

# **Skirting Censorship in the Muslim World: Discourse Through an Ever-Growing Blogosphere**

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2009 Pulliam Kilgore Intern**

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## I. Overview

### A. Before Neda, there was Omidreza.

He died quietly and alone.

A young, Iranian blogger named Omidreza Mirsayafi didn't capture the same headlines as a fellow compatriot who would become known to the world as "Neda." Felled by a gunshot in the streets of Tehran, Neda captivated thousands of YouTube viewers as she bled on the dark pavement in June. Just three months before, Mirsayafi's final moments in Iran's most notorious prison attracted no such global attention.

Neither seemed likely candidates to become martyrs. Twenty-six year old Neda, whose name means "voice" in Farsi, enjoyed music and was looking forward to learning how to play the piano before she was shot. Twenty-nine year old Mirsayafi wrote about Persian music and culture on his personal blog before he was arrested.

As waves of angry Iranians flooded the streets of Tehran to protest the contested results of the June 12 Presidential elections, Neda emerged as a powerful symbol of the opposition to the incumbent hard-line government. She became a symbol, too, of what some have called the "Twitter revolution." An onlooker with a cellphone camera captured her death in a 40-second-clip that was uploaded on YouTube and widely picked up by blogs and online media sites, like Time.com.<sup>1</sup> Even President Barack Obama took notice, describing the footage as "heartbreaking."<sup>2</sup> By contrast, only a couple of advocacy groups noticed when Mirsayafi died on March 18, 2009. Yet at the time of his death, an online revolution had already taken root in Iran

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<sup>1</sup> See Robin Wright, "In Iran, One Woman's Death May Have Many Consequences," *Time.com*, June 21, 2009, <http://www.time.com/time/world/article/0,8599,1906049,00.html> (last visited July 27, 2009).

<sup>2</sup> See, e.g., Hellen Kennedy, "President Obama calls Iranian martyr Neda's death 'heartbreaking,'" *NY Daily News*, [http://www.nydailynews.com/news/us\\_world/2009/06/23/2009-06-23\\_president\\_obama\\_calls\\_iranian\\_martyr\\_nedas\\_death\\_heartbreaking.html](http://www.nydailynews.com/news/us_world/2009/06/23/2009-06-23_president_obama_calls_iranian_martyr_nedas_death_heartbreaking.html) (last visited Aug. 3, 2009).

for several years as other young bloggers like him looked for ways to circumvent the pervasive censorship in the mainstream media.

With estimates ranging from 60,000 to 80,000<sup>3</sup> active blogs, Iran jumped on the blogging trend more than any other Middle Eastern country in no small part due to its demographics – 70 percent of Iran is under the age of 30<sup>4</sup> and the country enjoys a remarkably high literacy rate. Seventy-seven percent of all Iranian women and 87 percent of all Iranian men are literate.<sup>5</sup> (By contrast, Pakistan's adult literacy rate is only about 54 percent.)<sup>6</sup> In fact, the literacy rate in Iran climbs close to 100 percent among 15 to 24 years olds, the age group most likely to be active in the blogosphere.<sup>7</sup>

## B. The inevitable crackdown.

Bloggers at first slipped under the radar, thriving in a theocratic regime that has jailed more journalists than any other nation in the Middle East.<sup>8</sup> Perhaps inevitably, however, as the

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<sup>3</sup> These figures were corroborated through a July 15, 2009 interview with John Kelly, co-author of “Mapping Iran’s Online Public: Politics and Culture in the Persian Blogosphere,” The Berkman Center for Internet & Society at Harvard University, April 5, 2008, available at [http://cyber.law.harvard.edu/publications/2008/Mapping\\_Irangs\\_Online\\_Public](http://cyber.law.harvard.edu/publications/2008/Mapping_Irangs_Online_Public); see also “Mapping the Arabic Blogosphere: Politics, Culture, and Dissent,” The Berkman Center for Internet & Society at Harvard University, June 2009, available at [http://cyber.law.harvard.edu/publications/2009/Mapping\\_the\\_Arabic\\_Blogosphere](http://cyber.law.harvard.edu/publications/2009/Mapping_the_Arabic_Blogosphere); OpenNet Initiative, “Internet Filtering in Iran,” June 16, 2009, <http://opennet.net/research/profiles/iran> (last visited July 29, 2009).

<sup>4</sup> Ben Macintyre, “Mullahs versus the bloggers,” *Times Online*, Dec. 23, 2005, [http://www.timesonline.co.uk/tol/comment/columnists/ben\\_macintyre/article782133.ece](http://www.timesonline.co.uk/tol/comment/columnists/ben_macintyre/article782133.ece) (last visited Aug. 3, 2009).

<sup>5</sup> See UNESCO Institute for Statistics’ 2006 data on Iran (most recent data available), [http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=124&IF\\_Language=eng&BR\\_Country=3640&BR\\_Region=40535](http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=124&IF_Language=eng&BR_Country=3640&BR_Region=40535) (last visited Aug. 3, 2009) (hereinafter UNESCO, Iran).

<sup>6</sup> See UNESCO Institute for Statistics’ 2006 data on Pakistan (most recent data available), [http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF\\_Language=eng&BR\\_Country=5860](http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF_Language=eng&BR_Country=5860) (last visited Aug. 7, 2009) (hereinafter UNESCO, Pakistan).

<sup>7</sup> In the 15- to 24-year-old age group, about 96 percent of Iranian women were literate and about 97 percent of Iranian men were literate in 2006. See UNESCO, Iran, *supra* note 5.

<sup>8</sup> See Reporters Without Borders, “Iran Presidential candidates urged to pledge to defend press freedom,” *NEWS Press*, May 27, 2009.

blogosphere grew the Iranian state began cracking down on bloggers. Some of the arrests – like Mirsayafi’s – were not high-profile. Despite Mirsayafi’s claims that he blogged mostly about innocuous topics like Persian music and culture, the government said he was being detained on charges of criticizing Iranian officials. He was first imprisoned in Evin Prison – known as the “Abu Ghraib” of Iran – for a 20 days in 2000.<sup>9</sup> A few years after he was released (and before he was arrested for the second time last year), Mirsayafi wrote this on his blog:

I learned that the salvation is not achieved by wandering through the primrose path of sticking to the dogmas and the preordained codes. But it is in having faith in the dignity, nobility and liberty of the human beings. I learned that humans are not a bunch of weak slaves or debilitated beings, but they are commanding and free agents who can create whatever they wish.

(translated from the original Persian version).<sup>10</sup>

In a memorial to Mirsayafi on the *Huffington Post*, writer Jillian York said she regretted not doing more to stir awareness about the plight of the late blogger who she befriended shortly before he died.<sup>11</sup> Like Neda, Mirsayafi was a symbol of the untold numbers who had suffered at the hands of their authoritarian government: “Omidreza (Mirsayafi) was you. He was me. He was each one of us who dares speak our minds. He simply was born in the wrong country, at the wrong time, and chose the wrong day to write about something he believed in.”<sup>12</sup>

In late May 2009, Reporters Without Borders demanded an investigation into Mirsayafi’s death.<sup>13</sup> They also demanded that the Iranian presidential candidates defend press freedom

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<sup>9</sup> Jillian York, “In Memory of Omidreza Mirsayafi,” *The Huffington Post*, Mar. 21, 2009, available at [http://www.huffingtonpost.com/jillian-york/in-memory-of-omidreza-mir\\_b\\_177609.html](http://www.huffingtonpost.com/jillian-york/in-memory-of-omidreza-mir_b_177609.html) (last visited June 2, 2009).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Reporters Without Borders, “Iran Presidential candidates...” *supra* note 8.

generally and called for the unconditional release of the 13 journalists and bloggers who were being held in Iran at the time. The problem of censorship has only escalated since then – two weeks before the June elections, *The Jakarta Post* reported that the Iranian government blocked Facebook to muffle a “voice of reform (that) is prettier and louder on the (social) networking site.”<sup>14</sup> By mid-July, 41 journalists and “cyber-dissidents” were being held in Evin Prison.<sup>15</sup>

### C. “A high-tech game of cat and mouse.”

As Iranian officials pursue bloggers like Mirsayafi in a “high-tech, high-stakes game of cat and mouse,”<sup>16</sup> other authoritarian regimes are eying what is happening in Iran with self-serving interest.<sup>17</sup> The explosion of events in Iran has proven that the Internet age is making it increasingly difficult for governments to contain news within their own borders, but that does not stop these regimes from trying. “About three dozen governments — as widely disparate as China, Cuba and Uzbekistan” — significantly restrict their citizens’ access to the Internet, according to research by Harvard University’s Berkman Center for Internet and Society.<sup>18</sup> Indeed, the trend for countries that are extensively controlling access to the Internet is more, not less, censorship, said John Palfrey, a co-director of the Berkman Center.<sup>19</sup>

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<sup>14</sup> Ary Hermawan, “Thou Shalt Not Facebook,” *The Jakarta Post*, May 30, 2009.

<sup>15</sup> Reporters Without Borders, “41 journalists in prison after a month of unrest,” July 12, 2009, <http://www.rsf.org/41-journalists-in-prison-after-a.html> (last visited July 28, 2009).

<sup>16</sup> Doug Gross, “Iranians dodging government’s Internet crackdown,” *CNN.com*, June 18, 2009, <http://www.cnn.com/2009/TECH/06/18/iran.dodging.crackdown/index.html?iref=mpstoryview> (last visited July 31, 2009).

<sup>17</sup> Brian Stelter and Brad Stone, “Web Pries Lid of Iranian Censorship,” *The New York Times*, June 23, 2009, <http://www.nytimes.com/2009/06/23/world/middleeast/23censor.html?fta=y> (last visited July 31, 2009).

<sup>18</sup> Stelter and Stone, *supra* note 17.

<sup>19</sup> *Id.*

#### **D. “Citizen journalists” changing the landscape of journalism.**

It took a widely unpopular election to fuel an already thriving blogosphere in Iran, projecting the voices of the bloggers onto a larger international stage. These voices became increasingly vital when the visas of many foreign journalists covering the protests were set to expire and the Iranian government refused to extend their visas or issue new ones.<sup>20</sup> State-run television images only showed supporters of the current regime even though hundreds of thousands of supporters for the reformist candidate, Mir Hussein Moussavi, were rallying in the streets.<sup>21</sup> The pro-Moussavi camp turned to Twitter, YouTube and other social media platforms to post their videos and photos of the events,<sup>22</sup> with many foreign news organizations, such as *The New York Times* and *CNN*, relying on these so-called “citizen journalists” to receive independent coverage and images that they would not otherwise be able to receive.<sup>23</sup> Lara Setrakian, an *ABC News* journalist, posted this June 16 message on Twitter: “Please send footage we can’t reach!”<sup>24</sup> Meanwhile, a producer from *iReport.com*, a Web site for citizen journalists, is now sitting at *CNN*’s main newsgathering desk for the first time ever.<sup>25</sup> In an

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<sup>20</sup> See, e.g., Brian Stelter and Richard Perez-Pena, “In Iran, Fewer Journalists Each Day,” *The New York Times*, <http://mediadecoder.blogs.nytimes.com/2009/06/17/in-iran-fewer-journalists-each-day/> (June 17, 2009, 11:47 EST) (last visited Aug. 3, 2009); see also Brian Stelter, “In Coverage of Iran, Amateurs Take the Lead,” *The New York Times*, June 17, 2009, <http://mediadecoder.blogs.nytimes.com/2009/06/17/in-coverage-of-iran-amateurs-take-the-lead/> (June 17, 2009, 2:29 EST) (last visited Aug. 3, 2009).

