

Freedom Is Not Free License: Freedom House’s Flawed Measurement of “Internet Freedom”

ROBERT D. ATKINSON AND MICHAEL MCLAUGHLIN | JUNE 2020

The advocacy group’s annual report on Internet and digital media freedom is more polemic than dispassionate analysis. The State Department should stop funding it unless it focuses on true violations of Internet freedom, such as political persecution.

KEY TAKEAWAYS

- Freedom House’s annual *Freedom on the Net* report channels a radical libertarian ideology which holds that the Internet generally should be off limits for any and all government oversight.
- This ideological framework that fails to differentiate between legitimate freedom and free license is why the report ranks the United States 7th out of 65 nations, and why its score has declined three years in a row.
- In addition to its ideological bias, the report’s methodology is opaque—for example, conflating past infringements with current practices.
- There is clearly a need for a report that regularly assesses Internet censorship and other violations of democratic, rule-of-law principles, but in its current version, the Freedom House report is not it.

INTRODUCTION

Every year, the advocacy group Freedom House releases a survey and analysis of Internet and digital media freedom around the world. Called *Freedom on the Net*, the report attempts to assess Internet freedom using a 21-question methodology, assessing nations' obstacles to Internet access, limits on online content, and restrictions on Internet users.¹ Freedom House's methodology concedes that governments can legitimately restrict access to some information and some forms of freedom expression.² However, the report channels John Perry Barlow's radical libertarian ideology, which holds that the Internet generally should be off limits for any and all government oversight.³ For example, the report's methodology penalizes not just authoritarians like China for widely agreed-upon violations of Internet freedom but also Western democracies, like the United States, for taking steps within the rule of law that are good for society. The report also espouses Internet progressives' vision of Internet freedom. For example, it states that Internet freedom in the United States has declined because of consolidation in the telecommunications sector, even though there is no evidence for this ideological claim.

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In total, the report serves as a comprehensive summary of everything that one point view considers to be bad for Internet freedom rather than a dispassionate analysis of core Internet freedom violations, which to be clear, are a problem in many nations, particularly in China and some Middle Eastern nations. As such, it is troubling that the U.S. State Department funds the project in its current form. There is clearly a need for a report that regularly assesses Internet censorship and other violations of democratic, rule-of-law principles, but in its current version, the Freedom House report is not it. If the State Department is to continue supporting this work, it should ensure the report is focused on true violations of Internet freedom, such as governments blocking websites based on political factors and prosecuting people for exercising free speech online, not reasonable rules governing online behavior, such as limiting Internet piracy or tracking terrorists online.

WHAT IS INTERNET FREEDOM?

To be sure, Internet freedom, properly defined as the ability to do things online that are legal in most democracies, is critical. And to be sure, too many nations, most notably China, severely limit Internet freedom. But freedom is not a free license to do whatever one pleases, and not all actions limiting "Internet freedom" are abuses. Indeed, governments rightly restrict access to child pornography online, even though it violates Internet users' "rights." Likewise, if the police follow judicial norms and arrest someone for breaking the law, whether online or offline, that certainly violates their freedom, but that is what lawful societies want and need.

Yet, Freedom House often fails to make a distinction between legitimate societal norms and laws and jackbooted online authoritarianism. For example, its 2011 report states:

Although the [U.S.] government does not restrict any political and social content, legal rules that apply to other spheres of life have increasingly been extended to the internet. For example, concerns over copyright violations, child pornography, protection of minors from

harmful content, gambling, and financial crime have presented a strong impetus for aggressive legislative and executive action.⁴

In other words, while Americans in the offline world have both civil liberties and legal boundaries (e.g., don't steal, don't produce or consume child pornography, don't engage in financial crimes), Freedom House seems to imply that there is something unique and even sacred about the Internet. For them, it is a largely rules-free zone where limitations imposed by governments or companies necessarily crush individuals' freedoms and destroy the unique character of the Internet.

