red Shirts") were engaged in a political conflict with those allied against him (known as the "Yellow Shirts")³²—a loose alliance of the palace, the military, the Democrat Party, and the People's Alliance for Democracy.³³ Both parties use the Internet as a means for political mobilization and to express their discontent.³⁴ Thaksin, meanwhile, went into self-imposed exile, either in London (United Kingdom) or Dubai (United Arab Emirates).³⁵

Amidst this political upheaval, Thailand's monarchy faces a succession question. King Bhumibol Adulyadej, who has reigned since 1946, is known as the core of the 'three pillars' of Thailand—the monarchy, the military and the bureaucracy. The Crown Prince Maha Vajiralongkorn is unpopular with the public and many fear that the country will descend into civil strife after the King's passing. Divisions over the monarchy's future run deep in Thai society and have made postings of *lèse majesté* content—content considered to be insulting or threatening to the monarchy, as defined under Section 112 of the Criminal Code³⁶—to have increasing political salience. Thai authorities view *lèse majesté* offenses as a national security issue and warranting harsh punishment.³⁷

In September 2006, the coup leaders (who called themselves the Council for Democratic Reform) annulled the 1997 Constitution and replaced parliament with its own interim legislature.³⁸ The first legislation passed by the interim legislature was the Computer-Related Offenses Act B.E. 2550 (2007), otherwise known as the Computer Crime Act. The law was controversial as it not only considered content violations a major offense carrying severe penalties, but also provided broad powers for officials to conduct investigations. Thai authorities may duplicate, decrypt, censor, surveil, and access computer information of those suspected to be committing *lèse majesté*

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ (2011, June 24). Profile: Thaksin Shinawatra. *BBC News*. Retrieved from <http://www.bbc.com/news/world-asia-pacific-13891650>.

³⁶ (2016, June 10). Thailand's *lèse majesté* laws explained. *BBC News*. Retrieved from <http://www.bbc.com/news/world-asia-29628191>.

³⁷ Kinder, T (2014, August 7). Who Will Succeed Thailand's King Bhumibol? *International Business Times*. Retrieved from <https://uk.news.yahoo.com/succeed-thailands-king-bhumibol-155552162.html#yx1isNA>.

³⁸ Freedom House (2007). Thailand Country Report: Freedom of the Press. Retrieved from <https://freedomhouse.org/report/freedom-press/2007/thailand>.

violations.³⁹ The MICT cracked down on Internet content on the basis of the Act, targeting content related to lèse majesté, pornography, gambling, and terrorism in particular to be filtered. Court orders to block Internet content increased from two URLs in 2007 to over 74,000 in 2012,⁴⁰ and most legal prosecutions related to Internet content since 2006 have been regarding lèse majesté content.⁴¹ Intermediary liability provisions in the Act also punish content providers as harshly as offenders.⁴² The most well known case is that of Chiranuch Premchaiporn, the webmaster of popular news portal Prachatai, who was given an eight-month suspended sentence in 2012 for failing to promptly remove user comments deemed insulting to the monarchy.⁴³

2006 to 2014: Internet in Crises

In August 2007, Thailand adopted a new constitution. It contained several institutional revisions, such as the establishment of the National Broadcasting and Telecommunications Commission (NBTC), a merge of the NTC and NBC to form a single, independent regulatory agency regulating the entire telecommunications and broadcasting system. Observers noted that the core institutional structures of the 2007 Constitution were largely similar to the 1997 Constitution.⁴⁴ 2007 was also the year that the first election post-2006 coup was held in. The People Power Party (PPP) composed of Thaksin's allies, won the most seats in the election (228 seats in the 480-seat house), though short of a majority.⁴⁵ The PPP's main rival was the Democrat party, led by Abhisit Vejjajiva. Political pressure by anti-Thaksin protesters soon followed, who accused the governing PPP of corruption and being hostile to the revered monarch. Anti-government protesters shut down the Suvarnabhumi international airport and the smaller Don Mueang airport, both located in the capital city of Bangkok, which greatly

³⁹ Ramasoota, P. (2011). Internet politics in Thailand after the 2006 coup: Regulation by code and a contested ideological terrain. In R. Deibert, J. Palfrey, R. Rohozinski, & J. Zittrain (Eds.), *Access Contested: Security, Identity, and Resistance in Asian Cyberspace* (pp. 83–114). Cambridge, MA: MIT Press.

⁴⁰ OpenNet Initiative (2012, August 07). Thailand. Retrieved from https://opennet.net/research/profiles/thailand#footnote19_174d8wi.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Citizen Lab (2014, July 09). Information Controls During Thailand's 2014 Coup. Retrieved from <https://citizenlab.org/2014/07/information-controls-thailand-2014-coup/>.

⁴⁴ Ginsburg, T (2009), p. 102. Constitutional afterlife: The continuing impact of Thailand's postpolitical construction. *International Journal of Constitutional Law*, 7(1), 83-105. <http://doi.org/10.1093/icon/mon031>

⁴⁵ (2007, December 23). Thaksin ally wins Thai election. *BBC News*. Retrieved from <http://news.bbc.co.uk/2/hi/asia-pacific/7158354.stm>.

impacted Thailand's tourism industry.⁴⁶ The Constitutional Court handed down a decision in 2008 ordering for the PPP and two of its coalition partners to disband, and for the parties' leaders to be barred from politics for five years.⁴⁷ Abhisit then became Thailand's twenty-seventh prime minister.

Crackdowns against the "Red Shirts" movement occurred under PM Abhisit's government. Human Rights Watch (HRW), an advocacy organization, reported that community radio stations associated with the "Red Shirts" were shut down for broadcasting content deemed offensive to the monarchy (or *lèse majesté*) and their equipment, computers, and documents were seized.⁴⁸ Abhisit had publicly stated on several occasions that any *lèse majesté* speech would not be tolerated, offline or online.⁴⁹ HRW also referred to Abhisit's regime as "the most prolific censor in recent Thai history."⁵⁰ Numerous anti-government protests engulfed Thailand in 2009 and increased in intensity in 2010, resulting in the death of at least ninety people and wounded more than 2,000 people.⁵¹

Thailand held its second post-2006 coup general election on July 3, 2011. The Pheu Thai party, effectively controlled by Thaksin and led by his sister, Yingluck Shinawatra, won a landslide victory and Yingluck became Thailand's twenty-eighth prime minister. Relative political calm ensued until November 1, 2013 with the passage of an amnesty bill which was widely perceived as an attempt to enable Thaksin's return to Thailand. Street protests escalated, leading Pheu Thai to dissolve parliament on December 9, 2013. Snap elections called for February 2, 2014 were a resounding failure, with the opposition Democrat Party boycotting the vote and a voter turnout falling under fifty percent—the lowest figure since the 1970s. After the Constitutional Court annulled the results of the February vote, the country plunged further into conflict.