<sup>21</sup> Nazila Fathi and Alan Cowell, “Recount Offer Fails to Quell Political Tumult in Iran,” *The New York Times*, June 17, 2009, available at [http://www.nytimes.com/2009/06/17/world/middleeast/17iran.html?\\_r=1&hp](http://www.nytimes.com/2009/06/17/world/middleeast/17iran.html?_r=1&hp) (last visited Aug. 3, 2009).

<sup>22</sup> *Id.*

<sup>23</sup> See Stelter, “In Coverage of Iran...” *supra* note 20.

<sup>24</sup> *Id.*

<sup>25</sup> Brian Stelter, “Journalism Rules Are Bent in News Coverage from Iran,” June 29, 2009, <http://www.nytimes.com/2009/06/29/business/media/29coverage.html> (last visited Aug. 3, 2009).

instant, the landscape of journalism was altered, and the lines between bloggers, Tweeters, online journalists, and traditional media in both the Middle East and the West have been blurred.

#### **E. A slippery slope.**

Although the case of Iran is unique, it is still instructive – a slippery slope separates Iran from other countries in the Muslim world. For example, Pakistan has a blogosphere that is significantly smaller than Iran’s (with about 6,000 to 10,000 active blogs, Pakistan’s blogosphere is about eight times smaller),<sup>26</sup> but Pakistani bloggers still describe their online network as “dynamic”<sup>27</sup> and “definitely alive”<sup>28</sup> with alternative voices. Unlike Iran, however, Pakistan has not recently had a single, galvanizing moment to make its citizens take to the streets in the same sort of way. As one Pakistani blogger explained the difference, “Iran is witnessing a crisis that is larger than Pakistan has experienced in a long, long time.”<sup>29</sup>

Before such crises have the opportunity to spin out of control, bloggers in places like Pakistan and Iran can offer added depth and insight to our news coverage of the Muslim world. The case in Iran has, of course, highlighted the increased convergence between bloggers and Western media. Similarly, when the Pakistani military began cracking down on Taliban forces near the country’s Afghan border last August, it was the Pakistani bloggers who attracted international attention to the plight of the two million Pakistani refugees forced to flee the violence. Karachi-based orthodontist Awab Alvi – better known by his online pseudonym as “Teeth Maestro” – explained that when the refugee crisis first happened, the “Pakistani

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<sup>26</sup> These figures were corroborated through a July 15, 2009 interview with John Kelly, *supra* note 3.

<sup>27</sup> Quoted in a June 29, 2009 interview with Dr. Awab Alvi, a.k.a. “Teeth Maestro,” whose blog (<http://teeth.com.pk/blog/>) is one of the most widely read in Pakistan.

<sup>28</sup> Quoted in a June 29, 2009 interview with Ahsan Butt, a Pakistani native currently based in Chicago and a co-founder and contributor to *Five Rupees*, a Pakistani blog (<http://fiverupees.blogspot.com>).

<sup>29</sup> *Id.*

government told all the media houses to go soft on what was happening in the Swat region . . . because they wanted good coverage of their offensive.”<sup>30</sup> However, when the bloggers began to centralize coverage of the refugees, Western news outlets like the *BBC* and the *Huffington Post* picked up the story.<sup>31</sup> Teeth Maestro, the most famous blogger in Pakistan, claims that he and other bloggers in his circle are routinely contacted by a flurry of Western media whenever a huge event in their native land occurs.<sup>32</sup> For example, when gunmen attacked the Sri Lankan cricket team travelling through Lahore in March, who do you think the Western media called for first-hand accounts? You guessed it – the bloggers.

These online commentators often write about events that receive only the barest of coverage by the Western media, either because of lack of interest, or in the case of Iran, lack of access and resources. It is not news, after all, that U.S. news organizations in financial trouble are closing foreign bureaus at an alarming rate – the *Boston Globe*, which won the coveted George Polk Award for its coverage of the Israeli-Palestinian conflict in 2002, shut down its Jerusalem bureau in 2007.<sup>33</sup> By the end of 2008, the big three television networks – *ABC*, *NBC*, and *CBS* – eliminated all full-time reporters in Iraq.<sup>34</sup> Now more than ever, these media outlets have a vested interest in local bloggers for their foreign coverage. Indeed, prominent Iranian blogger Hossein Derakhshan had ties to some of the Western publications – the *New York Times*,

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<sup>30</sup> Teeth Maestro, *supra* note 27.

<sup>31</sup> See, e.g., Mona Sarika, “Pakistani Bloggers Unite, Call for Action,” *The Huffington Post*, June 1, 2009, [http://www.huffingtonpost.com/mona-sarika/pakistani-bloggers-unite\\_b\\_209123.html](http://www.huffingtonpost.com/mona-sarika/pakistani-bloggers-unite_b_209123.html) (last visited Aug. 11, 2009); see also *BBC News*, “Bloggers mobilise for Pakistan refugees,” May 26, 2009, [http://news.bbc.co.uk/2/hi/south\\_asia/8055384.stm](http://news.bbc.co.uk/2/hi/south_asia/8055384.stm) (last visited Aug. 11, 2009).

<sup>32</sup> Teeth Maestro, *supra* note 27.

<sup>33</sup> Robert Gavin, “Globe to close last three foreign bureaus,” *The Boston Globe*, Jan. 24, 2007, available at [http://www.boston.com/business/articles/2007/01/24/globe\\_to\\_close\\_last\\_three\\_foreign\\_bureaus/](http://www.boston.com/business/articles/2007/01/24/globe_to_close_last_three_foreign_bureaus/) (last visited Aug. 5, 2009).

<sup>34</sup> PEW PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2009).

*The Guardian*, and *The Washington Post* – that called for his release when he was detained in November 2008.<sup>35</sup> Bloggers like Derakhshan may be the last surviving media not completely infiltrated by the state that can offer Western journalists and readers a slice of the story that goes beyond the watered-down, state-sanctioned version.

Bloggers living abroad are not the only ones impacted by censorship. Many American bloggers, both citizen journalists as well as working online journalists alike, have some sort of link to the countries that they are writing about, whether they were born there or have family and friends who live there. The situation becomes thorny when foreign governments impose retaliatory sanctions against bloggers in the diaspora who want to travel back to visit family and friends or do more on-the-ground reporting. This risk to the bloggers themselves may seem obvious, but what about the chain of other consequences they could face? Could their sources be hurt? What about their families? Iranian attorney, writer, and activist Mehrangiz Kar and her family have experienced these dangers first-hand.<sup>36</sup> After speaking at an international conference in Berlin about the urgent need for constitutional reform in Iran, Kar was arrested in Tehran in 2000.<sup>37</sup> She is now living in the United States after being released from Evin Prison in 2001 to get treatment for cancer.<sup>38</sup> Two months after she was released, however, her husband,

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<sup>35</sup> Jillian York, “Blogging in Iran: A Dangerous Prospect,” *The Huffington Post*, Dec. 21, 2008, available at [http://www.huffingtonpost.com/jillian-york/blogging-in-iran-a-danger\\_b\\_152695.html](http://www.huffingtonpost.com/jillian-york/blogging-in-iran-a-danger_b_152695.html) (last visited June 3, 2009).

<sup>36</sup> See <http://www.mehrangizkar.net/english/biography.php> (last visited Aug. 6, 2009).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

Siamak Pourzand, was arrested.<sup>39</sup> Today, Pourzand is out of prison on regulated medical leave, but his wife and daughters cannot return to Iran to care for him for fear of arrest.<sup>40</sup>

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Journalists like Kar, Pourzand, Derakhshan, and Mirsayafi have to make precarious life-and-death gambles every day. Despite the dangers they face, these bloggers shine a glimmer of light into Muslim countries with media blackouts. Even in Muslim countries with less overtly repressive regimes, self-censorship still occurs in the traditional media and the blogosphere offers more freedom for journalists to write what they really want to write. Although many countries are now rapidly enacting “cybercrime” bills, there are just too many bloggers for their governments to be able to keep track of and prosecute. Or in places like Pakistan, where the blogosphere is still small, the bloggers escape notice as the government focuses its scrutiny on more widely accessible forms of media like television and radio.

This Pulliam Kilgore Report will explore how bloggers in countries with sizable Muslim populations, as well as American and expatriate bloggers writing about these Muslim countries, have used the blogosphere to maneuver around the traditional state censors against the press. The report is not meant to be an exhaustive survey of blogging activity and Internet regulation in the Muslim world, but is simply meant to provide a snapshot of how bloggers in these countries have used the Internet to break down legal and technological barriers that plague traditional media outlets. The next section will broadly survey the legal and regulatory schemes governing the Internet for some of the countries in the region, including Iran, Pakistan, Malaysia, Indonesia, and Singapore. The third and fourth sections will offer more detailed case studies of Iran and Pakistan, two Muslim countries that have increasingly populated Western headlines. While free-

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

speech advocates champion deregulation of the Web for bloggers, the fifth section will explore a darker side of free speech in the Muslim world: the proliferation of Jihadist Web sites. In response to the burgeoning blogosphere, some governments have begun to intensify their regulation of the Internet, but, even so, the Web represents the most open public forum for journalistic discourse in many cases.

## **II. A Broad Comparison of Internet Regulatory Schemes Across the Region**

### **A. Iran**

In Iran, Islamic law serves as a sweeping source of law.<sup>41</sup> Thus, the laws that govern the online media, including the Iranian Constitution, the Press Law, and the Penal Code, are interpreted through the lens of Islam.<sup>42</sup> Legally, freedom of speech is extremely restricted. Under the Press Law, for example, all media outlets are required to obtain government-issued licenses prior to publication or broadcast.<sup>43</sup> These licenses are administered by the Press Supervisory Board (“PSB”), a regulatory agency within the Ministry of Islamic Culture and Guidance.<sup>44</sup> An individual obtaining a license for herself or on behalf of a media outlet must jump through a series of hoops: she must be 25 years old, possess Iranian citizenship, have obtained higher education in a university or seminary, and not have a criminal record.<sup>45</sup> The real clincher, though, is that any potential journalist is also required to “be free of moral corruption.”<sup>46</sup>

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<sup>41</sup> Article 19, “Memorandum on Regulation of the Media in the Islamic Republic of Iran,” March 2, 2006, at 1, <http://www.unhcr.org/refworld/country,,ART19,,IRN,,475e4e270,0.html> (last visited July 29, 2009).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 8.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> *Id.* at 8-9.

<sup>46</sup> *Id.* at 9.

The board that reviews these press license applications is made up of a judge, a representative of the Ministry, a university professor appointed by the Ministry, and a press managing director “elected by the press.”<sup>47</sup> The so-called election of the press managing director, however, does not appear to be all that fair and free – the Ministry has the right to examine and approve the qualifications of any of the nominees.<sup>48</sup>

Notwithstanding the questionable integrity of the PSB, such a government licensing committee for the media is problematic in itself. It is up to the government to decide who is or who is not qualified to be a journalist based on arbitrary restrictions like age or education. Indeed, the fact that licenses for the media are controlled by the government contradicts the American notion of the press as the “fourth estate” whose very role is as a government watchdog.

