

DigiActive Policy Memo

Not Smart Enough: How America's "Smart" Sanctions Harm the World's Digital Activists

by Mary Joyce, Andreas Jungherr and Daniel Schultz¹
The DigiActive Working Group on Sanction Reform for the Digital Age

A Wave of Attacks on the World's Digital Activists

In the winter and spring of this year, a wave of attacks on digital activists began. In Zimbabwe, the web site of one of the nation's strongest pro-democracy groups, Kubatana, was threatened with being shut down. In Belarus, another pro-democracy web site, this one representing the Belarussian American Association, received the same threat. In February bloggers in Iran received a similar notice that their blogs would be suspended, this in spite of research by the Harvard Berkman Center for Internet and Society that the Iranian blogosphere is a vibrant arena for both supporters and opponents of the current regime. In Sudan, aid workers are unable to download Google Earth and its "Crisis in Darfur" map, which would give them important information on sites of violence. In April users in Syria were temporarily blocked from using the social network LinkedIn, though social networks have played an important role in organizing grassroots citizen movements in countries from Egypt and Morocco to Colombia.

... Perpetrated by United States' Embargo Policies

Who was behind this wave of attacks? Was it President Mugabe? President Lukashenko? President Assad? No. The perpetrator of these attacks on pro-democracy activists was none other than the United States government and American companies adhering to its embargo regimes.

The United States has several embargo regimes related both to particular products (such as encryption software) and to individuals. These sanctions were designed to protect US interests while limiting the effect of these measures to our nation's enemies. Yet in the digital age, where a "good" is a string of code that can be delivered anywhere in the world with the click of a mouse, even today's smart sanctions are not smart enough. By preventing access to blogging platforms, social networks, and other types of new media, current embargo policies harm the very activists who are furthering our common goals of democracy promotion, while leaving authoritarian governments free to spread propaganda through a range of state-controlled media outlets.

... With American Firms Caught in an Untenable Position

These embargo policies leave American firms in a difficult position. Overwhelmed by a mass of overlapping sanctions, many take the most conservative position and simply cut off all clients in targeted countries, even though sanctions target only a few individuals. This was the policy of the

¹ This policy memo was originally written for a Congressional briefing panel before the Commission on Security and Cooperation in Europe (October 22, 2009)

Utah-based company Bluehost, which was responsible for cutting off users in Zimbabwe, Belarus, and Iran earlier this year. Especially in light of potential fines, Bluehost decided to play it safe by cutting off all users in embargoed countries, rather than constantly cross-check their users against Specially Designated Nationals (SDN) lists.

Though activists may be frustrated with this kind of corporate decision-making, it is consistent with the firm's role as a profit-making entity. American companies may choose to promote ethical activity and protect activists in foreign nations, but this is hardly their purpose. When protecting activists means potentially running afoul of the US government, it is not surprising that many firms choose to cut off activists to protect shareholder interests.

New Embargo Policies for the Digital Age

In light of these private-sector realities, responsibility for protecting foreign democracy activists falls to the US government. DigiActive's Working Group on Sanction Reform for the Digital Age recommends the following steps in order to bring about this reform:

1. Creation of a Single Body of Software Regulations: Members of the government bodies responsible for promulgating sanctions should conduct a thorough review of all regulations and legislation related to embargoes on software including, but not limited to, the Commerce Department's Export Administration Regulations and the sanctions programs maintained by the Treasury Department's Office of Foreign Assets Control. This review would result in the creation of a single volume of software policies which, at a minimum, will make it easier for US firms to abide by current rules and, by clarifying their responsibilities, would allow them to follow the letter of the law rather than taking the unnecessarily conservative positions they are currently applying to avoid the risk of transgressing unclear embargo regulations.
2. Stakeholder Review of Software Regulations: Once this single body of regulation is created, stakeholders should be invited to comment and suggest modifications to the existing rules. This stakeholder group should include, but not be limited to, representatives of the agencies responsible for promulgating and enforcing the sanctions, representatives of American firms who must abide by the sanctions, and experts in digital activism and democracy promotion.
3. Promulgation of New Regulations: Based on this stakeholder review, DigiActive suggests that a new set of sanctions be promulgated that recognize 1) that software embargoes function quite differently than embargoes on physical goods 2) that any software embargo is highly susceptible to failure because of the ease in circumventing online blocks to digital goods and 3) that access to new media tools is a great benefit to democracy activists, who lack other means of organization and message dissemination, while being of little use to authoritarian regimes, who have entire state apparatuses at their disposal.

We at the DigiActive Working Group on Sanction Reform for the Digital Age are optimistic about the positive outcome of this process and would like to offer our continuing assistance. You may contact us through our web site at www.DigiActive.org.