Chapter 23
The Gatekeepers of Cyberspace: Surveillance, Control, and Internet Regulation in Brazil

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ABSTRACT

Cyberspace, like the territories grounded in the physical world, is an environment subject to border control and surveillance for various purposes: governmental, economic, security, among others. As in the physical sphere, governance can serve to enforce rules to avoid abuses and to allow users and institutions to build effective relationships, transparent and harmonious. The purpose of this chapter is to discuss the Civil Rights Framework for the Internet in Brazil ("Marco Civil da Internet"), a project created in 2009 that aims to establish rights and obligations for the operation of the network in this Latin American nation. Before that, however, it is critical to address the issue of control and surveillance on the Internet, revealing their motivations, goals, and work tools.

INTRODUCTION

The rapid development of digital technologies has made life in the modern age easier than ever before while allowing people to overcome the geographic barriers, hitherto impossible to surmount. The types of communication made possible by the Internet have brought individuals from the most distant corners of the planet in contact with one another and greatly reduced the costs of goods and services worldwide, as well as facilitating interactivity and accelerating economic, political and social progress.

These accessible, cheaper, and highly efficient methods of communication, however, do not only herald improvements. With the popularization of digital communication, cybercrimes and surveillance activities have also found new ways of acting more effectively. Whether undertaken by governments or applied by private organizations, surveillance is being used to develop a more subtle form of control. In the context of the so-called "free culture", which has emerged with the inception of the Internet and the growing use of Information Technology (IT) in society, laws regulating intellectual property, for example, are confronted with the need to adapt to changes imposed by the new methods of production, broadcasting and circulation of creative information, brought about by these new technologies.

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Implementation of cyberspace regulations which is essential for the proper functioning of the web and exercising of the freedom of expression in this new sphere of communication are the fundamental questions related to control and surveillance. Regulation plays a crucial role in enforcing and monitoring limits on the activities developed by companies providing Internet access, preventing indiscriminate use of network users' data for commercial purposes, as well as combatting practices such as traffic shaping. However, the difference between safe navigation and controlled and monitored Internet traffic is very delicate. It is necessary to create regulatory models that respect privacy and allow free navigation for the user, without barriers to full use of digital means with all the benefits they may provide.

The objective of our study is to identify the ways that led us to the digital public sphere that we have today, with its corresponding benefits and dangers. We will discuss the existing regulation model in Brazil, our research case. First, however, is necessary to have in mind the definitions of cyber culture and cyberspace, among other concepts that were born with new technologies (like gatekeeping, net neutrality, etc.). It is necessary to consider the profound metamorphosis that the emergence and the development of the network implied in the roles of the various social actors, and to identify possible paths of these already indispensable tools for interaction, creation and distribution of information.

TYPES OF SURVEILLANCE AND CONTROL TECHNOLOGIES: WHO ARE THE GATEKEEPERS AND WHAT ROLE DO THEY PLAY IN CYBERSPACE

In the 1950s, David Manning White proposed the concept that became known in the theory of communication as gatekeeping (Sousa, 2002, p. 39). White had to identify the criteria that would be used to determine what would be selected for publication by news organizations. By observing the operation of the newsrooms of various newspapers in the United States, White concluded that the selection of material for publication depended on arbitrary and subjective factors, beyond merit judgments, experiences, attitudes and expectations of the gatekeepers – the editors of the publications.

The gatekeeper is therefore the one who determines what goes through the gateway on to the finished paper, which will be seen by the reader. This editor is an individual of power in the media universe, because he controls the flows of information and decides whether content should be emphasized or removed altogether. We decided to use the concept of gatekeeper to discuss the individuals able to control what circulates on the Internet through the use of surveillance tools. These gatekeepers of cyberspace were transplanted from traditional media, primarily large enterprises, public organizations and NGOs, to Internet observation. It is to them that we now turn.

Lyon (2004) provides three major categories of surveillance of cyberspace: work-related, security and policing, and marketing. At work, surveillance is characterized by directors and supervisors monitoring sites accessed and email sent by employees to ensure that employees are not viewing inappropriate content (such as pornography, for example) or wasting time at work with activities not relevant to the company. In the United States, a public study conducted in April 2000 indicated that 73.5% of American companies regularly perform some type of surveillance of Internet use by their employees (Castells, 2007, p. 206).

In relation to security and policing, we can include the surveillance proposed by bodies such as the High Authority for the Transmission of Creative Works and Copyright Protection on the Internet (in french: Haute Autorité pour la