⁴⁶ (2008, December 02). Thai court ousts PM Somchai. *BBC News*. Retrieved from <http://news.bbc.co.uk/2/hi/7759960.stm>.

⁴⁷ Ibid.

⁴⁸ Human Rights Watch.(2011, April 27). Thailand: Authorities Silence 'Red Shirt' Community Radios. Retrieved from <https://www.hrw.org/news/2011/04/27/thailand-authorities-silence-red-shirt-community-radios>.

⁴⁹ Ramasoota, P (2011), p. 86. Internet politics in Thailand after the 2006 coup: Regulation by code and a contested ideological terrain. In R. Deibert, J. Palfrey, R. Rohozinski, & J. Zittrain (Eds.), *Access Contested: Security, Identity, and Resistance in Asian Cyberspace* (pp. 83–114). Cambridge, MA: MIT Press.

⁵⁰ Ibid.

⁵¹ Human Rights Watch (2011, May 03). Descent into Chaos: Thailand's 2010 Red Shirt Protests and the Government Crackdown. Retrieved from <https://www.hrw.org/report/2011/05/03/descent-chaos/thailands-2010-red-shirt-protests-and-government-crackdown>.

Following an initial declaration of martial law on May 20, 2014, two days of failed negotiations culminated in the May 22, 2014 declaration of a coup and the formation of the National Council for Peace and Order (NCPO), the name of the military junta led by Army General Prayut Chan-o-cha. The Internet was integral to the 2014 coup's announcement. Aside from being broadcasted on television, martial law was declared on the military's Twitter account and Facebook page.⁵² One day before the coup was announced, the NCPO created a working group tasked with coordinating efforts to censor Internet content. This working group consisted of representatives from the MICT, the NBTC, and the army's "peacekeeping" unit, called the Peace and Order Maintaining Command (POMC). The unit was headed by Pisit Paoin, previously the head of the Thai police's Technology Crime Suppression Division (TCSD).⁵³ The junta executed the 2014 coup to re-assert top-down control, and thus did not hesitate to use existing governance mechanisms or create new ones to stifle online and offline dissent.

Internet governance after the 2014 Coup

The junta's approach to the Internet and digital communications in 2014 was built on the lesson's learned from the experiences of 2006. Whereas in the 2006 coup there was a gradual development of the government taking back control of online communications, the junta behind the 2014 coup had an ambitious and specific agenda on how the Internet is or should be controlled. The following sections describe the junta's efforts toward restructuring how the Internet is managed in Thailand to facilitate government dominance.

Content Controls

The NCPO issued four edicts on the day of the coup which sought to restrict online content.

- Announcement 3b/2557 prohibited "distorted online news reports which could cause social division and unrest".⁵⁴

⁵² Citizen Lab (2014, July 09). Information Controls During Thailand's 2014 Coup. Retrieved from <https://citizenlab.org/2014/07/information-controls-thailand-2014-coup/>.

⁵³ Ibid.

⁵⁴ Ministry of Foreign Affairs of the Kingdom of Thailand. (2014, June 02). Order of the Peace and Order Maintaining Command No.3/2557. Retrieved from

- Announcement 12/2557, targeted social media users and platforms, prohibiting “dissemination of messages aimed at inciting violence, disrespect and violation of the law as well as provoking resistance and opposition against the NCPO in carrying out its duties”.⁵⁵
- Announcement 17/2557 mandated that Internet providers “monitor, inspect and suspend transmission of any distorted and provocative information which might cause turmoil in the Kingdom or affect national security or the good morals of the people”.⁵⁶
- Announcement 18/2557 prohibited “mass media entrepreneurs and service providers”, which included “all electronic media service providers, including communications through online social networks” to cease publishing, amongst other topics, “news which might be threatening to the [sic] national security”, “information and news which might cause confusion” or “persuasion to gather or assemble in order to oppose officials”.⁵⁷

The junta’s censorship working group ordered hundreds of websites to be blocked in the country,⁵⁸ and met with ISPs to confirm that websites could be blocked within an hour of receiving a block request.⁵⁹ NBTC later released details of blocked websites, which included an anti-Coup Facebook page, “Red Shirts” websites, and YouTube videos which contravened lèse majesté regulations.⁶⁰

On May 28, Facebook was reported to have been inaccessible throughout the country for upwards of an hour. While the outage was originally blamed on technical issues at

<http://www.mfa.go.th/main/en/media-center/3756/45785-Order-of-the-Peace-and-Order-Maintaining-Command-N.html>.

⁵⁵ Thai Embassy Belgium (2014, May 23). Announcement of the Peace and Order Maintaining Council No. 12/2557: Request of Cooperation from Social Media Networks. Retrieved from http://www2.thaiembassy.be/wp-content/uploads/2014/05/Announcements_National_Peace_12_30.pdf.

⁵⁶ Royal Thai Government (2014, June 04). Announcement of the Peace and Order Maintaining Council No. 17/2557: Dissemination of Information and News Through the Internet. Retrieved from <http://www.thaigov.go.th/en/announcement-2/item/83683-announcement-of-the-national-peace-and-order-maintaining-council-no-17/2557-subject-dissemination-of-information-and-news-through-the-internet.html>.

⁵⁷ Ibid.

⁵⁸ Sakawee, S (2014, May 29). Thailand’s coup spreads from streets to the web, 219 sites blocked so far. *Techinasia*. Retrieved from <https://www.techinasia.com/thailands-coup-spreads-streets-web-219-sites-blocked>.

⁵⁹ (2014, May 22). Under martial law, Thai authorities shut down some websites, vow to shut down others in 1 hour, threaten internet intermediaries, and say “This is not censorship.” *Prachatai*. Retrieved from <http://prachatai.com/english/node/3981>.

⁶⁰(2014, May 29). NBTC block 120 sites according to the NSO [translated from original Thai]. *Prachatai*. Retrieved from <http://www.prachatai.com/journal/2014/05/53643>.

the country's international gateway, the permanent secretary of MICT told the media it was a deliberate effort to stop the spread of anti-coup messaging.⁶¹ A representative from Norwegian telecom giant Telenor, the majority shareholder of DTAC, Thailand's second largest mobile operator, confirmed that NBTC officials ordered the block of Facebook, a disclosure which led to strong criticism against Telenor from NBTC.⁶²

Network Measurement Testing

Reports of censorship following the coup were frequent, and Thai authorities frequently cited inflated claims about the numbers of websites blocked. As a result, the collection of empirical data on information controls practices are needed to identify the reality of censorship on the ground. We have conducted network measurement testing to collect technical evidence of these censorship practices. As web censorship has proven to be highly dynamic, we have collected such data over two distinct periods: in the immediate aftermath of the 2014 coup, and over a longer period in 2015 and 2016.