The PSB also examines any alleged press violations, imposes temporary bans on press licenses, and refers cases to the special Press Courts, where there is a jury, or the special Revolutionary Courts, where individuals accused of undermining the Islamic regime are tried.<sup>49</sup> Violators of the Press Law can face extremely severe sanctions, including jail time, flogging, and suspension/banning of their publications.<sup>50</sup> Indeed, publications that operate without a license are subject to the stricter general laws of the Penal Code and come under the jurisdiction of the general courts without a jury trial.<sup>51</sup>

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 1.

<sup>51</sup> OpenNet Initiative, “Internet Filtering in Iran,” *supra* note 3, at 5.

Most print media in Iran is regulated by the Press Law. Meanwhile, radio and television stations are state-run and tightly controlled, which is why the blogosphere initially offered a promising alternative for independent media. On the technological front, Iran has one of the most extensive filtering systems for the Internet in the world.<sup>52</sup> Regulation of the Internet continues to expand, with the Revolutionary Guard beginning to play an active role in enforcing Internet content standards.<sup>53</sup> (The Revolutionary Guard is a branch of the Iranian military founded after the 1979 Revolution. It had an active role, for example, in suppressing the protests following the June 12 elections.) Recent legislative measures include a cyber-crime bill that is currently on review. If adopted, the bill would make the publication of Web sites or blogs that promote “corruption, prostitution or apostasy” punishable by death.<sup>54</sup>

## **B. Pakistan**

Unlike Iran, the media in Pakistan is privately run (it became privatized in the late 1990s) and therefore enjoys more freedom. Much like in the United States, a system of checks and balances for the media has been set up. For example, plaintiffs can seek civil redress for libel and slander disseminated through the media under the Pakistan Defamation Ordinance of 2002. (There was an unsuccessful attempt to amend the law in 2004 in order to make the publisher, editor, reporter and distributor jointly liable in libel cases. If adopted, the tabled bill would have also increased jail time from three months to one year and raised potential damages from 50,000 to 300,000 rupees.)<sup>55</sup>

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<sup>52</sup> *Id.* at 1.

<sup>53</sup> *Id.*

<sup>54</sup> Reporters Without Borders, “Two cyber-dissidents jailed, 5 million websites censored,” Nov. 20, 2008, <http://www.rsf.org/Two-cyber-dissidents-jailed-5.html> (last visited Aug. 6, 2009).

<sup>55</sup> AsiaMedia, “PAKISTAN: Bill to amend defamation law tabled,” July 31, 2004, <http://www.asiamedia.ucla.edu/article-southasia.asp?parentid=13233> (last visited Aug. 7, 2009).

Meanwhile, the Pakistan Electronic Media Regulatory Authority (“PEMRA”) is the regulatory body that oversees the broadcast media with the purpose of “optimizing the free flow of information.”<sup>56</sup> Established in 2002, this administrative agency is composed of a chairman and 12 members appointed by the President of Pakistan. Similar to the Federal Communications Commission in the United States, it has the regulatory capacity to issue broadcast licenses.<sup>57</sup> When former President General Pervez Musharraf declared emergency martial rule in November 2007, PEMRA went through a drastic overhaul that shut down independent media and prohibited live television newscasts because Musharraf’s regime was distraught by the television coverage of protesters in the streets. When widespread dissent from lawyers and journalists forced Musharraf to resign from power in August 2008, these restrictions were lifted.

Today, Pakistani attorneys versed in media law claim that the Pakistani media “enjoys as much freedom as in the U.S. or any other developed country.”<sup>58</sup> Still, recent legislative measures highlight how national security concerns can curb a country’s otherwise high standard for press freedom – Pakistan’s recent changes to its Cyber Crime Act is one example. On July 12, the government announced that violators – including Pakistanis living abroad – could face up to 14 years behind bars for sending “indecent, provocative and ill-motivated” stories and text messages through e-mails and cell phones.<sup>59</sup> While critics characterize such measures as “draconian,”<sup>60</sup>

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<sup>56</sup> See Pakistan Electronic Media Regulatory Authority (“PEMRA”) Ordinance 2002 (as amended by the PEMRA (Amendment) Act, 2007), available at: <http://www.pemra.gov.pk/pdf/ordinance1.pdf> (last visited Aug. 7, 2009).

<sup>57</sup> *Id.*

<sup>58</sup> Quoted from a July 30, 2009 interview with Sahibzada Anwar Hamid, former Vice President of the Supreme Court Bar Association of Pakistan.

<sup>59</sup> Syed Irfan Raza, “Punishment for indecent SMS and e-mails,” *Dawn.com*, July 13, 2009, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/sci-tech/16-punishment-for-indecent-sms-and-emails-hs-03> (last visited July 31, 2009).

the interior ministry counter that they are necessary to preserve national security. Supporters of the bill claim that recently intercepted e-mails and text messages had tried “to malign the political leadership and security forces engaged in military operation.”<sup>61</sup> (It is interesting to note that text messaging was used to rally supporters in a popular political uprising in Ukraine in 2004 and to threaten activists in Belarus in 2006).<sup>62</sup>

### C. Indonesia

Like Pakistan, Indonesia witnessed an explosion of media growth and freedom in the late 1990s. Before President Suharto’s regime was toppled in 1998, the now-defunct Ministry of Information monitored and controlled domestic media and restricted foreign media.<sup>63</sup> Today, major national commercial networks compete with the state-owned station, Televisi Republik Indonesia (“TVRI”), which had held a monopoly until 1989.<sup>64</sup> While television is the dominant form of media, there are also scores of radio stations in just Jakarta alone.<sup>65</sup> Despite the increase in privately-run stations, content is still restricted – radio and television broadcasters in Indonesia are prohibited from telecasting live news from international stations.<sup>66</sup>

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<sup>60</sup> Nauman Qaiser, “The Cyber Crime Ordinance,” *The Nation*, July 21, 2009, <http://74.125.95.132/search?q=cache:SNgiWyNIVc4J:www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Opinions/Columns/21-Jul-2009/The-Cyber-Crime-Ordinance/1+amendment+to+Pakistan+Defamation+Ordinance&cd=4&hl=en&ct=clnk&gl=us&client=firefox-a> (last visited Aug. 7, 2009).

<sup>61</sup> Reporters Without Borders, “Intensified fight against cyber-crime threatens free expression,” July 14, 2009, <http://www.rsf.org/Intensified-fight-against-cyber.html> (last visited July 31, 2009).

<sup>62</sup> Stelter and Stone, *supra* note 17.

<sup>63</sup> BBC NEWS, “Country profile: Indonesia,” Aug. 11, 2009, [http://news.bbc.co.uk/2/hi/asia-pacific/country\\_profiles/1260544.stm#media](http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1260544.stm#media) (last visited Aug. 11, 2009).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

Meanwhile, the number of Internet users in the world's most populous Muslim country skyrocketed to about 25 million by late 2007, with more growth expected.<sup>67</sup> In response to this accelerating activity on the Internet, the government enacted the Electronic Information and Transaction Law in 2008. The Internet law has received a backlash from Indonesian bloggers who believe that certain provisions curb free speech.<sup>68</sup> For example, Article 27 of the law censors content that is indecent, "gambling-related," or defamatory.<sup>69</sup> The same provision prohibits content that is part of an extortion attempt or conveys a threat.<sup>70</sup> The Alliance of Independent Journalists ("AJI") in Indonesia warned against the recent law's heavy penalties for defamatory comments, which range from six years of jail time to one billion rupees (\$98,000 U.S. dollars).<sup>71</sup> In May 2009, a second person in Indonesia was charged for violating the law.<sup>72</sup> Prita Mulyasari was arrested for allegedly circulating online defamatory comments about a hospital where she had been a patient.<sup>73</sup> The case arose when a doctor refused to give Mulyasari her medical record.<sup>74</sup> Mulyasari then sent out copies of her complaint via e-mail.<sup>75</sup> In response

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<sup>67</sup> *Id.*

<sup>68</sup> See OpenNet Initiative, "Indonesian Government Ratified Internet Law: Death to Bloggers' Voice?" <http://opennet.net/blog/2008/06/indonesian-government-ratified-internet-law-death-bloggers-voice> (June 20, 2008, 14:59) (last visited Aug. 2, 2009).

<sup>69</sup> Article 27 of the Electronic Information and Transaction Law in Indonesia would: "prohibit content that is indecent, gambling-related, defamation, extortion, (or conveys a threat)." See OpenNet Initiative, "Indonesian Government Ratified..." *supra* note 68.

<sup>70</sup> *Id.*

<sup>71</sup> International Freedom of Expression eXchange, "Second person charged under Electronic Information and Transaction Law," June 2, 2009, [http://www.ifex.org/indonesia/2009/06/02/prita\\_charged/](http://www.ifex.org/indonesia/2009/06/02/prita_charged/) (last visited Aug. 11, 2009).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

to these e-mail complaints, the hospital filed a case against Mulyasari.<sup>76</sup> AJI wanted to remove Article 27 and submitted a petition for judicial review of the law. The Constitutional Court rejected the petition.<sup>77</sup>

The Electronic Information and Transaction Law also regulates hate speech, prohibiting content that “invokes hate based on lies, (ethnicity), religion, race, and affiliation.”<sup>78</sup> Such legislation may be based out of a fear of online extremism that surfaced in early 2000 and continues to grow, according to a 2009 study.<sup>79</sup> Muslim clerics there also recently grabbed headlines for suggesting they could regulate Facebook since they believe the site is often used for gossip or exchanging pornographic material.<sup>80</sup>

#### **D. Singapore**

By contrast, the Singaporean government, which in other contexts is “known as a nation of controls,” has actually engaged in very minimal Internet filtering.<sup>81</sup> (Compare this to Iran, which has extensive Internet filtering for just about all types of content, and Pakistan, which has pervasive filtering when it comes to security-related content.) Instead, Singapore has told bloggers to self-regulate.<sup>82</sup> The government does, however, rely on non-technological means to censor content on the Internet, such as through defamation laws. In one high-profile case in May

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See OpenNet Initiative, “Indonesian Government Ratified ...” *supra* note 68.

<sup>79</sup> Zakir Hussain, “Extremists in the region wooing support online; More counter measures key, say experts,” *Straits Times* (Singapore), Mar. 7, 2009, at Prime News Section.

<sup>80</sup> Hermawan, *supra* note 14.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

2005, the state-funded Agency for Science, Technology and Research, known as A\*STAR, accused Jiahao Chen, a Singaporean doctoral student in the United States, of posting “untrue and serious accusations.”<sup>83</sup> The agency threatened Chen with a potential defamation lawsuit if he did not remove the content and issue an apology.<sup>84</sup> Chen complied in order to avoid getting entangled in a suit.<sup>85</sup> Thus, as the OpenNet Initiative reports, pervasive self-censorship still occurs because the threat of lawsuits, such as in the A\*STAR case, as well as potential fines and criminal prosecution “inhibit more open discourse in an otherwise vibrant Internet community.”<sup>86</sup>

#### **E. Malaysia**

Meanwhile, in Malaysia, the government has pledged not to censor the Internet because it wants domestic information technology industries to be able to flourish.<sup>87</sup> In 1996, Malaysia launched MSC Malaysia (formerly known as the Multimedia Super Corridor) as a Silicon Valley-like hub for technology research and development. This government initiative was designed to propel the country into the digital age and make it into an international information technology leader.<sup>88</sup> As an incentive for companies to join MSC Malaysia, the state guarantees

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<sup>83</sup> OpenNet Initiative, “Singapore,” May 10, 2007, at 3, <http://opennet.net/research/profiles/singapore> (last visited Aug. 11, 2009) (citing A\*STAR, Press Statement, May 6, 2005, [http://www.a-star.edu.sg/astar/about/action/pressrelease\\_details.do?id=0....](http://www.a-star.edu.sg/astar/about/action/pressrelease_details.do?id=0....))

