Trade, Power, and the Internet

Research question

How do the US, EU, and Canada use trade policy to regulate Internet? What are the effects of their efforts on internet openness, internet freedom, and stability?

I have updated our findings to add implications of the Snowden revelations. USG has not responded to many of the assertions



Context

Much of human activity (leisure, commerce, diplomacy, dating!) has moved online.

When you use the Internet to shop, to do research, to bank, or to take a course, you are trading.

The Internet is a major source of US and global economic growth. US has led efforts to use trade policy to encourage cross-border information flows and to regulate policies that can distort information flows across borders. But US has also been seen as increasingly hypocritical: US blocks free flow of information with its IPR policies and FISS ignores privacy concerns when it touches global communications.

Growing international concerns about US failure to respect privacy could undermine trust in the US as a steward of the Internet as well as US assigned Internet Architecture.

Implications for US competitiveness, influence and national security

Trust and Trade Agreements

Trade agreements are supposed to build trust, as partners are separated by distance.

The Internet is also based on trust.

However, we found trade policy has, at times, undermined public trust in Western democracy's stewardship of the Internet.

Some definitions:

Internet openness: policies and procedures that allow netizens to make their own choices about applications and services.

Internet stability: policies to prevent cyber-theft, hacking, spam, terrorism, policies designed to keep the internet stable.

Free flow of information: policies that allow data to cross international borders unimpeded.

Finding: Governments use both domestic and international policy tools to regulate the Internet. These policies are not coordinated and are often inconsistent.



Finding: trade policies and agreements are becoming important tools for Internet governance

The three case studies:

- Use trade agreements to encourage e-commerce, reduce online barriers to trade, and to develop shared policies;
- Use export controls, trade bans or targeted sanctions to protect Internet users in other countries or to promote a US value when exporting items using Internet related technologies to undermine the rights of individuals abroad. US is ostensibly active.
- Can use WTO to penalize challenge other governments' Internet policies (Internet regulation, server location, privacy rules, cybersecurity) as trade barriers.



Internet provisions in EU, US, and Canadian FTAs:

	EU/EFTA/EEA	United States	Canada
IPR Enforcement			
Privacy			
FOI/DRM			
Server location			

Finding: Trade policies can both increase and/or diminish Internet openness and can conflict with other countries' approaches to Internet governance.





Finding: widening use of trade agreements and policies with diverse Internet provisions may lead to a patchwork of Internet governance, gradually fragmenting the web.



Finding: US, EU, and Canada have not clearly defined Internet freedom, nor made Internet openness a priority.



Finding: Some nations have devised principles on Internet openness, but they are neither universal nor enforceable

No consensus on when it is appropriate for governments in one country to protect netizens in another.

No consensus on whether or not to export technologies related to the web to countries with substantial censorship and other human rights violations.

No consensus on how to monitor global communications and protect citizens from harm while maintaining an open, free, and stable Internet.

Finding: Policymakers have not decided whether they should challenge Internet policies as trade barriers.

Both US and EU describe other countries Internet policies (such as privacy, server location, and security policies) as potential barriers to trade.

The US also reports on country Internet policies when they can distort trade ("naming and shaming"). However, neither the US nor EU has challenged such policies (privacy, server location, etc...) in a trade dispute

Global Responses to NSA Surveillance

Some governments have responded to the revelations by seeking official clarifications. Others are trying to constrain surveillance with greater internal policies. Still others see this as an opportunity to gain market shares, enacting:

- Server location requirements
- Cloud computing regulations
- Encouraging use of non-US cloud services with incentives

Countries with server location requirements prior to Snowden revelations
China, Germany, India, Vietnam, Saudi Arabia

Countries now enacting server location requirements
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Countries with strong privacy provisions with concern about US policies
EU, Canada, Australia, New Zealand

Countries revising privacy laws as a result of concerns about data protection
Mexico, Brazil

Recommendations



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Finding: Governments use both domestic and international policy tools to regulate the Internet. These policies are not coordinated and are often inconsistent.

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Internet provisions in EU, US, and Canadian FTAs:

	EUROPEAN UNION	UNITED STATES	CANADA
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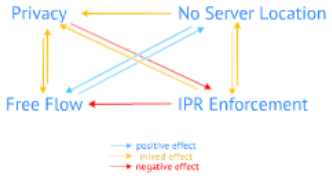
Ex: US extraterritorial use of IPR enforcement may undermine Internet openness.