In a report published in July 2014, we described the highly dynamic filtering environment in the days and weeks following the coup, with the methods of filtering and types of notification provided to users found to be highly variable.⁶³ Network measurement tests conducted in the country showed a variety of content types blocked, including Red Shirt websites, independent and international media critical of the coup, critical blogs, as well as circumvention tools, gambling websites, and pornography.⁶⁴ The messages displayed to users who attempted to access blocked content varied from day to day, and the technical methods used to block content were similarly highly dynamic. These results indicate that ISPs were undergoing a rapid transition in how content was blocked during this highly contentious period.

⁶¹ Petty M (2014, May 28). RPT- Thai Ministry says blocks Facebook stem anti-coup criticism. *Reuters*. Retrieved from <http://www.reuters.com/article/thailand-politics-facebook-idUSL3N0O91GU20140528>.

⁶² Vals, M (2014, July 09). Telenor says Thailand's recent Facebook outage was ordered by the government. *The Next Web*. Retrieved from <http://thenextweb.com/asia/2014/06/09/operator-dtac-says-thailands-government-forced-shut-access-facebook/>; (2014, June 11). DTAC in hot seat after Telenor comment. *Bangkok Post*. Retrieved from <http://www.bangkokpost.com/archive/dtac-has-found-itself-in-the-hot-seat-after-its-parent-company-said-the-national-broadcasting-and-telecommunications-commission-nbtc-had-asked-its-thai-subsiary-to-block-access-to-facebook/414754>.

⁶³ Citizen Lab (2014, July 09). Information Controls During Thailand's 2014 Coup. Retrieved from <https://citizenlab.org/2014/07/information-controls-thailand-2014-coup/>.

⁶⁴ Ibid.

Similar tests run throughout 2015 and 2016 showed that the methods of censorship had stabilized, and all of the same types of content remained blocked. Content found blocked included international news websites (e.g. the Daily Mail, The Guardian), human rights organizations (e.g. Human Rights Watch, Political Prisoners of Thailand), local news websites (e.g. Prachatai, Thai E-News), academic groups (e.g. Enlightened Jurists, Midnight University), Facebook groups critical of the coup, as well as gambling and pornography websites. While the coup itself served as a punctuation point in Thailand's content controls, the changes brought as a result have continued on.

A full discussion of the network measurement test results can be found in the Appendix.

Surveillance

The junta wanted to increase their surveillance capabilities and sought to establish new mechanisms, both regulatory and technical. Documents leaked from surveillance malware purveyor Hacking Team indicated that numerous Thai government and law enforcement groups, including the Royal Thai Army and Royal Thai Police, had purchased products from the company.⁶⁵ The local intermediaries who facilitated the deal requested the ability to perform surveillance on Gmail, Whatsapp, LINE and Skype.⁶⁶ In December 2014, leaked documents indicated that the junta had established a committee tasked with investigating methods of intercepting SSL-encrypted traffic.⁶⁷ Prior to the coup, the TCSD announced plans to begin surveillance of the highly popular messaging application LINE in order to “safeguard order, security and morality of Thailand”.⁶⁸ Junta leaders expedited such efforts following the coup, with the censorship working group head Pisit Paoin again targeting LINE, stating ““We’ll send you a friend request. If you accept the friend request, we’ll see if anyone disseminates information which violates the NCPO orders”.⁶⁹ Japan-based Naver, developer of LINE, clarified that surveillance of the platform was not possible and that user data would only be turned

⁶⁵ Wongsamuth N (2015, July 19). Privacy fears over hacking revelations. *Bangkok Post*. Retrieved from <http://www.bangkokpost.com/print/626964/>.

⁶⁶ Sambandaraska D (2015, September 17). Even HackingTeam gets fed up with corruption in Thailand. *Telecom Asia*. Retrieved from <http://www.telecomasia.net/blog/content/even-hackingteam-gets-fed-corruption-thailand>.

⁶⁷ Sambandaraska D (2015, January 26). Thai government to test SSL surveillance. *Telecom Asia*. Retrieved from <http://www.telecomasia.net/content/thai-government-test-ssl-surveillance>.

⁶⁸ (2013, August 19) Thailand Wants to Monitor Conversations on LINE App. *Global Voices*. Retrieved from <https://globalvoices.org/2013/08/19/thailand-wants-to-monitor-conversations-on-line-app/>.

⁶⁹ (2014, May 30) Thai authorities to spy on popular chat application. *Prachathai*. Retrieved from <http://www.prachatai.com/english/node/4061>.

over in response to a legal order issued by a Japanese court.⁷⁰ It was evident that the junta greatly exaggerated claims about its technical capacity to intercept and monitor online communications. Nonetheless, these developments could have “chilling effects” on users.

Announcement 26/2557, entitled “On the control and surveillance of social media” and issued by the NCPO on May 29, 2014, created a working group tasked with monitoring and accessing “online information” for content found to be unlawful.⁷¹ Social media was specifically targeted because Thais are known to be very active users. In June 2014, a ‘Login with Facebook’ icon appeared on the block page hosted by the TCSD, presented to users who attempted to access censored web content. Users who logged in with that button unwittingly provided the TCSD with access to their private Facebook data, an action justified by the TCSD as a means of collecting witness data to enable further prosecutions.⁷²

The junta also reinstated a previously dormant program called the Cyber Scouts, in which children are recruited to monitor and report on illegal content shared online.⁷³ The increase in surveillance post-coup is not exclusively driven by government or law enforcement. Citizen-driven measures, including royalist organizations or individuals who actively seek out and identify online content critical of the monarchy, became increasingly common.⁷⁴

Single Gateway Plan

⁷⁰ Bischoff, P (2014, December 22). Thai government listens in on country’s 33M Line users. *Tech in Asia*. Retrieved from

<https://www.techinasia.com/thailand-government-listens-entire-countrys-33-million-line-users-itc-minister>.

⁷¹ Telenor Group (2015, May). Authority requests for Access Electronic Communication Overview. Retrieved from https://www.telenor.com/wp-content/uploads/2015/05/GOVERNMENT-ACCESS-REPORT_05.pdf.

⁷² O’Brien, D. (2014, June 24). Junta Used Facebook App to Harvest Email Addresses. Electronic Frontier Foundation. Retrieved from <https://www.eff.org/deeplinks/2014/06/thai-junta-used-facebook-app-harvest-email-addresses>.