<sup>84</sup> OpenNet Initiative, “Singapore,” *supra* note 83.

<sup>85</sup> OpenNet Initiative, “Singapore,” *supra* note 83 (citing *Singapore News*, “Student shuts down blog after A\*Star threatens to sue,” May 6, 2005).

<sup>86</sup> *Id.* at 4.

<sup>87</sup> OpenNet Initiative, “Malaysia,” May 10, 2007, at 1, <http://opennet.net/research/profiles/malaysia> (last visited Aug. 3, 2009).

<sup>88</sup> *Id.*

that it will not censor Internet content in a so-called “Bill of Guarantees.”<sup>89</sup> To some extent, this seems to have worked – the OpenNet Initiative reported that it found no evidence of technological filtering of the Internet in Malaysia.<sup>90</sup> Moreover, with 59 percent of all Malaysians using the Internet, this Southeast Asian country ranks 34th in the world for its national penetration rate. (This is just one step ahead from Singapore, which has a 58.6 percent penetration rate. Meanwhile, the United States ranks 13th with a 72.3 percent penetration rate).<sup>91</sup>

Although these statistics for Internet use are promising, the Malaysian government still maintains a tight lid on traditional media – all four major print newspapers are pro-state. At times, this state control has been used to place a check on bloggers and so-called cyber dissidents.<sup>92</sup> One of the pro-state newspapers – the *New Straits Times* (“NST”) – and several of its executives initiated the first known defamation suits against bloggers in January 2007.<sup>93</sup> Jeff Ooi (<http://jeffooi.com/>) and Ahirudin Attan (<http://rockybru.blogspot.com>), who was the President of the National Press Club at the time, were sued simultaneously for both blog posts *and* reader comments.<sup>94</sup> (By contrast, Internet Service Providers in the United States generally cannot be held liable for any allegedly defamatory comments that their subscribers post under Section 230 of the Communications Decency Act of 1996.<sup>95</sup> Thus, American bloggers are

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<sup>89</sup> See MSC Malaysia, “Bill of Guarantees,” <http://www.msomalaysia.my/topic/12073058097925#bog> (last visited Aug. 11, 2009).

<sup>90</sup> OpenNet Initiative, “Malaysia,” *supra* note 87, at 3.

<sup>91</sup> See Internet World Stats, “Top 47 Countries with the Highest Internet Penetration Rate” (updated June 30, 2008), <http://www.internetworldstats.com/top25.htm> (last visited Aug. 11, 2009).

<sup>92</sup> OpenNet Initiative, “Malaysia,” *supra* note 87.

<sup>93</sup> *Id.* at 3.

<sup>94</sup> *Id.*

<sup>95</sup> 47 U.S.C. § 230(c)(1). “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

usually not held liable for comments that their readers add to their blogs.)<sup>96</sup> The newspaper charged Ooi with defaming NST and falsely accusing its editors of misrepresenting facts, publishing a caricature of the Prophet Muhammad, and plagiarizing blog posts in 2006.<sup>97</sup> The Malaysian police as well as the Communications and Multimedia Commission, a state agency empowered to regulate the information technology and communications industries, had previously investigated Ooi because of comments a reader posted on his blog that were deemed offensive to the official version of Islam in Malaysia.<sup>98</sup> Thus, while Malaysia claims to be one of the most free Muslim countries when it comes to regulation of the Internet, bloggers do not always escape government influence and control.

### **III. Spotlight on Iran**

#### **A. Background**

##### **1. *Before the blogs.***

As discussed above, the government in Malaysia launched an international public relations campaign to portray itself as an information technology leader that is willing to allow unfettered access to the Web for economic gain. By contrast, Iran is a Muslim country that appears to care less about its ties to the Western world and unabashedly and extensively monitors its citizens' online activity. Before the blogosphere came into being, however, Iran's conservatives had focused their attention on controlling the print media. In 2000, Iran's conservative judiciary began waging a power struggle against the reformist policies of former

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<sup>96</sup> *Id.*

<sup>97</sup> OpenNet Initiative, "Malaysia," *supra* note 87, at 3.

<sup>98</sup> *Id.*

President Mohammad Khatemi.<sup>99</sup> This included shutting down any newspapers thought to support Khatemi's policies. Indeed, Iran's Supreme Leader, Ayatollah Ali Khamene'i, had called the reformist press "bases of the enemy."<sup>100</sup> In just the two years since the conservatives began their crackdown, more than 60 publications have been closed and dozens of liberal activists have been jailed.<sup>101</sup>

In order to bypass these restrictions, several news sites sprung up, with some directly replacing banned newspapers. Soon, a modest online post would transform these budding blogs into a full-blown movement like nothing the world had ever seen.

## 2. *Iranian journalist posts how-to-blog guide and the blogosphere explodes.*

In September 2001, young Iranian journalist Hossein Derakhshan posted a simple how-to-blog guide in his native tongue, Farsi.<sup>102</sup> Derakhshan became known as the "godfather" of the Iranian blogosphere because it exploded exponentially, growing at a rate that was higher than any other country in the Middle East.<sup>103</sup> Over the past eight years, the number of Internet users in Iran has grown at an average annual rate of approximately 48 percent, increasing from under one million Internet users in 2000 to about 23 million in 2008.<sup>104</sup> To put it in perspective,

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<sup>99</sup> Peter Feuilherade, "Iran's banned press turns to the net," *BBC NEWS*, Aug. 9, 2002, [http://news.bbc.co.uk/2/hi/not\\_in\\_website/syndication/monitoring/media\\_reports/2183573.stm](http://news.bbc.co.uk/2/hi/not_in_website/syndication/monitoring/media_reports/2183573.stm) (last visited Aug. 11, 2009).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Kerakhshan was arrested in November 2008 and was still being detained at the time this report was published. His Web site, Hoder.com, could not be accessed and is likely blocked by Iranian authorities. In a July 21, 2009 interview, Nema Milanimia, an Iranian American attorney and a friend of Kerakhshan's, said that it is also possible that Kerakhshan could have anticipated that he would be arrested and therefore had his blog preemptively shut down.

<sup>103</sup> OpenNet Initiative, "Internet Filtering in Iran," *supra* note 3, at 2.

<sup>104</sup> *Id.* (citing International Telecommunications Union, "ITU Internet Indicators 2000," <http://www.itu.int/ITU-D/icteye/Reporting>ShowReportFrame.aspx?ReportNam...> and International Telecommunications Union, "ITU Internet Indicators 2008," <http://www.itu.int/ITU-D/icteye/Reporting>ShowReportFrame.aspx?ReportNam....>).

Internet users now account for approximately 35 percent of the population of Iran compared to the average of 26 percent of the population in other Middle Eastern countries.<sup>105</sup>

Years before the world witnessed Neda’s death on the streets of Tehran, some observers noticed that a “revolution within the Revolution” was brewing online. In 2005, author Nasrin Alavi published “We Are Iran” in an attempt to document the more than 60,000 blogs in Farsi.<sup>106</sup> Alavi, an Iranian native residing in the United Kingdom, uncovered many voices of dissent from a post-1979 generation that wanted to spark change.

Even high-ranking officials like former Vice President Mohammad Ali Abtahi were posting online diaries.<sup>107</sup> Abtahi, who resigned his position as Vice President when the new hard-line parliament took power in 2004, claimed that his blog was a personal one. Still, he did sometimes touch upon serious political topics, such as Iran’s controversial development of nuclear arms. In a June 2, 2006 post, for example, Abtahi urged the Iranian government to accept the Bush administration’s momentous offer at the time to break from a 27-year-old policy of isolation toward Iran and initiate multilateral talks on the country’s nuclear program.<sup>108</sup>

With prominent journalists and officials like Derakhshan and Abtahi posting online, Iranian bloggers became legitimized as a credible source of news and analysis. When the

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<sup>105</sup> *Id.* (citing International Telecommunications Union, “ITU Internet Indicators 2008,” <http://www.itu.int/ITU-D/icteye/Reporting>ShowReportFrame.aspx?ReportNam...>).

<sup>106</sup> See NASRIN ALAVI, WE ARE IRAN (Soft Skull Press, Inc. 2005).

<sup>107</sup> Abtahi was arrested on June 16, 2009, four days after Iran’s disputed June 12 Presidential elections. Abtahi had backed pro-reform candidate Mehdi Karoubi. Abtahi’s Web site, <http://www.webneveshteha.com/en/> (last visited June 24, 2009), is currently inactive, and includes this message: “Whenever he (Abtahi) gets released, he will write here on his website.”

<sup>108</sup> In his blog, Abtahi wrote: “The new opportunity is a situation that hopefully the politicians and those involved in Iran’s nuclear files would completely grasp (the importance of) leading Iran away from the danger of possible sanctions and the punitive response of (the) Security Council.” See Mohammad Ali Abtahi, “Orange Seller (the hidden reasonable conclusion of Ms. Rice’s Letter),” June 2, 2006, <http://www.webneveshteha.com/en/weblog/?id=2146307886> (last visited July 29, 2009).

American mainstream media was still criticizing what they saw as an unwieldy and unreliable mass of information on the Web, many Iranians were turning to the blogosphere to obtain news they could not access through their state-controlled television and radio stations. For example, they read the blogs for more honest coverage of the 2005 elections that first propelled the current conservative President Mahmoud Ahmadinejad to power. Even as many reformist newspapers in Iran were being shut down by the government, the reporters from those newspapers would open up blogs. Nema Milaninia, the current President of the Iranian American Bar Association, underscored the importance of the blogs: “Bloggers had gotten to a point in 2004 and 2005, where they were more trusted than any other form of media,” he said.<sup>109</sup> Milaninia, who practices law in Palo Alto, California, began his own blog in 2003.<sup>110</sup>

### 3. *War of words.*

The conservative power bloc in Iran soon began to get nervous about the bloggers. In 2005, Ben Macintyre, a reporter for U.K.’s *Times Online*, made an astute parallel between the Islamic Revolution that Iran experienced in 1979 and the online revolution that was taking place this decade:

Many of Iran’s religious leaders recall how an earlier revolution was fuelled by new technology, when cassette tapes and videotapes of sermons by Ayatollah Ruhollah Khomeini were smuggled into the country, undermining the Shah and hastening his downfall.<sup>111</sup>

Macintyre’s observation closely echoed the one that Iranian author Alavi had made in her book that same year. Still, there are many nuances in the larger narrative that the Iranian blogosphere is weaving, and it would be grossly simplistic to assume that it only includes young

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<sup>109</sup> Interviewed July 21, 2009.

