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Censorship by Websites Should Be Addressed by Voluntary Free-Speech Policies, NRB Says

By: Jonathan Make - October 3, 2013

Ongoing censorship of online content that major websites deem unpalatable could stop if Apple, Facebook, Google and other major companies voluntarily adopt the same free-speech principles that the Supreme Court has enshrined in decisions, a group of religious broadcasters plans to say Thursday. "A continuation of this oppressive pattern" of blocking content often aligned with politically conservative causes or views, as shown by the National Religious Broadcasters in previous studies (CD Sept 13/12 p10), was found in NRB's new report (<http://bit.ly/15M7GXn>). Based on news stories and other anecdotal evidence, it said, Apple, Facebook and Google are stifling speech.

ISPs appear to the broadcasters to be better actors. Although a previous NRB report found concerns they too had policies that could block speech they disagreed with, in practice the cable and telco companies aren't clamping down, said NRB General Counsel Craig Parshall in an interview Wednesday. "We have seen absolutely no practices by them that show they have used those [policies] to actually shut down viewpoints," he said. Apple, Facebook and Google "are replete" with such examples, he said. Those companies had no comment. Speaking about the report Thursday starting at 9:30 a.m. at the National Press Club will be Parshall and others from the NRB, along with Todd Starnes, a commentary show host, Manhattan Declaration Executive Director Eric Teetsel, Senior Research Fellow Adam Thierer of George Mason University's Mercatus Center Technology Policy Program and Trevor Burrus, research fellow at Cato Institute's Center for Constitutional Studies.

ISPs aren't a continuing focus of NRB's free-speech monitoring because they're "functionally different" and aren't "gatekeepers" for content as are websites but rather for online access, said Parshall. "We haven't seen viewpoint censorship by the ISPs. Their policies are probably not what" the group would like, "but their practices haven't shown us there's a problem," he said. "I am not hearing anybody being denied Internet access from one of the telecoms" because an ISP disagrees with a subscriber's views, said Parshall.

Broadband service providers also are in "frontier territory" with Verizon's challenge to the FCC net neutrality order pending, said Parshall. Oral argument was heard last month on Verizon v. FCC in a case observers think will lead the U.S. Court of Appeals for the D.C. Circuit to send back at least some of the 2010 order to the agency (CD Sept 10 p1). "There's been an attempt to regulate ISPs, which complicates the issue" of whether the access providers hold off on censorship because of net neutrality rules or whether they'd not engage in such practices regardless, said Parshall. "There's been no attempt to regulate the online platform" companies, he said.

Such companies should voluntarily adopt free-speech policies, given they don't need to follow the First Amendment because they aren't "state actors," said NRB's report. "Nevertheless we believe for a multitude of reasons that the First Amendment, as construed by the Supreme Court, serves as the best guide for these information technology businesses." Websites should restrict only content that a "good faith, view-point neutral analysis" finds falls under First Amendment exceptions because it's obscene, equivalent to broadcast indecency if accessible by minors, fraudulent, incites violence or "integral to criminal or unlawful conduct," said NRB. "The United States Supreme Court has refused to expand the list of traditional exceptions to free speech under the First Amendment. New media technology companies should follow suit."