⁷³ Saiyasombut, S (2014, August 07). Thailand junta reactivates ‘cyber scout’ program to curb online dissent. *Asian Correspondent*. Retrieved from <https://asiancorrespondent.com/2014/08/thailand-junta-reactivates-cyber-scout-program-to-curb-online-dissent/>.

⁷⁴ Blum-Dumontet, E (2016, September 20). Friends, Followers, Police Officers, and Enemies: Social Surveillance in Thailand. *Privacy International*. Retrieved from <https://www.privacyinternational.org/node/935>

In September 2015, reports suggested that the Prime Minister had ordered the creation of a single international Internet gateway which would handle all traffic between Thailand and international networks. The so-called 'single gateway' plan was to see six of the country's ten international gateways consolidated into a single point, a plan which immediately sparked controversy. Reports suggested that the plan was first proposed by the Thai Police Chief, who reasoned that such centralized control could facilitate authorities ability to monitor and control information.⁷⁵ The president of CAT Telecom, the company expected to implement the single gateway plan, emphasized the positive effects on the regional competitiveness the plan would offer, while also noting that a single point of control would allow for "inappropriate" material from outside Thailand to be more easily filtered.⁷⁶

Local and international civil society groups immediately protested the initiative. A 100,000-signatures petition was gathered from the public,⁷⁷ while the hacktivist group Anonymous launched a series of DDoS attacks, bringing down the websites of CAT Telecom and a number of government ministries, including the MICT and Ministry of Defence.⁷⁸ By mid-October 2015, government representatives claimed that the 'single gateway' plan had been halted.⁷⁹

New Institutions and Legislation

In 2015, the junta announced the Digital Economy Plan as part of efforts to consolidate power and to allay fears of a post-coup economic crisis. The key element of the Plan was the introduction of eight draft bills which included new legislation covering data

⁷⁵ (2015, September 23). Thai authorities to step up surveillance via 'single gateway.' *Prachatai*. Retrieved from <http://prachatai.org/english/node/5485>.

⁷⁶ (2015, September 24). Single gateway increases IT capacity and national security: Thai authorities. *Prachatai*. Retrieved from <http://prachatai.org/english/node/5493>.

⁷⁷ Yu, E. (2015, October 1). Thai government faces opposition in bid to build single internet gateway. *ZDNet*. Retrieved from <http://www.zdnet.com/article/thai-government-faces-opposition-in-bid-to-build-single-internet-gateway/>.

⁷⁸ Saiyasombut, S. Thailand's 'single gateway' internet plan backfires spectacularly. *Asian Correspondent*. Retrieved from

<https://asiancorrespondent.com/2015/10/thailands-single-gateway-internet-plan-backfires-spectacularly/>;
Vongkiatkajon, K (2015, October 23). Anonymous Hacktivists Join Cyberwar Against Thai Junta's Effort to Control the Internet. *Vice News*. Retrieved from

<https://news.vice.com/article/anonymous-hacktivists-join-cyberwar-against-thai-juntas-effort-to-control-the-internet>.

⁷⁹ (2015, October 15). Thailand scraps unpopular Internet 'Great Firewall' Plan. *Reuters*. Retrieved from <http://www.reuters.com/article/us-thailand-internet-idUSKCN0S916I20151015>.

protection, cybersecurity, and the promotion of the digital economy, alongside amendments to existing legislation including, most notably, the Computer Crime Act. The junta maintained that the Plan's purpose was to re-shape Thailand's ICT sector, expand connectivity, and spur innovation and private investment to better compete globally.⁸⁰ While the junta emphasized the Plan's potential to transform Thailand's underdeveloped tech sector, human rights activists were quick to point out the considerable implications it would have on surveillance, censorship, and Internet governance in the country more broadly.⁸¹

Among the eight drafts was the draft cybersecurity legislation, which created a new body called the National Cybersecurity Committee, tasked with establishing cybersecurity strategy and formulating a response during a crisis.⁸² The bill and committee, whose membership is to be made up entirely of representatives from ministries, law enforcement and national security, were criticized for lacking perspectives on civil liberties and human rights and excluding civil society.⁸³ Article 35 of the bill grants the authority to intercept electronic communications without judicial oversight, and therefore codifying in law the junta's unrestrained approach to communications surveillance.⁸⁴

Proposed amendments to the already troubling Computer Crime Act contained a number of problematic elements. The revised Section 14/1 introduced text prohibiting "import to a computer system of false computer data in a manner that is likely to damage the country's security or cause public panic," but the term 'false computer data' was undefined.⁸⁵ Under Section 15, intermediaries are subject to prosecution, while

⁸⁰ Souche A, Ruengkul K, Sachdev K, and Moore K (2015). Thailand's Implementation of a Digital Economy. *Thai-American Business*, Volume 4, pp. 11-12. Retrieved at http://www.dfdl.com/wp-content/uploads/2015/09/T-AB_Magazine_Issue_4_2015_DFDL_Article_Thailand_s_Implementation_of_a_Digital_Economy.pdf.

⁸¹ (2015, January 30). Thailand's junta aggressively pushing increased legal, technical surveillance powers. *IFEX*. Retrieved from https://www.ifex.org/thailand/2015/01/30/surveillance_powers/.

⁸² Thai Netizen Network (2015, March). National Cybersecurity Bill [unofficial translation]. Retrieved from <https://thainetizen.org/wp-content/uploads/2015/03/cybersecurity-bill-20150106-en.pdf>.

⁸³ Patram, W (2016, January 04). Industrial concerns on Cybersecurity Bill in Thailand. Policy@Intel. Retrieved from <http://blogs.intel.com/policy/2016/01/04/industrial-concerns-cybersecurity-bill-thailand/>.

⁸⁴ (2015, February 03). Thailand's Digital Economy Bills Could Worsen Media Repression. Global Voices Advocacy. Retrieved from <https://advox.globalvoices.org/2015/02/03/thailands-digital-economy-bills-could-worsen-media-repression/>.

⁸⁵ Saiyasombut, S (2015, February 17). Thailand's new cyber laws - Part 2: Changes to the Computer Crime Act. *Asian Correspondent*. Retrieved from <https://asiancorrespondent.com/2015/02/thailands-new-cyber-laws-part-2-changes-to-the-computer-crime-act/>.

amendments to Section 18 resulted in additional lawful intercept provisions, but without specific time limits.⁸⁶

Thailand's Digital Economy Plan restructured the MICT and related agencies, such as the state-owned TOT and CAT Telecom, and the telecoms regulator NBTC under the banner of the Ministry of Digital Economy and Society.⁸⁷ Two new ministerial agencies were created: the National Digital Economy Committee (NDEC), chaired by the prime minister,⁸⁸ and the Digital Economy Promotion Agency.⁸⁹ The NBTC is no longer an independent telecom regulator, but firmly under the NDEC's supervision.⁹⁰ The reorganization means that the government now has direct control over the telecoms sector, thereby marking the revival of a state-dominant telecom industry in Thailand.