<sup>110</sup> Milaninia’s blog, <http://www.iraniantruth.blogspot.com/>, is no longer active.

<sup>111</sup> Macintyre, *supra* note 4.

dissenters looking to topple the Ahmadinejad government. A 2008 study by the Berkman Center for Internet & Society at Harvard University points out that the blogosphere is not just a forum for online dissent but also a venue for pro-establishment voices. The authors of the study described the Persian blogosphere as

a place where the Supreme Leader is praised, the Holocaust denied, the Islamic Revolution defended, Hezbollah celebrated, Islamist student groups mobilized, and pro-establishment leaders, including hard-line President Ahmadinejad, reach out to their very real constituencies within the Iranian public.<sup>112</sup>

Further still, many of the blogs serve as an outlet for topics that have nothing to do with politics – such as sports, culture and history, or just people blogging about their everyday lives.

4. *Berkman Center’s studies on the Persian blogosphere in 2008 and the Arabic blogosphere in 2009 uncover some surprising results.*

The Berkman Center’s 2008 study found that Persian blogs could be roughly divided into four groups: 1) secular/reformist; 2) conservative/religious; 3) Persian poetry and literature; and 4) mixed networks. The secular/reformist group includes both expatriates and Iranians involved in a dialogue about Iranian politics that is often critical of the government. This group also includes most of the “famous” Iranian bloggers like Derakhshans well as other notable dissidents and journalists who have left Iran in recent years.<sup>113</sup>

By contrast, the conservative/religious group features bloggers who are very supportive of the Islamic Revolution, Islamist political philosophy, and certain threads of Shi’a belief.<sup>114</sup> What is notable about the conservative bloggers in Iran is that they mirror the same sort of

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<sup>112</sup> Bruce Etling and John Kelly, “Mapping Iran’s Online Public: Politics and Culture in the Persian Blogosphere,” The Berkman Center for Internet & Society at Harvard University, April 5, 2008, at 5, available at [http://cyber.law.harvard.edu/publications/2008/Mapping\\_Irands\\_Online\\_Public](http://cyber.law.harvard.edu/publications/2008/Mapping_Irands_Online_Public).

<sup>113</sup> *Id.* at 8.

<sup>114</sup> *Id.*

political discourse and robust debate found in the American blogosphere. John Kelly, a co-author of the Berkman Center studies, said that Persian conservatives represent a wide gamut of opinions and some even criticize Ahmadinejad.<sup>115</sup>

“Even though they were extremely religious, they nonetheless were contentious,” said Kelly, who is also the founder and lead scientist of Morningside Analytics, a New York-based facility that studies online networks. “They’re really not a propagandistic party line, they really looked like political thinkers.”

Kelly noted that the Persian blogosphere is unique in its political heterogeneity, especially when compared to the neighboring Arabic blogosphere. In Egypt, for example, all the political discourse is oppositional to the current president. “There’s no little cluster of bloggers supporting Mubarak,” Kelly said.

There is also less diversity when it comes to gender. The vast majority of Persian bloggers are male and live inside Iran, according to the 2008 study. The secular/reformist and Persian poetry categories, however, did boast a large minority of women. Even so, women are generally underrepresented in both the Persian and Arabic blogospheres, said Bruce Etling, the director of the Berkman Center’s Internet & Democracy Project and a co-author of the studies.<sup>116</sup>

“This strikes me as an important area for future research,” Etling said.<sup>117</sup>

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<sup>115</sup> Kelly, *supra* note 3.

<sup>116</sup> Interviewed via e-mail July 15, 2009.

<sup>117</sup> Etling provided some illuminating statistics on women in the Arabic blogosphere. He said that the Berkman Center’s research found that only 34 percent of Arabic bloggers were female, which was still more what was found in the Persian blogosphere. (Compare this to Russia, where there are more women who blog than men.) In the Arabic blogosphere, female bloggers are also much more likely to blog anonymously than their male counterparts. Forty-two percent of female bloggers wrote anonymously or with an obvious pseudonym, compared to just 29 percent of males. The women who blogged also tended to be younger. Women’s issues (rights, status, hijab, etc.) were talked about more often among female bloggers (16 percent), compared to males (6 percent). Female bloggers were much more likely to discuss poetry, literature, and art than men (47 percent versus 30 percent), making it the most popular topic among women bloggers, said Etling.

##### 5. *Anonymous bloggers.*

One solution for Iranian bloggers seeking to avoid prosecution might be to blog anonymously. Prior to the recent elections, however, only a minority of bloggers in the secular/reformist category were blogging anonymously.<sup>118</sup> Indeed, despite the high-profile arrests and harassment of bloggers such as Derakhshan, regulation of the blogosphere in 2008 was not as severe as originally assumed by the Berkman Center's researchers.<sup>119</sup> Although the think tank has not yet conducted further research on this since the June 12 elections, Etling said that the 2008 finding is still noteworthy: "At that time, bloggers were still being arrested and punished for what they wrote on their blogs, so it was still surprising to find that so many wrote with their name instead of anonymously or with an obvious pseudonym," he said.

Perhaps just as surprising was the finding that it is more common for bloggers in the religious/conservative category to post anonymously. Although Kelly said that they are not completely sure of the reason, the dichotomy might be explained by norms in the Persian culture. Religious conservatives may generally be more likely to follow an "ethic of modesty" and feel that it is immodest to use their own name, said Kelly. By contrast, the secular bloggers would be more willing to use their own names out of pride of being part of a "long tradition of public intellectualism, (and) standing up on your soapbox," Kelly said. "People like to stake out a position as sort of a public intellectual."

It is unclear whether the Iranian government is taking concerted actions to unmask anonymous bloggers who make anti-establishment remarks. Anonymous or not, however,

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<sup>118</sup> Etling and Kelly, *supra* note 112, at 2.

<sup>119</sup> *Id.* at 24.

bloggers have remained resilient even as sanctions against them increased after the June 12 elections.

## B. Legal Framework.

### 1. *Iran is not too different from America – at first glance.*

On a very superficial level, the American constitutional protections for “freedom of speech, or of the press”<sup>120</sup> mirror what the Iranians have in their own constitution. On paper, Article 24 of the Iranian Constitution allows the press to have “freedom of expression.”<sup>121</sup>

That’s where the similarity ends, according to Milaninia, the current President of the Iranian American Bar Association. “From the abstract, they look similar, but the difference is in the details,” he said. “The fact that (the right to freedom of expression) can be arbitrarily implemented is all indicative that the (Iranian) system is fundamentally different.”

The important caveat is that the Iranian government can revoke freedom of expression if it is “detrimental to the fundamental principles of Islam or the rights of the public.”<sup>122</sup> The “rights of the public” protect so-called norms of “public decency” in Iran.<sup>123</sup> This provision was introduced with the aim of shielding the public from “immoral” content, and has been wielded as a weapon by the authorities to censor political news and information that might threaten their power.<sup>124</sup> Not surprisingly, what is considered “un-Islamic” often falls under a very wide umbrella.

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<sup>120</sup> U.S. CONST. amend. I.

<sup>121</sup> CONST. OF THE ISLAMIC REPUBLIC OF IRAN, ch. III, art. 24.

<sup>122</sup> *Id.*

<sup>123</sup> See Reporters Without Borders, “Iran Presidential candidates...” *supra* note 8.

<sup>124</sup> *Id.*

According to Milaninia, Iranian authorities usually rationalized shutting down reformist newspapers or jailing journalists on two different legal bases: (1) the newspapers and journalists were propagating opinions that were “un-Islamic,” and, therefore, violating Article 24, and (2) the newspapers and journalists were compromising “national security.” Thus, when prominent Iranian blogger Derakhshan was detained in 2008, he was charged with making comments that were un-Islamic. When Iranian-American journalist Roxana Saberi was arrested earlier this year in January, she was accused of being a spy.

Derakhshan was a print journalist at a popular reformist newspaper who turned to the Web when his newspaper was shut down in 2000.<sup>125</sup> He, of course, became famous for his how-to-blog guide. Derakhshan was last based in London after blogging for many years in Canada. Interestingly enough, Derakhshan became a controversial figure among his fellow reformist bloggers. He became disillusioned with the reformists he once championed, and was instead writing more and more pieces in support of Ahmadinejad.<sup>126</sup> Still, Iranian officials were suspicious. It did not help that Derakhshan visited Israel on a highly publicized trip in 2006 – even if it was to, as Derakhshan said, show Iranians the “real” Israel, and in turn to “humanize” Iranians for the Israelis.<sup>127</sup> So when the blogger returned to his native land in 2008, he was arrested for remarks he allegedly made on his blog about a key Shiite cleric and the third infallible Imam of Shiism.<sup>128</sup> There has been no word from Derakhshan since his arrest.

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<sup>125</sup> See Mohamed Abdel Dayem, “Attempting to silence Iran’s Weblogistan,” *GlobalPost*, June 10, 2009.

<sup>126</sup> Michael Theodoulou, “Iranian ‘Blogfather’ Hossein Derakhshan is arrested on charge of spying for Israel,” *Times Online* (U.K.), Nov. 20, 2008, [http://www.timesonline.co.uk/tol/news/world/middle\\_east/article5190462.ece](http://www.timesonline.co.uk/tol/news/world/middle_east/article5190462.ece) (last visited Aug. 11, 2009).

<sup>127</sup> *Id.*

<sup>128</sup> Dayem, *supra* note 125.

Saberi, on the other hand, has since been released due to international pressure. The former Miss Dakota beauty pageant winner studied broadcast journalism at Northwestern University as well as international relations at the University of Cambridge in England. Saberi, the daughter of an Iranian father and a Japanese mother, moved to Iran in 2006 to open a news bureau for the independent broadcast news agency Feature Story News (“FSN”). Before the Iranian government revoked her press credentials, Saberi freelanced as a reporter for such media outlets as the *BBC*, *NPR*, and *Fox News*.<sup>129</sup> As with Derakhshan, Iranian intelligence officials disapproved of a trip Saberi made to Israel as well as her relationship with U.S. government officials.<sup>130</sup> She was first sentenced to eight years, but following appeals from both President Obama and Secretary of State Hillary Clinton, Saberi was released on May 11, 2009 on a two-year suspended sentence.<sup>131</sup>

Groups like the Iranian American Bar Association and the American Center for Law & Justice counter that the Iranian government’s blatant censorship of journalists like Derakhshan and Saberi as well as the state’s recent attempts to stifle protests after the Presidential elections violate both Iranian law as well as international law.<sup>132</sup> They say that in addition to its domestic obligation under Article 24, the Iranian government is required to adhere to the United Nation’s

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<sup>129</sup> Nahid Siamdoust, “Roxana Saberi: Out of Iranian Prison, Into a Soap Opera,” *Time*, May 11, 2009, <http://www.time.com/time/world/article/0,8599,1897440,00.html> (last visited Aug. 11, 2009).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> See American Center for Law & Justice, “Iran’s Ban on the Media – A Violation of Domestic and International Law,” June 25, 2009, [http://www.aclj.org/media/pdf/AC LJ\\_IranProtestsMediaClosure062509.pdf](http://www.aclj.org/media/pdf/AC LJ_IranProtestsMediaClosure062509.pdf) (last visited July 30, 2009); see also Iranian American Bar Association, “Iranian American Bar Association Calls on the Iranian Government to Grant Legal Rights Afforded to Esha Momeni under Iranian and International Law,” Nov. 13, 2008, <http://www.iaba.us/publications/Press%20Release,%20Esha%20Momeni.pdf> (last visited July 30, 2009).

