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Thailand's Struggle for Freedom of Expression in Cyberspace

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TIM YU, JUL 21 2013

The right to freedom of expression has often been considered a fundamental benchmark for any liberal democracy. Thailand has been confronted with the challenge of allowing for freedom of expression, while protecting the constitutional monarchy from defamation. Following the Thai military coup in 2006, however, Bangkok has increasingly invoked *lèse-majesté* laws as a weapon against political opposition and to suppress the free discussion of politics in Thailand. Article 112 in Thailand's Criminal Code, which contains provisions of *lèse-majesté*, has made it punishable by up to three-to-fifteen years imprisonment for each offence that "defames, insults, or threatens the King, Queen, and the Heir-apparent or the Regent." [1] The passage of the Computer-Related Offences Commission Act, better known as the Computer Crimes Act (CCA), though, in 2007 has extended the range of Thailand's *lèse-majesté* laws to cyberspace. While *lèse-majesté* is not explicitly mentioned in the CCA, Thai authorities have sought to criminalize *lèse-majesté* offences in cyberspace under the provision of 'national security.' The recent proliferation of *lèse-majesté* cases has also witnessed the CCA being used in conjunction with Article 112 to "suppress critics of the monarchy and persecute perceived government enemies." [2]

This essay argues that the combined enforcement of *lèse-majesté* provisions under Article 112 of the Thai Criminal Code and the CCA, has seriously threatened freedom of expression and communication freedom in Thailand. Although studies have been conducted on both *lèse-majesté* and the CCA, less research has been devoted to analyzing the combined effects that these provisions have had on free expression and communication freedom. The rapid expansion of Internet activity amongst Thailand's eighteen million users has raised questions about the degree to which Thai authorities are willing to allow for freedom of expression, but also the extent to which rival public and private actors intend to respond to increased government censorship controls. The unorthodox convergence of sixteenth-century legislation of *lèse-majesté*, into a form of twenty-first-century online cybercrime surveillance law, has coincided with the severe decline in freedom of expression in Thailand.

Risking Security: The Politics of Cyberspace Security

Cyberspace security is the focus in which nation-states evaluate the risks and benefits associated with becoming more deeply integrated through global connectivity on the Internet. [3] The rapid growth in the number of new Internet users from the developed and developing world has brought a diverse array of linguistic, cultural, and political values to cyberspace, and triggered serious questions behind how governing regimes intend to strike a balance between national security and communication freedom. Nations have sought to implement policy regulations to ensure that cyberspace becomes a more secure environment, while also recognizing its strategic importance to social and economic development. Although policy coordination on cyberspace does occur between states, the degree of multilateral cooperation tends to decline depending on how political regimes differ in their national interests and perspectives. Liberal democratic societies, for instance, have generally favoured more open communication networks, with the occasional filtering of content relating to copyright infringements, distribution of hate propaganda, and the sexual exploitation of children. [4] Authoritarian and democratically challenged regimes, including nations such as Thailand, have sought to establish wider controls on 'information security,' as well as covert and offensive-minded tactics, to shape cyberspace according to their strategic interests. [5]

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The irony behind Internet content filtering is that security policies that have been designed to mitigate risks *to* and *through* cyberspace also have the ability to exacerbate existing insecurities themselves. Ronald Deibert and Rafal Rohozinski (2010) of the Citizen Lab at the University of Toronto, have identified two distinct but related risk dimensions in cyberspace security: risks *to* the physical realm of information and communication technologies (ICT), and risks that are generated or facilitated *through* cyberspace infrastructure. Policies that are designed to combat risks posed to cyberspace have often been adopted in the hopes of sustaining security in a friction-free global communications environment. Yet, at the same time, these same policies can also have the effect of introducing undesirable disruptions in the form of content filtering, computer network attacks, and self-censorship through pervasive national surveillance practices.[6] In more extreme cases, this can even result in the disabling of critical infrastructures by national authorities in order to neutralize risks posed by private networks of political and social actors through cyberspace. Cyberspace security is unique in that it (1) monitors international networks that operate beyond national jurisdictions, (2) consists of a mix of public and private networks, and (3) operates in both material and virtual realms that are in a constant state of transformation.[7]