New Constitution

The passage of the Organic Act on Referendum for the Draft Constitution B.E. 2559 (2016),⁹¹ the legislation governing the referendum for the new Constitution, restricted public debate on the draft constitution online and offline. Article 61 of the Act prohibited the dissemination through television, newspaper, radio or electronic means, any material which, amongst other things, induced "eligible voters to refrain from voting, or vote in a certain way".⁹² As a result, public debate on the draft text was virtually nonexistent. At least 120 individuals, including journalists, were arrested for discussing the referendum, leading to criticism from international human rights groups.⁹³ The junta

⁸⁶ Ibid.

⁸⁷ (2016, September 16). Govt establishes Ministry of Digital Economy and Society. *National News Bureau of Thailand*. Retrieved from http://thainews.prd.go.th/website_en/news/news_detail/WNPOL5909160010004.

⁸⁸ Tortemvasana, K (2016, September 14). Prajin draws praise as ICT pick. *Bangkok Post*. Retrieved from <http://www.bangkokpost.com/business/news/1085392/prajin-draws-praise-as-ict-pick>.

⁸⁹ Tortemvasana, K (2016, September 12). Digital ministry to be set up this week. *Bangkok Post*. Retrieved from <http://www.bangkokpost.com/business/news/1084436/digital-ministry-to-be-set-up-this-week>.

⁹⁰ Baker and McKenzie (2016, September 22). With the Advent of the Ministry of Digital Economy and Society, for the First Time the Main ICT Regulatory Entities are Brought under One Roof. Retrieved from <http://www.lexology.com/library/detail.aspx?g=e1fdf5f5-3603-40c9-9eb6-c3c951c3a2cf>.

⁹¹ Asian Network for Free Elections (2016, June 24). Organic Act on Referendum for the Draft Constitution 2016. Retrieved from <http://anfrel.org/organic-act-on-referendum-for-the-draft-constitution-2016/>.

⁹² (2016, August 03). Speech restrictions cloud constitutional referendum in Thailand. *IFEX*. Retrieved from https://www.ifex.org/thailand/2016/08/03/constitutional_referendum/.

⁹³(2016, July 12). Reason to worry about Article 61. *SEAPA*. Retrieved from <https://www.seapa.org/op-ed-reason-to-worry-about-article-61/>; Paddock, R.C (2016, August 04). Thailand Junta seeks to Extend Its Power with Constitutional Referendum. *New York Times*. Retrieved from <http://www.nytimes.com/2016/08/05/world/asia/thailand-referendum-constitution.html>; (2016, July 29).

also authorized the NBTC to shut down TV and radio stations found to be broadcasting programs that “threatened national security,” and gave NBTC officials immunity from legal accountability.⁹⁴ A joint statement signed by the National Press Council of Thailand, Thai Journalists Association, Thai Broadcast Journalists Association, News Broadcasting Council of Thailand, and the Online News Providers Association was released in July 2016 to express concern about the ruling.⁹⁵

In August 2016, the new constitution—Thailand’s twentieth since 1932—was adopted in a referendum with sixty one percent in favour and a relatively low turnout of fifty five percent.⁹⁶ Several provisions in the 2016 Constitution are considered problematic. For example, the military is allowed to put forward its own candidate for prime minister and to step in and dissolve parliament at its discretion. The constitution, therefore, was characterized as a vehicle for further entrenchment of the military’s powers, while simultaneously shrinking the political power of elected representatives.⁹⁷ Critics noted that there are several articles which may infringe on freedom of expression. Section 36, which forbids government censorship without a court order, removed requirements that such court orders only be granted for the protection of national security and the maintenance of “good morals”, thus increasing the potential justifications for government censorship.⁹⁸ The same requirements were also removed from section 41, which covers the public’s right to access information.⁹⁹

The Monarchy

The monarchy plays a complex role in Thai politics and its interventions into electoral politics have waxed and waned over the years. While contemporary developments and

Thailand: Army Detains Referendum Critics. Human Rights Watch. Retrieved from <https://www.hrw.org/news/2016/07/29/thailand-army-detains-referendum-critics>.

⁹⁴ (2016, July 21). As Constitutional Referendum Nears, Thailand Intensifies Censorship. Global Voices Advocacy. Retrieved from <https://advox.globalvoices.org/2016/07/21/as-constitutional-referendum-nears-thailand-intensifies-censorship/>.

⁹⁵ SEAPA [Facebook Post] (2016, July 15). Retrieved from <https://www.facebook.com/seapa/posts/1065520593538176>.

⁹⁶ (2016, August 08). Thailand votes for a new constitution. *The Economist*. Retrieved from <http://www.economist.com/news/asia/21704593-charter-further-consolidates-power-army-thailand-votes-new-constitution>.

⁹⁷ Ibid.

⁹⁸ Palatino, M (2016, August 17). Thailand’s New Constitution: A Blow to Rights?. *The Diplomat*. Retrieved from <http://thediplomat.com/2016/08/thailands-new-constitution-a-blow-to-rights/>.

⁹⁹ Ibid.

the country's modernization have made absolute royal rule untenable, the monarchy has maintained its influence through connections to bureaucratic and military elite in an arrangement referred to as 'networked monarchy.'¹⁰⁰ As the country's political process is continually unstable, the King has been reimagined as a key source of national identity, but one that rises above the fray of common, corrupt politics.¹⁰¹ Instead, the King is portrayed and viewed as a source of morality for all Thai people. Since the early 2000s, his status has been further exalted into a 'heavenly monarch' figure of the Buddhist tradition. Importantly, the monarch's status as a source of morality is "free-floating and can be utilized by others"¹⁰², a fact capitalized upon by the "Yellow Shirts" back in 2006 who paired the monarch's protection of morality with the push to drive the "corrupt and immoral" Thaksin Shinawatra's regime from office.¹⁰³ Elected politicians, in contrast, are portrayed as intrinsically corrupt, with elections seen as favouring leaders who dispense patronage to the lower classes who cannot resist the lure of such handouts.¹⁰⁴ As such, offences against the monarch are portrayed as strikes against the hearts of all Thai citizens, providing a legal and moral justification for the harsh repression of oppositional and critical voices. As a result, Thailand has some of the world's harshest punishments for *lèse majesté*, and applies those punishments more frequently than virtually all other countries with similar laws.¹⁰⁵