International Covenant on Civil and Political Rights (“ICCPR”).<sup>133</sup> The ICCPR is an international treaty that Iran signed in 1968 and ratified in 1975 that imposes formal legal obligations, including the right to freedom of expression, on the some 154 signatory countries.<sup>134</sup>

“Iran was one of the first ratifying parties to back (the treaty) in the 1970s, which specifically articulates the right to free speech and the right to a free press,” Milaninia said.

Article 22 of the ICCPR gives everyone the “right to freedom of association with others”<sup>135</sup> and, therefore, should protect the Iranian protesters. Article 19 gives the right to freedom of expression not only for journalists and citizens disseminating information through the traditional print and broadcast media, but also “through any other media of (their) choice.”<sup>136</sup> This means that bloggers should arguably be protected under the covenant as well.

American legal groups further argue that Iranian protesters, including bloggers, should be protected under the Universal Declaration of Human Rights (“UDHR”), which sets forth international norms for freedom of expression.<sup>137</sup> The declaration includes freedom to “seek, receive and impart information and ideas through *any media* regardless of frontiers.”<sup>138</sup> As a UN

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<sup>133</sup> International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), art. 19(1)-(2), U.N. Doc. A/6316 (*entered into force* Mar. 23, 1976).

<sup>134</sup> Article 19, *supra* note 41, at 2.

<sup>135</sup> ICCPR, *supra* note 133, at art. 22.

<sup>136</sup> *Id.* at art. 19.

Article 19 states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

<sup>137</sup> Universal Declaration of Human Rights, G.A. Res. 217A, art. 19, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 at 71 (1948) [hereinafter “UDHR”].

<sup>138</sup> *Id.*

General Assembly resolution, the UDHR is not directly binding on countries, but is still widely regarded as having legal force internationally since its adoption in 1948.<sup>139</sup>

The problem is that there is no real enforcement of either the ICCPR or the UDHR.

Although Iran should be adhering to the spirit of these international agreements, it does not.

2. *A tight lid on broadcast media, the notorious press law and the cyber crime bill.*

As mentioned in Section 2 of this report, the Iranian government holds a monopoly over all radio and television broadcasting. Furthermore, Iranians are prohibited from using satellite antennae to receive foreign broadcasting content.<sup>140</sup> Thus, the blogosphere initially became a preferred venue for people who wanted to receive independent news and information free from censorship. Now that the blogosphere has come to the attention of the authorities, however, the Iranian government can take advantage of the ambiguities in the statutes and directives regulating the Iranian press to regulate the blogosphere as well. Given the ambiguities in many of their press laws, the Iranian agencies charged with executing these laws have very broad discretionary powers.<sup>141</sup>

For example, the scope of the 1986 Press Law has been contested within the last year and half by legislators, who want to extend the statute to apply to Web sites and blogs in Iran.<sup>142</sup> The Press Law is the principle instrument for regulating media in Iran and imposes very serious and problematic restrictions on free speech.<sup>143</sup> As the OpenNet Initiative notes, “the legislation is

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<sup>139</sup> Article 19, *supra* note 41 (citing e.g. *Filartiga v. Pena-Irala*, 630 F. 2d 876 (2nd Cir.1980)).

<sup>140</sup> Article 19, *supra* note 41.

<sup>141</sup> OpenNet Initiative, “Internet Filtering in Iran,” *supra* note 3, at 4.

<sup>142</sup> *Id.* at 5.

<sup>143</sup> *Id.* at 4.

unusual in that it not only describes restricted speech but also lays out normative objectives for the press, who are required to ‘propagate and promote genuine Islamic culture and sound ethical principles.’”<sup>144</sup>

The Press Law also requires media outlets to obtain a license from the government prior to publication. If there is just one allegation that a media outlet has violated the Press Law, the Iranian government’s standard response is to suspend the publishing license until the matter is resolved.<sup>145</sup> This is in stark contrast to American jurisprudence, where such prior restraints are presumed to be unconstitutional. In the United States, the government has the onus to show that a prior restraint is necessary because of the exceptional nature of these types of cases.<sup>146</sup>

In April 2009, the Iranian parliament passed an amendment that could facilitate the application of the Press Law to online sources of content.<sup>147</sup> The 2009 amendment stipulates that “the rules stated in this Press Law apply to domestic news sites and domestic websites and set out their rights, responsibilities, legal protection, crimes, punishments, judicial authority and procedure for hearings.”<sup>148</sup> Since the wording in the amendment is very ambiguous, personal Web sites and blogs may also fall within the new definition.<sup>149</sup> Critics suspect that the timing of the amendment just a couple of months before the Presidential elections was no mere

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<sup>144</sup> *Id.* (citing Article 19, “Memorandum on Regulation of the Media in the Islamic Republic of Iran,” March 2, 2006, <http://www.unhcr.org/refworld/country,,ART19,,IRN,,475e4e270,0.html> (last visited July 29, 2009)).

<sup>145</sup> Article 19, *supra* note 41, at p5.

<sup>146</sup> See, e.g., *Near v. Minnesota*, 283 U.S. 697 (1931) (holding that a Minnesota law that imposed permanent injunctions against newspapers with “malicious, scandalous, and defamatory” content violated the First Amendment, and that such prior restraints are generally presumed unconstitutional except in very narrow circumstances, such as national security).

<sup>147</sup> OpenNet Initiative, “Internet Filtering in Iran,” *supra* note 3, at 5.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

coincidence. This amendment, which was rejected a year and a half ago when proposed to the previous parliament, was reportedly passed this time because the incumbent President Ahmadinejad wanted to curb the influence of his opposing reformist candidates in cyberspace.<sup>150</sup>

Meanwhile, the Iranian government has been seeking to sanction bloggers through other legislative measures. On July 2, 2008, the Iranian Parliament passed a cyber-crime bill on its first reading that made the publication of objectionable content on blogs punishable by death.<sup>151</sup> At the time of publication, the bill was still under review by the Guardian Council, an appointed and constitutionally mandated 12-member council that can veto any legislation passed by the Iranian parliament.<sup>152</sup>

### 3. *An ad hoc system.*

By comparison, what Americans like to think of as free speech in the United States is not completely unrestricted either. For example, private citizens can sue journalists for making defamatory remarks and speech cannot advocate violence if it will incite “imminent harm.”<sup>153</sup>

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<sup>150</sup>*Id.* (citing *Ghalam News*, “The new decision for the internet media by the parliament,” April 15, 2009, <http://www.ghalamnews.ir/news-6261.aspx>).

<sup>151</sup> Reporters Without Borders, “Iran Presidential candidates...” *supra* note 8.

<sup>152</sup> OpenNet Initiative, “Internet Filtering in Iran,” *supra* note 3, at 6 (citing <http://tarh.majlis.ir/?Report&RegId=121> (in Farsi)).

<sup>153</sup> See *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (holding that speech becomes illegal advocacy when “directed to inciting or producing imminent lawless action and is likely to incite or produce such action”). This “imminent harm” standard arose out of case in which Clarence Brandenburg, a Ku Klux Klan (KKK) leader in rural Ohio, contacted a reporter at a Cincinnati television station and invited him to come and cover a KKK rally. Portions of the rally were taped, showing several men in robes and hoods, some carrying firearms, first burning a cross and then making speeches. One of the speeches made reference to the possibility of “revengeance” against “niggers,” “Jews,” and those who supported them. One of the speeches also claimed that “our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race,” and announced plans for a march on Washington to take place July 4. Brandenburg was later convicted of advocating violence under Ohio’s Criminal Syndicalism statute for his participation in the rally and for the speech he made. However, the U.S. Supreme Court reversed Brandenburg’s conviction, holding that his conviction violated the First and Fourteenth Amendments. The court ruled that it was not enough that Brandenburg merely advocated violence; in order to be prosecuted, he needed to have incited *imminent* lawless action. The *Brandenburg* test is still the standard used for evaluating attempts to punish inflammatory speech, and it has not been seriously challenged since it was laid down in 1969.

With defamation cases, however, it is private citizens, and not the government, bringing suit. Furthermore, courts within the United States have defined standards and framed parameters to decide these types of cases through evolving judge-made law.

There are no such standards in Iranian jurisprudence, said Milaninia. The reason that you do not see defamation actions in Iran is because it does not matter whether the comments that were made were truthful or not, he said. (In the United States, a defamation claim will not succeed if the statements at issue are substantially true.)<sup>154</sup> Meanwhile, these same statements that would have no basis for legal action in the United States could be actionable in Iran if the authorities think they are harmful to the state.

“You don’t … see defamation issues,” said Milaninia. “It’s broader than defamation. In a defamation action, you are at least seeking a sense of truth, but in Iran, (a statement) could be truthful and still be illegal if it is harmful to the state.”

And as far as an imminent harm standard, “[t]hat type of standard doesn’t exist in the jurisprudence of Iran,” said Milaninia. “Essentially you have something that is flexible, and very ad hoc.”

Thus, while some of the laws look deceptively similar, how they are applied in the real world is decidedly different.

#### 4. *Technical filtering.*

In addition to its legal sanctions, Iran has one of the most extensive technological filtering systems for the Internet in the world.<sup>155</sup> Attempting to wean itself off of Western filtering technologies, Iran is now producing its own technology to block provocative blogs and

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<sup>154</sup> RESTATEMENT (SECOND) OF TORTS s. 559 (1977).

<sup>155</sup> OpenNet Initiative, “Internet Filtering in Iran,” *supra* note 3, at 1.

Web sites – the only country besides China to do this.<sup>156</sup> Furthermore, all commercial Internet Service Providers (“ISPs”) in Iran have been centralized through a state-controlled system. Milaninia explained the reason for this: “You may not be able to control what Google does, but you can sure as heck control any Web site that is operated out of Tehran.”

So far, Iran has largely relied on large-scale filtering and targeted legal action to control online activity. As of now, however, there are just too many bloggers for the Iranian government to keep up with, and the blogosphere continues to grow. For this reason, it still holds alluring promise as the last bastion for freedom of expression and democratic discourse in an otherwise repressive society.

#### **IV. Spotlight on Pakistan**

##### **A. A blogger’s story.**

When Benazir Bhutto, the first woman ever elected to lead a Muslim state, was assassinated, a pall of gloom spread across the Pakistani nation. Twenty-six year old Kalsoom Lakhani<sup>157</sup> was never a big fan of Bhutto, but the former Prime Minister’s death on December 27, 2007 stirred her awakening. It was at that point that Lakhani decided to start her popular blog *CHUP!* (<http://changinguppakistan.wordpress.com/>) because she realized just how important it was to counter the fringe of Muslim militant extremism in her native country with more moderate voices.

“It was a tragedy that her voice was extinguished,” said Lakhani, who respected how Bhutto had spoken out against the Muslim militants. “They (the militants) are technically the minority, but the majority, who is moderate, is now afraid to speak out.”

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<sup>156</sup> *Id.* at 4.

<sup>157</sup> Interviewed June 24, 2009.