The exponential rise in Thai cyberspace users from 2.3 million in 2000 to 18.3 million in 2011, which amounts to an estimated Internet penetration rate of 27.4 percent, has provided citizens with an opportunity to discuss and engage with other like-minded individuals within an online community. The growing demand from the general public to expand to cyberspace has coincided with significant growth in the number of social networks, news- and non-news orientated websites, online forums, and blogs that are made available to Thai netizens.[8] The National Telecommunications Commission (NTC) was established in 2004 to serve as the main national independent regulator of telecommunications in the country, but has remained subject to Thailand's external political and corporate influences.[9] In response to expanding cyber-networks, Thailand has adopted a two-tiered structure for Internet regulation: pre-reform intermediaries that report to the MICT, and post-reform intermediaries that operate under licenses issued by the NTC.[10] As part of a greater initiative to improve Thailand's information and communications technology (ICT) infrastructure, the Ministry of Information and Communications Technology (MICT) has adopted a so-called 'National Broadband Policy' to improve cross-country Internet access to eighty percent by 2015.[11]

Thailand has been consistently ranked as one of the top countries worldwide engaged in strong censorship controls of cyberspace.[12] The MICT, which is responsible for overseeing ICT policies across the country, has the legal authority to carry out judicial orders, extra-judicial blocking decisions from the executive branch, and censorship of content from domestic and foreign Internet-service providers (ISPs).[13] While Thai citizens have actively engaged in contributing to online commentary for well over a decade, Thai authorities have been equally as persistent in establishing Internet filtering units to monitor the dissemination of pornographic content, terrorist and separatist movements, gambling, and defamatory comments about the monarchy that are considered to be *lèse-majesté* offences.[14] The primary method adopted by the Thai government for securing cyberspace, particularly following the military coup on September 19, 2006, has been to outsource content control to Internet intermediaries, and holding them accountable for third-party content that may be liable to *lèse-majesté* charges.[15]

Article 112 and the Computer Crimes Act

The CCA, enacted on July 18th 2007 under General Surayudh Chulanont, is significant in that it was the first piece of legislation passed by the post-coup military regime to have provided state authorities with absolute powers in the surveillance, censorship, and control of Thai communication flows on the Internet.[16] Prior to the CCA, Thai authorities did not have specific legislation to directly address a variety of cybersecurity issues, such as hacking, system-related attacks, and content-related offences (pornography, *lèse-majesté*, false data, and Internet fraud).[17] The legal provisions of the CCA have extended the criminalization of *lèse-majesté* to cyberspace, and allowed government officials to create a type of 'surveillance' or 'risk society' within an authoritarian framework.[18] Under Section 18 of the CCA, for instance, Thai policymakers have been equipped with numerous far-reaching powers: (1) the ability to summon an alleged party to appear, report to, or send documents, information, or evidence; (2) request computer-based traffic information; (3) confiscate or 'freeze' any suspicious computer system; and, (4) decrypt, censor, and access computer systems used to store computer data and information.[19] Section 20 of the CCA has also granted Bangkok with the ability to seek a court warrant to restrict the dissemination of information directly, and

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order Internet intermediaries to comply with domestic laws.

The most controversial section of the legislation pertains to Section 14 of the CCA, which vaguely refers to the *lèse-majesté* provisions outlined in the Criminal Code. One of the central problems behind the CCA lies in its unclear provisions and ambiguity in its legislation. For example, Section 14 (2) of the act prohibits "input, into a computer system, false computer data in a manner likely to cause injury to national security or public panic," but does not ever indicate whether this would include any implied criticism of the King under *lèse-majesté*.^[20] Although *lèse-majesté* is never explicitly mentioned in the CCA, there have been numerous instances in which Thai citizens have been prosecuted on the grounds of 'national security,' which encompasses the Thai nation-state, Buddhist religion, and constitutional monarchy.^[21] According to the OpenNet Initiative, there have been a total of 117 court orders for 43,908 websites to be blocked in 2010, due to *lèse-majesté* offences. Of the 185 reported cases involving the CCA from 2007 to 2010, 31 were found to have been *lèse-majesté* offenses (of which, 29 had been filed by the MICT or other government agencies).^[22] Many of these offences had initially been prosecuted under Thailand's Criminal Code, but with the advent of the CCA, even harsher penalties have been established, and, in some cases, carries an additional maximum sentence of five years imprisonment.^[23] The Centre for Democracy and Technology (CDT), an U.S.-based media freedom organization, has been particularly critical of the fact that the *lèse-majesté* provisions in the Criminal Code and the CCA have been unnecessarily used in conjunction with one another.^[24] Since the charges filed under Section 14 of the CCA are already included in the Criminal Code, it would prevent issuing duplicate sentences and doubling the amount of time a subject is punished.