Lèse Majesté Arrests

One of the most notable developments following the 2014 coup has been the increased use of Article 112 of the Thailand Penal Code, known as the *lèse majesté* law. It punishes anyone who "defames, insults or threatens the king, the queen, the heir-apparent or the regent" with up to 15 years imprisonment."¹⁰⁶ While the law has

¹⁰⁰ McCargo, D. (2005). Network monarchy and legitimacy crises in Thailand. *The Pacific Review*, 18(4), 499–519. Retrieved from <http://www.tandfonline.com/doi/abs/10.1080/09512740500338937>

¹⁰¹ Baker, C. (2016). The 2014 Thai Coup and Some Roots of Authoritarianism. *Journal of Contemporary Asia*, 46(3), 388–404. <http://doi.org/10.1080/00472336.2016.1150500X>

¹⁰² Baker, C. (2016). The 2014 Thai Coup and Some Roots of Authoritarianism. *Journal of Contemporary Asia*, 46(3), 388–404. <http://doi.org/10.1080/00472336.2016.1150500X>

¹⁰³ Sopranzetti, C. (2016). Thailand's Relapse: The Implications of the May 2014 Coup. *The Journal of Asian Studies*, (April), 304. <http://doi.org/10.1017/S0021911816000462>

¹⁰⁴ Sopranzetti, C. (2016). Thailand's Relapse: The Implications of the May 2014 Coup. *The Journal of Asian Studies*, (April), 304. <http://doi.org/10.1017/S0021911816000462>

¹⁰⁵ Streckfuss, D. (2014). Freedom and Silencing under the Neo-Absolutist Monarchy Regime in Thailand, 2006–2011. In Chachavalpongpun, P (Ed.) "Good Coup" Gone Bad: Thailand's Political Developments since Thaksin's Downfall. Institute of Southeast Asian Studies.

¹⁰⁶ (2016, June 10). Thailand's *lèse majesté* laws explained. *BBC News*. Retrieved from <http://www.bbc.com/news/world-asia-29628191>.

been used periodically since its adoption in 1957, the frequency and severity of lèse majesté charges have increased dramatically following both the 2006 and 2014 coups, with the majority of these cases the result of information shared online.

The scope of lèse majesté charges against individuals for sharing or sending information online since the coup is extensive. Individuals have been arrested and in many cases convicted and imprisoned for sharing audio clips on a file sharing website,¹⁰⁷ broadcasting an online overseas radio show,¹⁰⁸ editing an online news portal which posted a sensitive article written by someone else,¹⁰⁹ posting a message on Facebook criticizing the King's comparison between humans and the royal dog,¹¹⁰ and posting a photo wearing black clothing during the King's birthday weekend.¹¹¹ In addition, a police officer was suspended for allegations of defaming the monarchy using a pseudonym on Facebook and an individual was arrested for sending private Facebook chat messages to an individual already in custody on lèse majesté charges.¹¹²

In December 2014, the NBTC granted ISPs the authority to use their own discretion in blocking lèse majesté content, rather than waiting for a court order or request from NBTC.¹¹³

In addition to charges on grounds of lèse majesté content, individuals have been summoned to appear before military officers based on their online posts. Several prominent Pheu Thai politicians were summoned to appear after posting comments on

¹⁰⁷ (2014, September 12). Thai leader vows to use telecom tech to crack down on lèse majesté. *Prachatai*. Retrieved from <http://prachatai.com/english/node/4337>.

¹⁰⁸ Chanda, A (2014, November 18). Thailand: Radio show host defames monarchy on air, jailed for five years. *Firstpost*. Retrieved from <http://www.firstpost.com/world/thailand-radio-show-host-defames-monarchy-on-air-jailed-for-five-years-1808833.html>.

¹⁰⁹ Pitman, T (2014, November 24). Journalist jailed 4 ½ years for posting criticism of Thailand's king. *Toronto Star*. Retrieved from http://www.thestar.com/news/world/2014/11/24/journalist_jailed_4_years_for_posting_criticism_of_thailands_king.html.

¹¹⁰ (2014, December 19). Thong Daeng, Facebook and lèse majesté. Political Prisoners in Thailand. Retrieved from <https://thaipoliticalprisoners.wordpress.com/2014/12/19/thong-daeng-facebook-and-lese-majeste/>.

¹¹¹ (2014, December 08). Women wearing black around King's birthday accused of lèse majesté. *Prachatai*. Retrieved from <http://prachatai.com/english/node/4570>.

¹¹² (2015, January 28). Facebook messages lead to lèse majesté arrest. *Prachatai*. Retrieved from <http://prachatai.com/english/node/4719>.

¹¹³ (2014, December 30). Thai authorities urge internet providers to use their own judgement in blocking lèse majesté websites. *Prachatai*. Retrieved from <http://prachatai.com/english/node/4644>.

Facebook which were critical of the ongoing martial law and the impeachment of Yingluck Shinawatra.¹¹⁴

Police arrested two individuals in February 2015 for posting a forged notice regarding the King's health on Facebook.¹¹⁵ Both claimed that they had believed the notice to be legitimate and removed it immediately upon realizing it was fraudulent. Authorities also arrested eight individuals on allegations they were part of a "criminal organization defaming the monarchy on the Internet," confiscating equipment allegedly used to record anti-monarchy audio materials.¹¹⁶ Police offered a significant bounty to identify 'Banpodj', the alleged ringleader and financier of the group, leading to his arrest on February 10th.¹¹⁷ A woman was charged with lèse majesté for posting a single two-letter word on Facebook in response to an article which was critical of the monarchy.¹¹⁸ Two individuals were sentenced in August 2015 to 30 years and 28 years, respectively, for insulting the monarchy in messages posted on Facebook.¹¹⁹

The surge of lèse majesté arrests have led state officials to forbid employees from accessing social media from workplace computers out of fear they could share illegal content.¹²⁰ In many cases, these individuals were identified and reported to police for lèse majesté activities by pro-monarchist groups who aggressively target those posting content critical of the monarchy.¹²¹

¹¹⁴ (2015, January 15). More Pheu Thai politicians summoned to NCPO. *Bangkok Post*. Retrieved from <http://www.bangkokpost.com/news/politics/461585/more-pheu-thai-politicians-summoned-to-ncpo>.

¹¹⁵ (2015, February 7). ASTV Webmaster arrest warrant approved. *Bangkok Post*. Retrieved from <http://www.bangkokpost.com/news/security/468568/webmaster-sought-for-lese-majeste>.