FLAWED METHODOLOGY PENALIZES COUNTRIES LIKE THE UNITED STATES

In addition to its ideological bias, the report's methodology is opaque. The report conflates past infringements with current practices, as when it penalizes the United States for questionable prosecutions under the Computer Fraud and Abuse Act, even though the abuses the report cites are from 2015 or earlier. Moreover, while there have been individual cases of federal and state law enforcement abusing Internet rights in America, how many cases count as a lot versus a little? And how does that compare with other nations? There appears to be little effort to provide this kind of analysis.

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In addition, the report states that each country's assessment is prepared by an independent analyst. For its recent report, Laura Reed, an independent researcher, wrote the U.S. chapter. Reed was an Internet policy analyst for New America, a think tank with a particular ideological point of view blending support for Internet social engineering and cyber-libertarianism.⁵ (Cyber-libertarians believe that individuals should be free to do whatever they want online while Internet social engineers distrust big corporations and want strong regulation to protect individual rights, even if these come at the expense of the public good.) And that orientation completely colors this supposedly objective analysis.

This ideological framework that fails to differentiate between legitimate freedom and free license is why the report ranks the United States 7th out of 65 nations, and why its score has declined three years in a row.⁶ To be sure, the report correctly criticizes the United States for several issues, such as attempts by parts of the government to undermine encryption (but which the government has not implemented). But most cases where the United States receives a less-than-perfect score reflect the ideology of Freedom House rather than any objective failure of the United States not to ensure Internet users have adequate rights.

For example, nations are penalized if they allow "zero-rating plans"—where ISPs provide access to some kinds of content without counting it against data-use plans. But this practice is not by definition anti-Internet freedom. In fact, one can argue that these plans expand Internet freedom as they provide low-income individuals more Internet access.⁷ The point is that this, and many of the factors Freedom House includes, are ones where people in democratic nations can have legitimate disagreements about their merit. The inclusion of these kinds of measures obscure,

rather than clarify, important differences between Internet totalitarian nations like China and Western democracies.

Freedom House includes this factor: “Are there legal, regulatory, or economic obstacles that restrict the diversity of service providers?” The United States scores only four out of six possible points. The report states: “Many consumers only have one choice when it comes to broadband providers, particularly for fixed-line service, allowing these companies to act as de facto monopolies in a given area.” But again, not only this completely subjective (how many is “many”?) but it reflects an ideological framing. There are legitimate arguments on both sides of this issue, but there is considerable evidence that it is inefficient to have too many facilities-based broadband providers, particularly in high-cost areas.⁸

Freedom House also asks: “Do national regulatory bodies that oversee service providers and digital technology fail to operate in a free, fair, and independent manner?” The United States scores just three out of four points, presumably because the authors did not like the “Republican controlled” FCC’s decisions. The report provides no evidence that the FCC is not free, fair, or independent. Freedom House just doesn’t like what the FCC decided under Republican control. Interestingly, the 2015 report did not appear to penalize the United States on this factor, even though that was the year Democratic FCC Chairman Tom Wheeler took the unprecedented step of acting at the behest of the White House, in this case on net neutrality regulations. Again, the point is not whether one agrees with then-Chairman Wheeler or current Chairman Ajit Pai. The point is that the Freedom House report does not provide an objective assessment of what is fair and independent: It is an assessment of how much the reviewer agreed with the FCC’s decisions. A fair assessment would examine factors such as whether the FCC was not operating as an independent agency and whether it violated the Administrative Procedures Act.

The report also penalizes the United States for “the decision by the Federal Communications Commission (FCC) to repeal the Open Internet Order went into effect in June 2018.” But again, this is an ideological framing. Did the United States have less Internet freedom before 2015, when Chairman Wheeler introduced his net neutrality regulation? (The answer is no.) Were there any specific net neutrality violations in 2019? (The answer is no.)

The report also penalizes countries without taking crucial context into account. For example, nations are penalized for “high prices” for Internet services. This means that less densely populated nations like Australia, Canada, and the United States, where deployment of broadband is significantly more costly than in more densely populated nations like South Korea and Japan, have less “Internet freedom.”⁹ Likewise, the report penalizes nations if there “are there significant differences in internet penetration and access based on geographical area.” Again, by definition, people in nations with large rural populations, like Australia, Canada, and the United States, where it is difficult and costly to provide broadband, are deemed less free. The report also confuses local competition with national, and it appears to lower the score of the United States for having larger ISPs and allowing some ISPs to merge, even though the merged companies were not competing in the same service territories and therefore the mergers could not have had an impact on competition. This reflects the Internet social engineers’ view that large ISPs are bad, and small ones, ideally owned by government, are good.