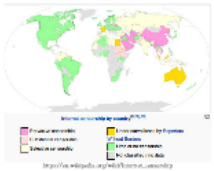
Ex: trade agreement provisions re. server location may conflict with other countries' concerns about privacy.



Finding: widening use of trade agreements and policies with diverse Internet provisions may lead to a patchwork of Internet governance, gradually fragmenting the web.



Finding: US, EU, and Canada have not clearly defined Internet freedom, nor made Internet openness a priority.



Finding: Some nations have devised principles on Internet openness, but they are neither universal nor enforceable

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Finding: Policymakers have not decided whether they should challenge Internet policies as trade barriers.

Both US and EU describe other countries Internet policies (such as privacy, server location, and security policies) as potential barriers to trade.

The US also reports on country Internet policies when they can distort trade ("naming and shaming"). However, neither the US nor EU has challenged such policies (privacy, server location, etc...) in a trade dispute

Finding: The United States sends mixed messages with its cybersecurity and intelligence policies

America operates an active cybersecurity program, many facets of which are "offensive" rather than "defensive". These actions undermine free flow of information.

- American cyber-attacks on other countries
- PRISM and other broad NSA programs eavesdropping, ignoring privacy laws overseas
- NSA "back door" encryption-breaking programs

These operations have led to skepticism in the US and abroad about America's commitment to Internet freedom and openness

America has banned Huawei and has pushed other countries to do so as well because of fears of Chinese hacking and interference - but NSA also supposedly has a backdoor.

As a result, governments are responding to Snowden's allegations (whether they are true or not) with trade policies

Global Responses to NSA Surveillance

Some governments have responded to the revelations by seeking official clarification. Others are trying to counter surveillance with protectionist policies. Still others see this as an opportunity to gain market share, enacting:

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Source: PCWorld http://www.pcworld.com/article/2018928/the-inv-internet-power-grab-in-faq.html

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Internet provisions in EU, US, and Canadian FTAs:

	EUROPEAN UNION	UNITED STATES	CANADA
IPR Enforcement	Strong enforcement : +/- (Actionable provisions)	Strong enforcement : +/- (Actionable provisions)	Encourage cooperation : +/- (No binding language)
Privacy	Human/consumer right : +/- (No binding language)	Consumer right : +/- (No binding language)	Human/consumer right : +/- (No binding language)
Free Flow	...	Free flow : + (Proposed binding language)	Cross border data flows : + (No binding language)
Server Location	...	No restrictions : + (Proposed binding language)	...

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Finding: Trade policies can both increase and/or diminish Internet openness and can conflict with other countries' approaches to Internet governance.

Ex: US extraterritorial use of IPR enforcement may undermine Internet openness.



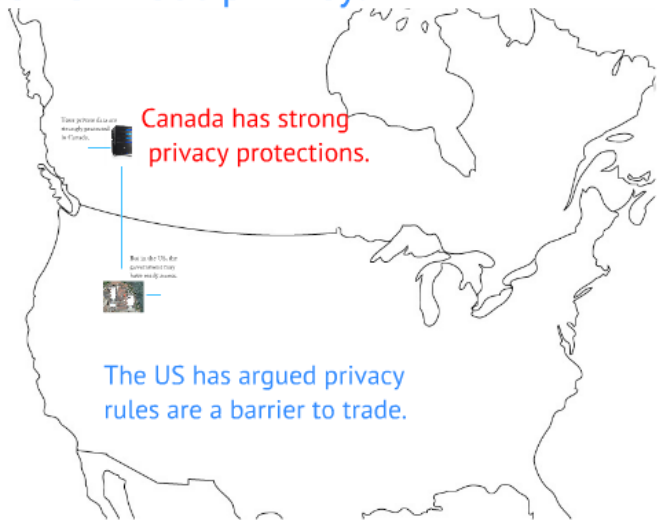
In January 2011, the FBI seized the domain of a Spanish sports website, despite Spanish courts twice ruling the site legal.



19 months later, the FBI returned Rojadirecta to its owners. Trade partners are resisting expansion of US IPR enforcement.