¹¹⁶ (2015, February 04). Details of arrest of 6 suspects in alleged network to defame monarchy. *Prachatai*. Retrieved from <http://prachatai.com/english/node/4748>; (2015, February 09). Police identify Banpodj, arrest 2 more for lèse majesté. *Prachatai*. Retrieved from <http://prachatai.com/english/node/4768>.

¹¹⁷ (2015, February 10). Big reward for tip-offs on man wanted for anti-monarchy clips. *The Nation*. Retrieved from <http://www.nationmultimedia.com/politics/Big-reward-for-tip-offs-on-man-wanted-for-anti-mon-30253759.html>; (2015, February 10). Leader of 'Banpodj' network caught. *Bangkok Post*. Retrieved from <http://www.bangkokpost.com/news/politics/471205/anti-monarchist-hasadin-urairaiwan-alias-banpodj-arrested-in-bangkok-on-monday-night>.

¹¹⁸ (2016, August 01). Thailand lèse majesté: Woman charged over single word used on Facebook. *BBC News*. Retrieved from <http://www.bbc.com/news/world-asia-36944205>.

¹¹⁹ (2015, August 07). Thai courts give record jail terms for insulting king. *BBC News*. Retrieved from <http://www.bbc.com/news/world-asia-33819814>.

¹²⁰ (2015, January 31). Lèse majesté arrest prompts social media ban in state offices. *Khaosod English*. Retrieved from <http://www.khaosodenglish.com/detail.php?newsid=1422699127>.

¹²¹ (2014, December 12). Police arrest man for lèse majesté on Facebook. *Prachatai*. Retrieved from <http://prachatai.com/english/node/4593>.

Analysis and Conclusion

The most dramatic changes to the country's Internet governance structure have taken place after the 2006 coup to oust Thaksin Shinawatra's regime—the passage of the Computer Crime Act by a junta-appointed legislature, the expansion of web filtering, and the crackdown on lèse majesté content—while the 'Digital Economy' plan and 2016 Constitution further entrenched the government's powers. Observers have noted that these efforts were by and large guided by the desire to diminish the ability of Thaksin-allied groups to communicate and organize online.

The case of Thailand is significant because it illustrates how the evolution of its Internet governance is inseparable from the broader, and still ongoing, political conflict. The coups and the protracted political crisis that engulfed the country have not simply been the backdrop for the Internet governance process, but rather has been driving the changes. It is evident that the rules and regulations governing the Internet in Thailand are viewed by the government as functional tools to be manipulated and deployed during a political crisis. The consequence has been the application of new or existing problematic regulations that negatively affect the constitutionally protected and internationally recognized human rights of Thai citizens.

The link between Internet governance and political conflict is most apparent in the post-2014 coup, whereby the controls exerted on governance of the Internet have mirrored broader efforts by the junta to reassert their role in the country writ large. Civil society voices have also for the most part been suppressed by the junta, with a few notable successes, such as the civil society-led campaign against the 'single gateway' plan. The continuing harsh crackdown on dissent, the structural changes implemented to restrain regulators, private sector, and civil society, coupled with the military's continued involvement in the political conflict suggest that the establishment of a multistakeholder model of Internet governance in Thailand is a long way off.

The sources of authority in Internet governance—be they political, legal, technical or economic—overlap and intersect. We argue that an analysis of Internet policy without an understanding of the technical implementation of that policy would be inherently incomplete.¹²² As a result, it is important for research on such a topic to cross

¹²² Crete-Nishihata, M. and Deibert, Ronald J. and Senft, A., Not by Technical Means Alone: The Multidisciplinary Challenge of Studying Information Controls (May 1, 2013). Crete-Nishihata, M, Deibert, R.J.

interdisciplinary boundaries as a means of developing a holistic understanding of the issues.

While Thailand's frequent coups have historically been periods of high contestation and rapid change, the 2006 and 2014 coups are unique in that the junta made pronounced changes to the way in which the Internet is governed and codified them in laws and institutions, thus making them more resilient. It is likely that the current challenges we see in Thailand will remain in play for the foreseeable future.

Acknowledgements

The authors would like to thank Masashi Crete-Nishihata, Jakub Dalek and Amitpal Singh for assistance with this report.

and Senft, A., "Not by Technical Means Alone: The Multidisciplinary Challenge of Studying Information Controls," IEEE Internet Computing, Vol. 17, No. 3, pp. 34-41, May-June 2013. Available at SSRN: <http://ssrn.com/abstract=2265644>

Appendix

Network Measurement Testing

As web filtering in Thailand, particularly following the coup, has proven to be highly dynamic, network measurement tests can confirm reports of censorship and shed light on how filtering may be changing over time. We conducted in-country network measurement tests on two ISPs in Thailand using the ICLab¹²³ platform. These tests consisted of an automated software tool running on a dedicated hardware device located in Thailand, which attempted to access two predefined lists of potentially sensitive websites: a list of the 500 most popular websites globally, as well as a list of Thailand-specific websites, which included content relevant to the country's political, religious, cultural and linguistic context. The results of these attempts are collected and examined through a process of automated and manual analysis to identify instances of deliberate filtering. Tests are repeated in order to differentiate deliberate filtering from intermittent but innocuous technical errors.

In total, 430 tests were run on the networks of two services providers in the country: JasTel Network Company and Metrabyte. Tests were conducted from October 30, 2015 to November 12, 2015 on Metrabyte and August 13, 2015 to July 27, 2016 on JasTel.

Testing showed that attempts to access censored content on both ISPs were redirected to a page which displayed a message indicating the content was blocked:

¹²³ <https://iclab.org/>.



เว็บไซต์นี้มีเนื้อหาและข้อมูลที่ไม่เหมาะสม
ถูกระงับโดยกระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร

A variety of types of content were found blocked, including international news websites (e.g. the Daily Mail, The Guardian), human rights organizations (e.g. Human Rights Watch, Political Prisoners of Thailand), local news websites (e.g. Prachatai, Thai E-News), academic groups (e.g. Enlightened Jurists, Midnight University), Facebook groups critical of the coup, as well as gambling and pornography websites.¹²⁴

This blockpage was first observed during the tested performed soon after the coup, on June 2nd, 2014.¹²⁵ On June 3rd, the blockpage source code changed to rename the image from ict.jpg to ict2.jpg, but the image remained the same.

This blockpage is returned via an HTTP 302: Moved Temporarily header with a hard coded IP address:

```
HTTP 302: Moved Temporarily  
connection: close
```

¹²⁴ A full list of test results can be found at: <https://github.com/citizenlab/web-censorship>.