Likewise, the report penalizes the United States because its telecommunication service providers have consolidated, and it specifically references Sprint and T-Mobile’s merger. At best,

reasonable people can differ on the question of whether the merger enhances or detracts from consumer welfare. But it certainly has little to do with Internet freedom. There is considerable evidence, in fact, that the merger will provide numerous benefits, including intensifying competition between existing providers and accelerating the transition to 5G networks.¹⁰ The merger will also help the combined firm expand into adjacent markets. For these reasons, U.S. consumers will benefit from a combination of lower prices, a higher quality network, and innovative new offerings.¹¹

Another factor in the Freedom House analysis is: “Are service providers and other technology companies required to aid the government in monitoring the communications of their users?” On this the United States scores four out of six. Is Freedom House really saying that people are less free if service providers and other technology companies comply with court-approved, lawful government requests by information?

One reason for the low score is that the United States “lacks a robust federal data protection law.” But the report makes no mention of the freedom people attain by having a robust data economy, which the U.S. privacy system enables, compared to the European system grounded in restrictions under the General Data Protection Regulation (GDPR). The report also criticizes the FCC’s so-called rollback of privacy regulations for broadband providers. This is another issue open to legitimate disagreement. In fact, there is considerable evidence that the FCC’s action did not weaken privacy, as the Federal Trade Commission (FTC) already had jurisdiction, and all the major carriers allowed consumers to opt out of having their information collected.¹²

Perhaps most surprising and disturbing of all the factors Freedom House includes is: “Are there laws that assign criminal penalties or civil liability for online activities?” Really?

The report gives the United States just two out of four possible points on: “Are online sources of information controlled or manipulated by the government or other powerful actors to advance a particular political interest?” Much of the report’s discussion is about foreign governments engaging in Internet-based disinformation campaigns. But the report’s methodology, which, according to Freedom House, rates real-world freedoms enjoyed by citizens, not government performance per se, penalizes the United States for the actions of another nation. It would make more sense to penalize the perpetrator, Russia, rather than the victim, the United States, would it not?

Similarly, the United States earns just one out of a possible three points on the factor: “Are websites, governmental and private entities, service providers, or individual users subject to widespread hacking and other forms of cyberattack?” But again, this is the wrong measure. U.S. websites are likely to be attacked for a variety of reasons, including having adversaries like Russia and China, which regularly employ cyber means to attack them, as well as the fact that U.S. incomes are high, making cybercrime more profitable than it is in lower-income nations. The report appears to give the United States a low score because, “Attackers with alleged links to foreign governments continued to pursue political targets in the country.” Again, attackers such as Russia and China should get the low scores, not the victims. Moreover, to the extent cybersecurity laws are weak in the United States, it is because organizations with the same ideology as Freedom House oppose them, because they worry about the impact on privacy.

Indeed, if the Congress had enacted a stronger cybersecurity law that would allow better online protection, then it is likely the U.S. score on this measure would not increase, but its scores on other measures such as government tracking would fall.

Perhaps most surprising and disturbing of all the factors Freedom House includes is: “Are there laws that assign criminal penalties or civil liability for online activities?” Really? It should be okay to engage in illegal activities on the Internet, such as take copyrighted materials, because the Internet is a governance-free zone? This orientation is why, in its 2015 report criticizing the United States, Freedom House writes:

Advertisement, production, distribution, and possession of child pornography—on the internet and in all other media—is prohibited under federal law and can carry a sentence of up to 30 years in prison. According to the Child Protection and Obscenity Enforcement Act of 1988, all producers of sexually explicit material must keep records proving that their models and actors are over 18 years old. In addition to prosecuting individual offenders, the Department of Justice, the Department of Homeland Security, and other law enforcement agencies have asserted their authority to seize the domain name of a website allegedly hosting child abuse images after obtaining a court order.¹³

It also criticizes U.S. states “for having their own laws related to computer hacking or unauthorized access.” One would assume that Freedom House would support laws that make it a criminal, or at least civil offense, to break into someone’s house without permission. But breaking into someone’s computer and having a state attorney general bring a case is a violation of the hacker’s freedom.