The recent arrest of Chiranuch Premchaiporn, the director and editor of Prachatai, a popular online newspaper in Thailand, is a *cause celebre* in which *lèse-majesté* laws and the CCA have come into effect. On March 6, 2009, Chiranuch was charged with violating Sections 14 and 15 of the CCA on the basis of endangering "national security or terrorism according to the criminal code," after failing to immediately remove ten alleged *lèse-majesté* posts on Prachatai's website.^[25] Chiranuch was expected to remove all political postings in question, despite three significant obstacles: (1) Prachatai receives about twenty-to-thirty thousand news posts each day on three hundred new daily topics; (2) neither she nor the service provider has control over what readers are posting on the site, and can only remove material once it becomes published; and, (3) Chiranuch never posted any of this material herself.^[26] She was later charged with an additional nine counts under the CCA on April 7, 2010 from the information she provided to the Royal Thai Police, and faced up to fifty-years imprisonment for comments she did not even make.^[27] She was eventually sentenced on May 30, 2012 to a year of imprisonment, which was later reduced to eight months and a 20,000 Thai baht fine.^[28]

Conflicts with Human Rights Principles

Despite being a signatory of several international human rights agreements, Thailand has threatened to undermine the human rights principles outlined in the *United Nations Declaration of Human Rights* (1948) and the *International Convention on Civil and Political Rights* (1976). Under the terms of Article 19 of the ICCPR, Thailand has agreed to uphold the right to freedom of expression: (1) everyone is guaranteed "the right to freedom of opinion;" and, (2) everyone shall have the "right to freedom of expression," which includes the "freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art or *through any other media of [their] choice*."^[29] The right to freedom of expression in the ICCPR, albeit drafted before the emergence of the Internet, has also been extended to include any means of communication through the Internet. The annual resolutions on Freedom of Opinion and Expression by the United Nations Human Rights Council have added numerous references to the importance of freedom of expression on the Internet.^[30] Although freedom of expression is by no means absolute, Article 19 (3) of the ICCPR outlines strict conditions upon which restrictions on freedom of expression are acceptable: (1) the respect of rights or reputations of others are violated; and, (2) the protection of national security or public order is threatened.^[31]

Thailand's *lèse-majesté* laws have raised several alarming human rights concerns. The first of which is that *lèse-majesté* can be committed entirely without any criminal intent. For the majority of *lèse-majesté* cases, the alleged perpetrator can be brought before court or arrested, simply because someone else had interpreted the remarks to be damaging to the monarchy. This will be the case, even if: (1) the defendant's comments are taken out of context; (2)

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the defendant was unaware of the implications of their remarks; or, (3) the Thai monarchy is not explicitly mentioned in the statement.[32] In other words, the truth or accuracy behind the defendant's claims has become no longer relevant. Without the need to verify these charges, *lèse-majesté* complaints can be filed by virtually anyone, and any charges can be interpreted in an infinite amount of ways. The inability to access alternative forms of justice, outside of the Thai Crown, has posed additional problems as well. Prosecuting authorities are not required to provide any evidence to prove the defendant's *intent to harm* the Thai monarchy, and final decisions on *lèse-majesté* cases are predicated on anticipating how the reputation of King Bhumibol would be tarnished or damaged, if it were to be heard by the broader Thai public.[33]

The widespread crackdown on freedom of expression in cyberspace presents an opportunity to silence opposition critics, but risks undermining the credibility of Thailand's *lèse-majesté* laws. In times of political turbulence, ISP intermediaries and websites containing any kind of politically sensitive online content have frequently been targeted as a potential threat to 'national security' and social order.[34] International human rights organizations, including Amnesty International, have been critical of the characterization of the *lèse-majesté* laws as a matter of national security by the Thai government, in order to justify the suppression of freedom of expression amongst Thai citizens.[35] Following the outbreak of the military coup of 2006, the MICT had issued, under martial law, an order to "suppress, ban, and destroy" the circulation of any form of messages through communication networks that were deemed a threat to political reform. During this period, Thailand experienced an increase of 33 reported cases of *lèse-majesté* charges in 2005 to an astounding 478 cases in 2010.[36] The sudden resurgence in *lèse-majesté* cases also coincided with a disproportional increase in the severity of legal punishment, escalating from a maximum of seven years imprisonment and a 5,000 Thai baht fine, to a maximum sentence of fifteen years imprisonment over the past decade.[37]