¹²⁵ See figure 3 in Citizen Lab (2014, July 09). Information Controls During Thailand's 2014 Coup. Retrieved from <https://citizenlab.org/2014/07/information-controls-thailand-2014-coup/>.

```
content-type: text/plain
location: http://203.113.26.210
```

This IP address is hosted on the network of the ISP TOT. This is the same IP address seen previously between June 2, 2014 and June 6, 2014 when the blockpage was served with the hostname `block.dyndns-at-home.com`. From June 9th, 2014 onward we see the functionality that persists today: a 302 redirect directly to this IP address. This IP address is also configured to be inaccessible from outside of Thailand.

After the 302 redirect the following server headers are seen when accessing blocked content:

```
content-length: 125
accept-ranges: bytes
vary: Accept-Encoding
server: Apache/2.x.x (eMARA)
last-modified: Tue 03 Jun 2014 06:27:34 GMT
etag: 538d6ad6-7d
cache-control: public max-age=86400
date: Thu 13 Aug 2015 23:37:22 GMT
content-type: text/html
age: 53152
```

The server tag, etag and cache-control values remain the same across all observed blocked requests. The server tag references a network product called eMARA that is sold by MARA Systems GmbH, based in Germany. eMARA is a front end server that can serve content from a number of other backend servers¹²⁶. A typical use case for such a product would be having a number of authentication servers, and content servers and serving content from all these through a single IP address. This product alone is not capable of blocking or injecting traffic, but rather is used to serve the blockpage.

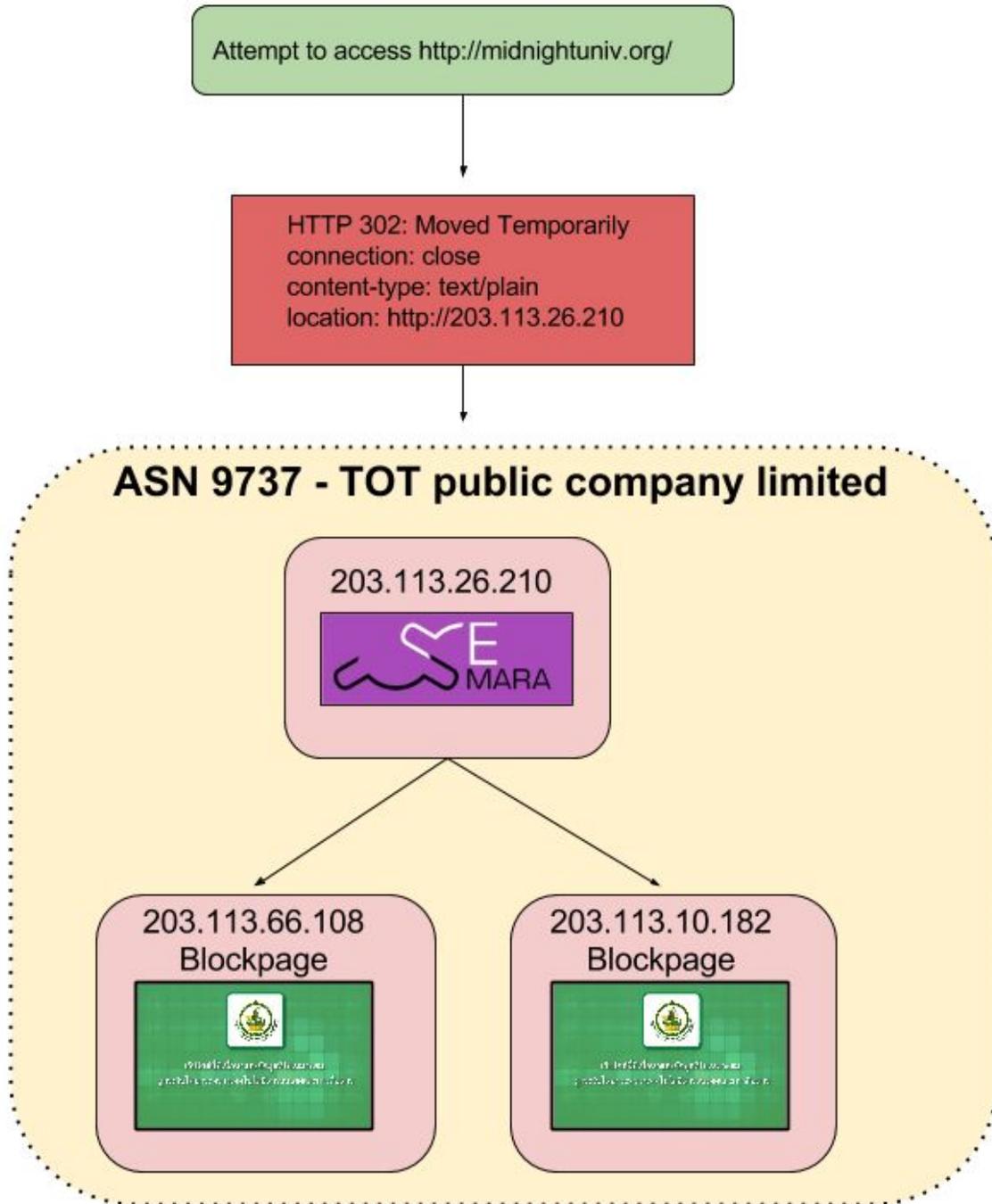
Given that eMARA is just a front end server, we set out to find any backend servers on Thai networks that are serving this same blockpage. Searching on internet wide scanning data provided by `censys.io` we searched for any sites that included the text

¹²⁶ <http://www.marasystems.com/products/emara.html>.

strings “ict.jpg” and “disableclick”¹²⁷. These strings were chosen because they were present in the blockpage source code observed previously. This lead to two IP addresses both hosted on the same TOT network: 203.113.66.108, and 203.113.10.182. These IP addresses were found to be serving the blockpage and are on IPs that are announced by the same ASN 9737, belonging to TOT.

The process of accessing blocked content and the path that the blockpage takes to be returned to the user is shown below:

¹²⁷ <https://censys.io/ipv4?q=ict.jpg+and+disableclick>



Between May 21, 2016 and July 4, 2016, there was a change in the blockpage presented to users. First, the filename of the image changes from `ict2.jpg` back to `ict.jpg`. Additionally, a piece of JavaScript is added to the blockpage to disable right click functionality in the browser seen below. This may be an attempt to restrict users

from investigating the HTML source code or limiting the ease of saving the image. In practice, this type of code is easily circumvented and often ignored by modern web browsers such as Chrome.

```
<script language="javascript">
document.onmousedown=disableclick;
status="Right Click Disabled";
function disableclick(event)
{
  if(event.button==2)
  {
    alert(status);
    return false;
  }
}
</script>
```