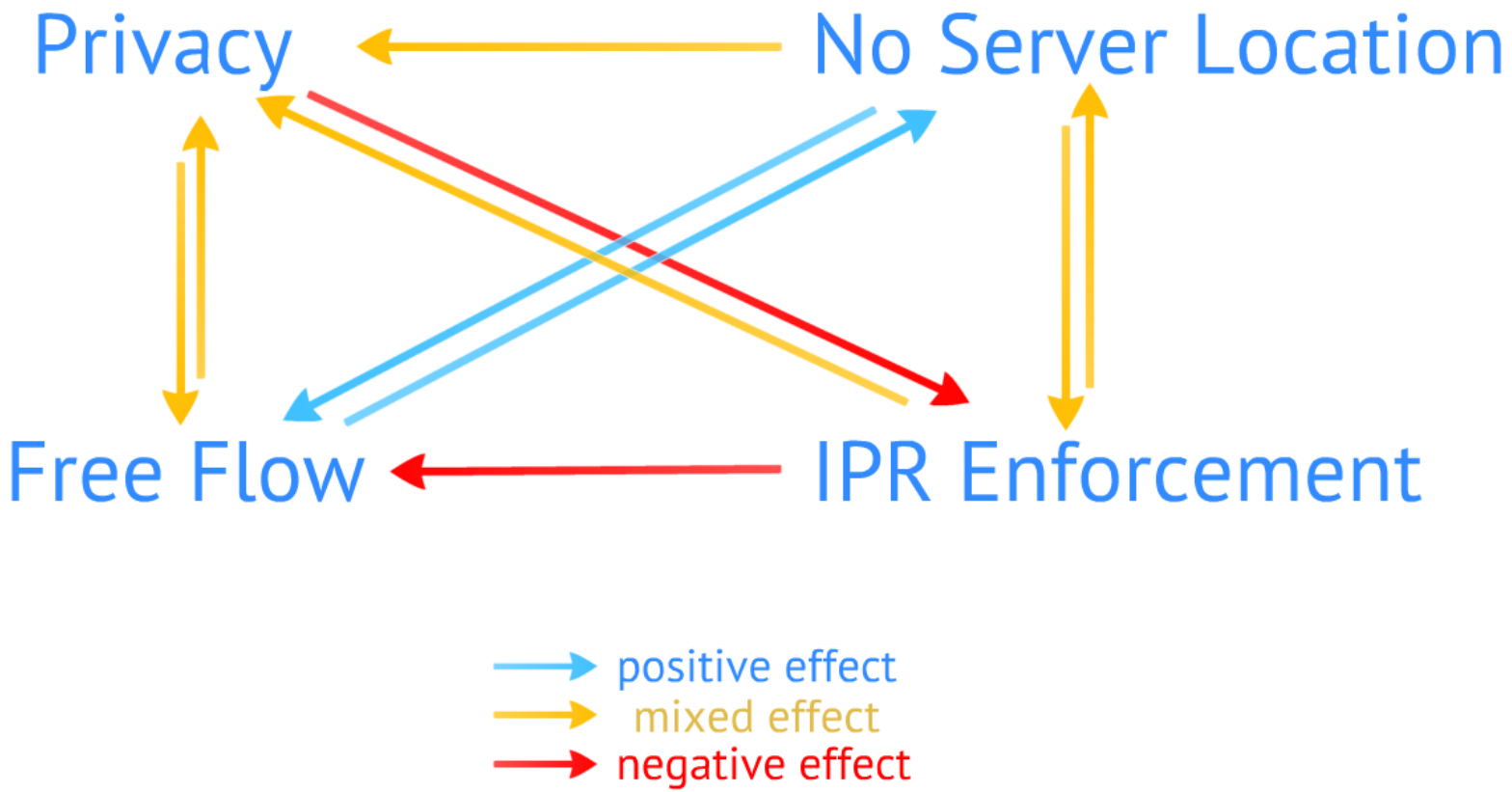
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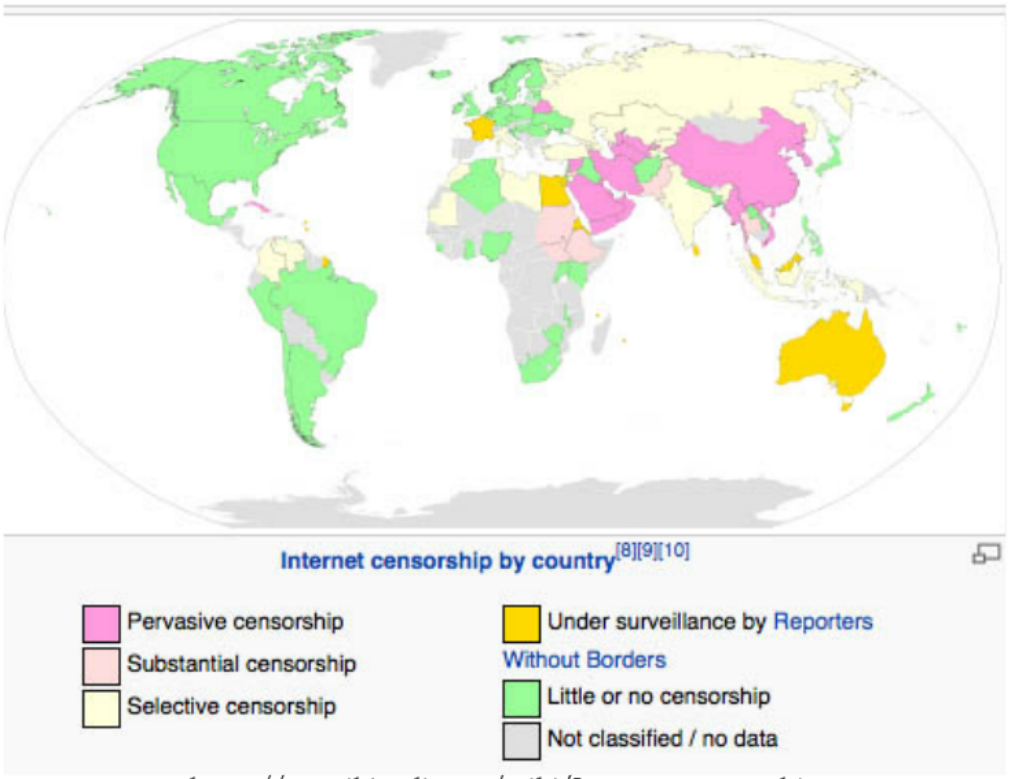
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Recommendations