Another factor Freedom House weighs is: “Are individuals penalized for online activities?” Here, the United States scores just four out of six. Is Freedom House really saying that there is nothing an individual can do online that should not subject them to civil or criminal penalties? Downloading child pornography? Hacking into someone’s bank account and stealing all their money? Placing malware on someone’s computer? Distributing pirated movies? If Freedom House is really focused on government abuses in this realm, such as putting someone in jail for criticizing the state, then it should say so by asking, “Are individuals unfairly and capriciously penalized for online activities?”

Another factor in the report is, “Does the government place restrictions on anonymous communication or encryption?” Here, the United States scores three out of four, in part because some social media platforms require users to register with their real names. This is another area where different people can have different views: ITIF believes that platforms should be able to determine their own terms of service and that there can be legitimate reasons for requiring users to register under their real name.

Finally, the United States scores particularly poorly on the question of “Does state surveillance of internet activities infringe on users’ right to privacy?” The report criticizes the U.S. government for monitoring online social media activity, even though that activity is often open and available for anyone to see. In the United States, the government monitors social media for a variety of reasons, including to flag visa applicants who are national security risks. To be sure, such programs require oversight, and their administrators should publicly discuss their effectiveness to determine if their use outweighs potential tradeoffs.¹⁴ But the proper administration of these

programs may help protect society. In ITIF's view, the government should be able monitor someone's social media account before they obtain a visa. But again, these are issues on which reasonable people can disagree. To be clear, all this does not mean that U.S. record is spotless. For example, the report rightly criticizes, as ITIF has, warrantless searches of laptops and other devices.

CONCLUSION

Freedom House's report represents a mix of the views of Bay Area Internet libertarians, circa 1993, and Internet progressivism today. The Internet libertarian view was a radical and ill-fitting philosophy in 1993, and it is even less appropriate now. Leading public intellectual Amitai Etzioni of George Washington University has spoken about what he terms "liberal communitarianism," where there are two competing concerns: individual rights and the common good. How do we sort out which takes priority under what conditions? He argues that when the violation of freedom is minor and temporary, and the public benefit is large, then policy should err toward the latter. Freedom House would have us live in a society where there are never violations of "freedom" and there is little or no concept of the public good.

And while some components of Internet progressives' agenda are sorely needed, such as encouraging strong action to close the digital divide, other components, such as distrust of large companies just because they are large, do more harm than good. Freedom House's conception of Internet freedom misses the mark when it views broadband competition as an end rather than a means, and when it takes a radical view of net neutrality, demanding that all bits be treated alike, even when that harms Internet users.

The Internet has grown up since 1993. It is time for assessments of Internet policy to do the same.

About the Authors

Robert D. Atkinson is the founder and president of ITIF. Atkinson's books include: *Big Is Beautiful: Debunking the Myth of Small Business* (MIT, 2018), *Innovation Economics: The Race for Global Advantage* (Yale, 2012), and *The Past and Future of America's Economy: Long Waves of Innovation That Power Cycles of Growth* (Edward Elgar, 2005). Atkinson holds a Ph.D. in city and regional planning from the University of North Carolina, Chapel Hill, and a master's degree in urban and regional planning from the University of Oregon.

Michael McLaughlin is a research analyst at the Information Technology and Innovation Foundation. He researches and writes about a variety of issues related to information technology and Internet policy, including digital platforms, e-government, and artificial intelligence. Michael graduated from Wake Forest University, where he majored in Communication with Minors in Politics and International Affairs and Journalism. He received his Master's in Communication at Stanford University, specializing in Data Journalism.

About ITIF

The Information Technology and Innovation Foundation (ITIF) is a nonprofit, nonpartisan research and educational institute focusing on the intersection of technological innovation and public policy. Recognized as the world's leading science and technology think tank, ITIF's mission is to formulate and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress.

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ENDNOTES

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