

Internet censorship seen liable to WTO challenge



A photographer types on his laptop while using the internet in the Main Press Center at the Olympic Games in Beijing July 31, 2008.

(Reuters)

- Censorship of the Internet is open to challenge at the World Trade Organization as it can restrict trade in services delivered online, a forthcoming study says. A censorship case at the WTO could raise sovereignty issues, given the clear right of member states to restrict trade on moral grounds -- for example, by blocking access to child pornography websites.

But a WTO ruling could set limits on blanket censorship and compel states instead to use more selective filtering, according to the study, to be published on Thursday by think-tank ECIPE.

"Censorship is the most important non-tariff barrier to the provision of online services, and a case might clarify the circumstances in which different forms of censorship are WTO-consistent," said the study by Brian Hindley and Hosuk Lee-Makiyama.

"Many WTO member states are legally obliged to permit an unrestricted supply of cross-border Internet services," they wrote in their report, obtained in advance by Reuters.

Many countries censor the Internet for political or moral reasons. China has developed one of the most pervasive systems, in Cuba all unauthorized surfing is

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illegal, and many Western countries limit access to child porn sites.

Internet use is particularly strong in Asia. China, with 298 million people online, overtook the United States in numbers of Internet users in 2008, the study said.

BUSINESS IMPACT

Internet censorship can have a serious impact on businesses, it said, noting how local search engine Baidu, which follows official rules on censorship, has overtaken global leader Google in the Chinese market.

There have even been reports that the authorities rerouted requests for Google.com and other international search engines to Baidu's site.

In the third quarter of 2009 Baidu had 64 percent of the 2 billion yuan (\$293 million) Internet search market in China, while Google had 31.3 percent.

Back in 2002, Baidu had 3 percent and Google 24 percent, the study said.

In Japan, where Google might face similar linguistic entry barriers to China, foreign-owned search engines have more than 90 percent of the market.

A challenge at the WTO by Antigua to U.S. laws restricting online gambling showed that a member's commitment -- once made -- to opening up in a sector takes precedence over subsequent bans and restrictions, even if they do not discriminate between domestic and foreign suppliers, the study noted.

And a WTO panel ruled against Chinese restrictions on imports of audio-visual entertainment, including the use of domestic distributors to control access to the material, in response to a U.S. challenge. China is appealing against that ruling.

WTO rules allow members to restrict trade to protect public morals or public order, but those measures must be necessary and disrupt trade as little as possible.

The study argues that a strong case can be made against disproportionate censorship that disrupts commercial activities by more than necessary to achieve the goals of the censoring government.

Proportionate censorship would mean selective filtering rather than arbitrary and entire blockages or permanent bans.

Some states might argue such filtering would impose an impractical burden, but others, such as China with its "Golden Shield" -- known in the West as the "Great Firewall of China" -- already have well-staffed infrastructure in place for selective censorship.

"There is a good chance that a panel might rule that permanent blocks on search engines, photo-sharing applications and other services are inconsistent with (WTO services) provisions, even given morals and security exceptions," it said.

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