1. Policymakers and netizens must decide if we want "One Global Internet." If so, we must find common ground on principles to maintain it or we will end up with many national intranets.

2. Policymakers may also need to delineate steps governments should take when countries do not live up to these principles. They have a responsibility to protect the open Internet.

3. When writing trade agreements, policymakers should also find common grounds on exceptions for national security. Policymakers should build on WTO exceptions (Articles XX and XXI).

4. The US, EU, and Canada should show their commitment to Internet openness by annually reporting when and why they blocked specific applications or technologies and/or limited content (or asked intermediaries to limit access) to sites or domains. With this information, policymakers may get a better understanding of how to achieve a flexible and effective balance of Internet stability and Internet openness.

5. Americans are just beginning to debate the appropriate balance of privacy, surveillance and free flow of information. We should also encourage a global debate in internet regulatory fora.

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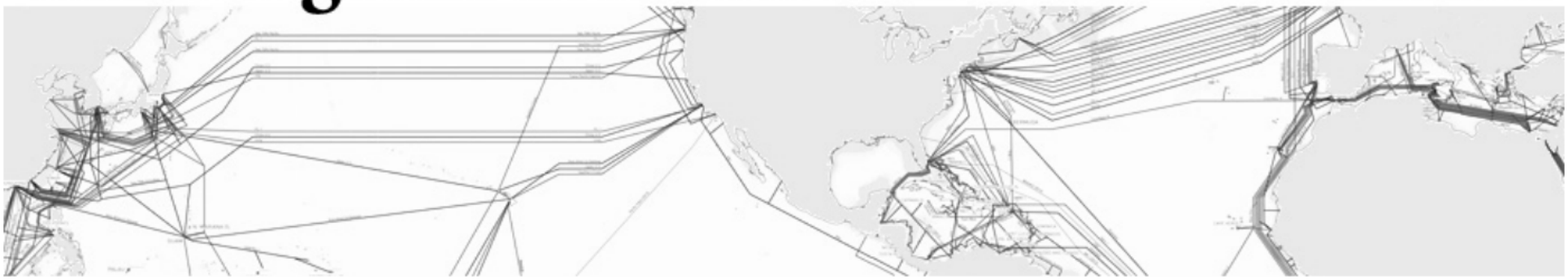
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