Almost two years later, Lakhani is still part of a growing network of Pakistani bloggers trying to raise awareness about issues neglected in both the Pakistani and Western media. At first, Lakhani was hesitant to wear the mantle of a “citizen journalist.” “I never really thought of myself as a journalist, because, you know, I have a day job, and I don’t get paid to do this,” she said. (Lakhani currently resides in the Washington, D.C. area and runs the social investment side of ML Resources, a small private investment firm.)

Lakhani soon realized, however, that she was no longer just a consumer of information, but also an active producer. One issue close to her heart has been the exodus of Pakistani refugees forced to leave their homes due to the violence in the North West Frontier Province. Following intense pressure from the United States, the Pakistani military launched a campaign to eradicate Pakistani Taliban groups in this volatile geopolitical area bordering Pakistan and Afghanistan. The fighting has resulted in the largest internal displacement of Pakistan’s population since its independence. According to the United Nations, about 1.5 million people, called Internally Displaced Persons or “IDPs,” have been displaced since Pakistan’s latest offensive against the Taliban began in May, and two million since last August.<sup>158</sup>

On her blog, Lakhani gives regular updates on the condition of the refugees in various camps across Pakistan. “As for us, it is important to remember that IDPs are not beggars living in tents. They are not just a statistic. They are people. And we must also play a role in helping their situation,” Lakhani wrote in a May 6 post.<sup>159</sup>

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<sup>158</sup> Sarika, *supra* note 31.

<sup>159</sup> Kalsoom Lakhani, “The Status of Pakistan’s IDPs,” *CHUP! Changing Up Pakistan*, <http://changinguppakistan.wordpress.com/2009/05/06/the-status-of-pakistans-idps/> (May 6, 2009) (last visited Aug. 3, 2009).

Lakhani and other bloggers like her received international attention when they mobilized together to generate news coverage of the refugees. They wanted to draw attention to what they have characterized as the Pakistani government's apparent lack of planning to help. "I got a big response for covering the IDP issue and being a part of the wider Pakistani blogging community," said Lakhani, who has been interviewed and featured on such media outlets, as the *BBC*, *Huffington Post*, and *Reuters*. "A lot of (bloggers) came together to centralize the coverage."

Teeth Maestro, one of the most widely known bloggers in Pakistan, used his blog to raise money for the refugees.<sup>160</sup> Over the course of a four-day online drive, Teeth Maestro helped to raise three million rupees, or more than \$36,000, for the refugees. "This online revolution is completely different," said Teeth Maestro. "You have a larger base to say what you can, and a lot more people can hear you." He estimated that he received 3,500 hits during the drive for the refugees.

Muslim Americans of foreign descent are also being called upon to provide their perspectives. Wajahat Ali, a Pakistani-American blogger, is a frequent contributor to the *Washington Post*, *The Guardian*, and *Huffington Post*. When President Obama addressed the Muslim community in Cairo, Egypt in June, the *Associated Press* contacted Ali. After reading his blog, <http://goatmilk.wordpress.com/>, they thought Ali would be ideal to write about the Muslim perspective. "You never know who reads what," said Ali, a 28-year-old attorney and playwright based in northern California.

Michael Wolfe, a contributor to *CNN.com*, said that this is a pivotal turning point for Muslims and their neighbors. "For the first time, ordinary Muslims can speak directly to their

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<sup>160</sup> Teeth Maestro, *supra* note 27.

non-Muslim neighbors – and share their views on just about anything – without the mainstream media as intermediaries selecting their talking heads, pundits and experts,” Wolfe said.<sup>161</sup>

In addition to reaching out to the West, some bloggers want to diversify coverage in their own countries. For example, *Five Rupees* (<http://fiverupees.blogspot.com>) is a Pakistani blog run by four contributors who reside in different parts of the world, including Chicago, London, and Karachi. One of the contributors, Ali K. Shah, said that he blogs to debunk myths propagated by the mainstream Pakistani press.<sup>162</sup> “Pakistani media frustrates me the most,” said Shah. “Pakistanis have this profound love of the conspiracy theory. I would suggest that 50 percent of the population believes that September 11 happened because of the Jews. It’s that sort of real lunacy that we want to challenge.”

Alternative voices like Shah may be adding to the mix, but compared to the Iranian blogosphere, the Pakistani blogosphere is relatively small. Only 6,000 to 10,000 blogs in Pakistan compare to the 60,000 to 80,000 in Iran. “Blogging has simply not caught on there, and become a cultural practice the way it has in Iran,” said Kelly, who has done some recent research on the Pakistani blogosphere with his company, Morningside Analytics.

One reason might be because the majority of Pakistani bloggers write in English, the exclusive language of the country’s well-educated elite. Shah, an intellectual property attorney based in Karachi, also noted a perceived lack of female bloggers.

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<sup>161</sup> Michael Wolfe, “Commentary: New media, new Muslim voices,” *CNN.com*, May 1, 2009.

<sup>162</sup> Interviewed June 29, 2009.

“There is no script for Urdu blogging,” he said. “If we had that, we would see a lot more views from women.” (By contrast, Iranian bloggers can use a piece of software that enables them to blog in Farsi without having to resort to transliteration in the Roman alphabet.)<sup>163</sup>

Despite these barriers, the media in Pakistan is a lot more diverse than it once was.

## B. Background and Legal Framework

### 1. *Explosion of privately run media under Musharraf in the 1990s.*

After taking power in 1999, General Musharraf privatized the Pakistani media, resulting in a much more vibrant and diversified press. British-Pakistani novelist Mohsin Hamid described the profound change on Pakistani society when he visited his homeland in 2007:

Not just television, but also private radio stations and newspapers have flourished in Pakistan over the past few years. The result is an unprecedented openness. In cities like Lahore, Karachi, and Islamabad, young people are speaking and dressing differently. Views both critical and supportive of the government are voiced with breathtaking frankness in an atmosphere remarkably lacking in censorship. Public space, the common area for culture and expression that had been so circumscribed in my childhood, has now been vastly expanded. The Vagina Monologues was recently performed on stage in Pakistan to standing ovations.<sup>164</sup>

The irony, of course, is that it was a military dictatorship that initially opened up the Pakistani media. Blogger Teeth Maestro noted that Musharraf once had a remarkable ease with the press. The General even appeared on Jon Stewart’s *The Daily Show* in 2006.

“There was a time when President Musharraf was really confident in the media,” said Teeth Maestro. “It was the one good thing that he did . . . but the leadership now is afraid of the media. Naturally it could be because they have a lot of skeletons in the closet.”

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<sup>163</sup> See Dayem, *supra* note 125.

<sup>164</sup> Mohsin Hamid, “General Pervez Musharraf: Pakistan’s big beast,” *The Independent*, Feb. 11, 2007, available at: <http://74.125.95.132/search?q=cache:iHvIJUw6BZAJ:www.independent.co.uk/news/world/asia/general-pervez-musharraf-pakistans-big-beast-unleashed-435738.html+General+Pervez+Musharraf+AND+privatize+media&cd=3&hl=en&ct=clnk&gl=us&client=firefox-a> (last visited Aug. 1, 2009).

## 2. *Danish cartoons of Prophet Muhammad spur crackdown in 2006.*

It was this same military dictatorship that began cracking down on the blogosphere when a controversy over Danish cartoons of the Prophet Muhammad erupted in February 2006. The cartoons had been published in the Danish daily *Jyllands-Posten* and reproduced online.<sup>165</sup> Within two weeks in March, the Supreme Court directed the government to block all Web sites affiliated with the cartoons.<sup>166</sup> They shut down 12 Web sites. Since one of the 12 was hosted on Blogspot, the Pakistan Telecommunications Company Limited (“PTCL”) blocked the entire domain.<sup>167</sup> As a result, thousands of personal blogs hosted on [www.blogspot.com](http://www.blogspot.com) were inadvertently filtered for most of 2006.<sup>168</sup> Pakistan is among a number of countries, including Ethiopia, that have blocked entire blogging domains.<sup>169</sup>

“The Pakistanis have a very crude ability to filter,” said Kelly. “The Pakistanis have this giant club, where they can smash down the Internet if they’re not happy with it. The Iranian government is more sophisticated, they’ve got a more surgical capability, so they exercise it much more lightly, and blogging thrives there.”

In response, a civil society movement against Internet censorship in Pakistan emerged, including the “Don’t Block the Blog” campaign led by Teeth Maestro.<sup>170</sup> (Ironically, Teeth Maestro had used his own blog to call for peaceful protests against the Danish cartoons, saying

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<sup>165</sup> Reporters Without Borders, “Pakistan,” Feb. 1, 2007, [http://www.rsf.org/Pakistan\\_20794.html](http://www.rsf.org/Pakistan_20794.html) (last visited Aug. 1, 2009).

<sup>166</sup> OpenNet Initiative, “Pakistan,” May 10, 2007, at 3, <http://opennet.net/research/profiles/pakistan> (last visited Aug. 1, 2009).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> OpenNet Initiative, [http://www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/ONI\\_QA\\_5\\_18.PDF](http://www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/ONI_QA_5_18.PDF) (last visited August 1, 2009).

<sup>170</sup> See Don’t Block The Blog, available at: <http://dbtb.org/>.

they were the culmination of five years of anti-Muslim agitation since the Sept. 11 attacks.)<sup>171</sup>

The campaign launched alternative Web sites for Pakistani bloggers to post on and continues to monitor other acts of censorship against the media.

### 3. *Media blackout and the lawyers' movement.*

On November 3, 2007, Musharraf declared a state of emergency within the country and imposed martial law citing rising Islamic extremism.<sup>172</sup> He decided "to overrule the Supreme Court because the court was overruling the martial law," explained Teeth Maestro. Thus, Musharraf overthrew those judges that would not take a new oath under the martial law. In the process, he suspended Pakistan's Constitution, replaced the nation's chief judge and blacked out the independent media that refused to support him. Musharraf also drastically altered the Pakistan Electronic Media Regulatory Authority ("PEMRA") Ordinance of 2002,<sup>173</sup> the directive that governs the broadcast media. In 2007, Musharraf added as many as 11 amendments in the original ordinance to curtail the freedom of the broadcast media and to prevent them from taping live telecasts of the massive protests against his authoritarian regime, according to Sahibzada Anwar Hamid, the Vice President of the Supreme Court Bar Association of Pakistan at the time.<sup>174</sup>

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<sup>171</sup> See Teeth Maestro, "The Cartoons had been a Journalistic Project," <http://teeth.com.pk/blog/2006/02/07/the-cartoons-had-been-a-journalistic-project> (Feb. 7, 2006) (last visited Aug. 2, 2009).

<sup>172</sup> David Rhode, "Pakistani Sets Emergency Rule, Defying the U.S.," *The New York Times*, Nov. 4, 2007, <http://www.nytimes.com/2007/11/04/world/asia/04pakistan.html> (last visited Aug. 2, 2009).

<sup>173</sup> The PEMRA Ordinance of 2002 applies to broadcast media in Pakistan, which it defines in 2(c) as: "broadcast by radio, television including Cable television, closed circuit television, direct broadcasting, multi-point multi-channel distribution systems for radio and television." See PEMRA, *supra* note 56, at 2(c).

<sup>174</sup> Interviewed via e-mail July 30, 2009.

Members of both the legal and journalism communities were up in arms. Hamid filed a Constitutional petition<sup>175</sup> on the grounds that the amendments made to the PEMRA Ordinance violated fundamental rights guaranteed by the Constitution.

Perhaps inevitably, Hamid was among the 3,000 lawyers throughout the country who were thrown in jail. A day after Musharraf had enforced martial law, Hamid recalls a large raid of police storming into his house at midnight. Hamid was arrested and kept in solitary confinement in a “very small cell” for more than 18 days, he said. He was eventually released.

All the while, public sentiment against Musharraf grew. Facing impeachment on charges drawn up by the governing coalition at the time, Musharraf eventually stepped down from power in August 2008.<sup>176</sup> About seven months later, the chief justice was restored. Parliament also refused to pass the amendments to the PEMRA Ordinance that Musharraf had previously instituted.

“Now in my view, there is complete freedom of press in the country,” Hamid said.

Teeth Maestro said the bloggers helped propel the restoration of democratic rule to Pakistan. “That was a movement that we were part of, the online community played a key role . . . because when that happened, the entire (broadcast) media was shut off,” he said.

Another Pakistani blogger, Ahsan Butt, described the role Teeth Maestro played: “Teeth Maestro . . . was the most important (blogger) in the lawyer’s movement,” said Butt. “He wasn’t a detached observer . . . he was very much in the thick of things.”<sup>177</sup>

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<sup>175</sup> Hamid filed a petition pursuant to the CONST. OF THE ISLAMIC REPUBLIC OF PAKISTAN, art. 184, available at: [http://www.pakistanconstitution-law.com/const\\_results.asp?artid=184&title=Original%20jurisdiction%20of%20Supreme%20Court](http://www.pakistanconstitution-law.com/const_results.asp?artid=184&title=Original%20jurisdiction%20of%20Supreme%20Court) (last visited Aug. 2, 2009).

<sup>176</sup> BBC News, “Pakistan’s Musharraf steps down,” Aug. 18, 2008, available at: [http://news.bbc.co.uk/2/hi/south\\_asia/7567451.stm](http://news.bbc.co.uk/2/hi/south_asia/7567451.stm) (last visited Aug. 2, 2009).

<sup>177</sup> Butt, *supra* note 28.

#### 4. *Technical filtering.*

Despite anecdotal claims from attorneys and bloggers that the online press is able to operate free from censorship, the Pakistan Telecommunications Authority (“PTA”) does use technological filtering to weed out content determined to be “irredentist, secessionist, antistate, or antimilitary.”<sup>178</sup> In addition to the filtering, the Supreme Court has also banned publishing or posting sites that are thought to present blasphemous material.<sup>179</sup>

Still, Pakistanis, for the most part, do have unimpeded access to most political, social, sexual, and religious content, but censorship still becomes an issue whenever so-called “anti-state” and “un-Islamic” comments come into play.<sup>180</sup> For example, citing national security concerns, the government announced on July 12 that it would use a cyber crime law to prosecute violators who send objectionable stories and text messages on the Web or on their cell phones.<sup>181</sup>

### C. **Bloggers Sound Off.**

#### 1. *Are they citizen journalists?*

Teeth Maestro said he began blogging while he was studying dentistry at the University of Pennsylvania in 2004. He was compelled to write about the unfairness he saw in American politics at the time – “the Florida fiasco that happened with Kerry” – and to “give a Pakistani perspective on the political scene in the world.” Although it started out as a casual endeavor, Teeth Maestro “definitely” considers himself a citizen journalist – and he has received both

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<sup>178</sup> OpenNet Initiative, “Pakistan,” *supra* note 166, at 1.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 4.

<sup>181</sup> *Reporters Without Borders*, “Intensified fight...” *supra* note 61.

national and international fame. (An ad spot on Teeth Maestro's Web site can cost up to \$250 a month.)<sup>182</sup>

Teeth Maestro emphasized the role that bloggers have to play in creating a democratic discourse in Pakistan and in holding their officials accountable even if they are not "traditional" journalists. "By day I am a dentist, by night I am an activist and a blogger," he said.

Others expressed discomfort with being called "journalists." Butt, of *Five Rupees* in Karachi, explains that his blog analyzes rather than gathers the news. "We have the luxury of not doing any of the fact-gathering that journalists do," said Butt. "We're basically using other people's works and analyzing the news."

2. *Despite some alternative voices, are most Pakistani bloggers pro-establishment?*

Shah, also of *Five Rupees*, believes that the blogosphere still reflects the mainstream media in Pakistan, which does not cross the line on certain topics such as questioning the state and religion.

"I think that's sad that not as many bloggers are challenging the established truths," said Shah. "When it comes to radical voices, I think there are very, very few."

Kelly, an affiliate at Harvard University's Berkman Center, agrees. The Pakistani blogosphere is "much more pro-government," said Kelly. "They're not establishment-driven, but they're much more patriotic. When the terrorist stuff happened in Mumbai (for example), they were completely conspiracy driven, how the Indians did it themselves."

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<sup>182</sup> See <http://teeth.com.pk/blog/advertise> (last visited Aug. 2, 2009).

### 3. Are they worried about censorship?

Somewhat surprisingly, Pakistani bloggers and attorneys interviewed believe that the media can write free from censorship. Yet think tanks like the OpenNet Initiative have characterized Pakistan as having one of the strictest political filtering practices in the world as recently as 2008.<sup>183</sup>

Kelly said that this is because the bloggers might not have a sense of the bigger picture. “I think they’re wrong – the most unreliable source of that information is the bloggers themselves,” he said.

Bloggers, like Butt of *Five Rupees*, disagree.

“The media in Pakistan is actually quite free, many people in the West are surprised when I tell them this,” said Butt. “Criticism of public officials is frequent . . . there really is no self-censorship either.”

Butt explained that the government is more concerned with surveillance of the broadcast media than it is with bloggers. “No one is under any delusions of grandeur here, we know that no one really cares,” said Butt. “And we have said some rather incendiary things.” Still, even Butt said that he and the other contributors on *Five Rupees* do take certain precautions. “That’s why we don’t blog under our own names...but I don’t think anyone would go as far as to ascertain[] your identity,” he said.

Lakhani, who currently resides in the Washington, D.C. area., said that she is generally not concerned about censorship but is still sometimes more careful when she travels back to Pakistan to visit family or for her job. Recently, Lakhani posted a photo of a Pakistani restaurant

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<sup>183</sup> The OpenNet Initiative’s research found that among the countries it surveyed, the following list of countries engage in substantial political blocking: Bahrain, Burma, China, Libya, Iran, Pakistan, Saudi Arabia, Syria, Tunisia, Uzbekistan, and Vietnam. Thailand and Ethiopia are the most recent additions to this group of countries that filter Web sites associated with political opposition groups. Yet such filtering systems were not found in other countries with an authoritarian bent such as Russia and Algeria.

that had hung a banner making fun of current Pakistani president Asif Ali Zardari. Zardari had become the fodder for jokes after he had made what some saw as “sleazy” comments about Sarah Palin in September 2008, Lakhani said. (Zardari had called Palin “gorgeous” upon meeting her on the sidelines of the U.N. General Assembly.)<sup>184</sup> Even though Lakhani was not in Karachi at the time, another Pakistani blogger warned her to take the photo down. “Just because I was going to Pakistan the next month, I took down the post,” she said.

#### 4. *What is the future of blogs?*

Pakistani blogs do face obstacles: small numbers, a lack of socioeconomic diversity, and censorship (both self-censorship, like the kind that blogger Lakhani described, or overt censorship, as in the case of the Danish cartoons). Still, Pakistani bloggers agree that their online network holds promise for alerting readers to issues not covered elsewhere.

### V. **Dark Side of Free Speech: Jihadist Terrorist Web sites**

Free speech, however, always has a flip side. In the United States, this is most apparent with hate speech from often well-organized groups. Likewise, in the Muslim world Jihadist Web sites can pass along dangerous ideas to new recruits. Indeed, Muslim militants are rapidly turning to the Internet to win support, a 2009 study found.<sup>185</sup> The 24-page report was written by a team of researchers from the S. Rajaratnam School of International Studies in Singapore and the Australian Strategic Policy Institute.<sup>186</sup> Called “Countering Internet Radicalisation in South-east Asia,” the study found that online extremism surfaced in early 2000 on Malay- and

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<sup>184</sup> Omar Waraich, “How Sarah Palin Rallied Pakistan’s Feminists,” *Time.com*, Sept. 26, 2008, <http://www.time.com/time/world/article/0,8599,1844925,00.html> (last visited Aug. 2, 2009).

<sup>185</sup> Zakir Hussain, “Extremists in the region wooing support online; More counter measures key, say experts,” *Straits Times* (Singapore), Mar. 7, 2009 at Prime News Section.

<sup>186</sup> *Id.*

Indonesian-language Web sites.<sup>187</sup> The sites, which were operated by radical and extremist groups or those who were sympathetic to their beliefs, grew from 13 in 2007 to 31 last year.<sup>188</sup> Some regional governments are reluctant to shut down the sites because they “do not want to appear un-Islamic by coming down hard on Islamist groups, and some do not want to appear undemocratic by seeming to rein in freedom of expression,” the study reported.<sup>189</sup>

This raises the question of whether governments should be shutting down these sites. Some who are alarmed at the rise of terrorism and believe that cyberspace can fuel the fire say yes. Meanwhile, free speech advocates disagree and point to how America deals with dissident speech. In the United States, the government regulates hate groups through an “imminent harm” standard in speech. Legislators may also use tactics outside of speech regulation such as cracking down on gun laws. But free speech is revered and left alone. After all, the weight of our First Amendment jurisprudence hinges on the idea that free speech comes with both benefits and costs. In the aggregate, however, the benefits should outweigh the costs:

The constitutional protection accorded to the freedom of speech and of the press is not based on the naive belief that speech can do no harm but on the confidence that *the benefits society reaps from the free flow and exchange of ideas outweigh the cost* society endures by receiving reprehensible or dangerous ideas.<sup>190</sup>

## VI. Conclusion

Bloggers in countries with repressive governments such as Iran are increasingly turning to the Web to escape censorship. Although these bloggers once flew under the radar, their governments have stepped up tactics to track down the bloggers, either threatening them with

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<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Herceg v. Hustler Magazine, Inc.*, 814 F.2d 1017, 1019 (5th Cir. 1987) (emphasis added).

targeted legal action or creating new state-of-the-art technologies to filter the Web for objectionable content. Other countries in the Muslim world such as Pakistan have enjoyed relative press freedom with the advent of privately run broadcast and print media. Still, even Pakistani bloggers have had to maneuver around press controls when “un-Islamic” or “anti-state” content has surfaced on the Web. Although the Pakistani blogosphere is about eight times smaller than the Iranian blogosphere, bloggers there view it as a potential outlet for alternative voices. On the flip side, such alternative voices can also generate dangerous ideas such as the growing number of Jihadist Web sites found in Southeast Asia. The trend for countries that extensively restrict their citizens’ access to the Web has been more, rather than less, censorship, but authoritarian regimes are finding it difficult to regulate bloggers in a world where the Web has defied national borders. Indeed, the blogosphere represents the most open forum for journalistic discourse in much of the Muslim world. While we mourn the death of young bloggers, like Omidreza Mirsayafi, we can still look forward to the future.

Christiane Amanpour, CNN’s chief international correspondent and a native of Iran, put it this way: “You can’t keep any of this news down anymore.”