National Security and Internet Censorship in Thailand

The struggle to balance national security with freedom of expression in cyberspace has become a prevalent issue in Thailand.[38] The efforts that have been made by the MICT to intervene in the free flow of information has often been driven by the desire to establish territorial jurisdiction in the international governance of cyberspace. However, this can lead to unintended outcomes and paradoxical tendencies. Much of the official justification for upholding the CCA has been centred on the need to preserve national security, in lieu of Thailand's lack of comprehensive privacy laws. The desire for state control has outweighed the underlying desire to maintain open communication channels, and Thai citizens are less likely to object to state monitoring if it is rationalized on the basis of *lèse-majesté*. For the more technology-cognizant, however, there have been instances in which local Internet advocates have accused law enforcers of infringing upon privacy rights and misusing the CCA in an attempt to track and censor online rumours surrounding King Bhumibol's health condition. Panitan Wattanaygorn, a government spokesman for former PM Abhist Vejjajiva, has maintained that the CCA was designed to protect the Thai people from fraud and defamation, preserving respect for the Thai monarchy, and to mitigate any threats to national security.[39] Yet, coincidentally, Wattanaygorn himself has publicly acknowledged that Thai policeman, prosecutors, and judges have lodged *lèse-majesté* complaints not out of 'national security concerns, but rather out of a fear of being accused of disloyalty themselves.[40]

The ability to distinguish between the specific origins or intentionality of a cybercrime is essential to avoiding potential miscalculations that could exacerbate existing mutual distrust between state and non-state actors. Several nations in the Asia-Pacific region, including Malaysia, Singapore, and China, have recognized the threat of computer crimes can threaten ICT infrastructure, but have vastly differed in their interpretations. In the case of Thailand, Bangkok has identified computer crimes as "unauthorized access to a computer, in which people may view secret information [as] illegal, even if there is no damage done to the system." [41] These social complexities are compounded by the fact that many of these networks are used by thousands of private actors, who operate beyond the national jurisdiction of Thailand. Although Thai officials may seek to enact regulations on Internet communication, their legal authority extends only to Thailand's territorial borders, which can make enforcement problematic in cases where computer crimes are committed beyond its political-jurisdictional boundaries.

The high-profile arrest of Joe Gordon, a Thai-born American citizen accused of translating excerpts from English to

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Thai of a banned biography of King Bhumibol and posting the material online, is a recent example in which the jurisdictional authority of the CCA has been brought into question. Gordon, arrested on May 26, 2011, had been sentenced to two-and-a-half years imprisonment for posting translations of Paul Handley's *The King Never Smiles* on his personal blog while still living in Colorado, United States.[42] Upon returning to Thailand to receive medical treatment however, Gordon was immediately arrested by Thai authorities for allegedly violating both the lèse-majesté provisions in the Criminal Code and the CCA.[43] Elizabeth Pratt, U.S. Consul General to Thailand, has been on record stating that she considers the sentence to be 'severe,' and expressed serious human rights concerns with "[Gordon being sentenced] for the right to freedom of expression." [44] The MICT, in response to international criticism, justified their decision by reiterating that the CCA applies to anyone, including foreigners committing computer-related crimes from abroad.[45] After being previously denied bail on numerous occasions, Gordon was finally granted a royal pardon by the Thai monarchy on July 11, 2012; a few days prior to Thailand PM Yingluck Shinawatra's visit with former U.S. Secretary of State Hilary Clinton in Cambodia.[46]

Several measures have been taken by the MICT to enforce cyberspace restrictions on foreign ISP intermediaries operating outside of Thailand, in order to censor online content more effectively. This was particular evident when the Thai Minister of the MICT Anudith Nakornthap publicly stated at a press conference on November 24, 2011 that Thailand had requested that Facebook remove URLs of 86,000 user accounts with any lèse-majesté content in comments, photos, videos, and multimedia clips.[47] The MICT had also warned Thai users that any material pertaining to lèse-majesté in comment sections, photos, audio clips, videos, or even clicking the 'Like' or 'Share' features on Facebook or other social networking pages would be enough to be considered a criminal offence.[48] Some Internet users in Thailand have even contributed to coordinating their own online surveillance 'witch hunts,' and have opened a citizen-organized Facebook page called Social Sanction to help monitor any online activity could be deemed offensive to the Thai monarchy.[49] Facebook has not publicly revealed whether it has complied with the requests of the Thai government, and it remains unclear as to how many of these removal requests were successful.

Table 1: Internet Penetration Rates in ASEAN Nations (2011)

Internet Users
Facebook Users
Population
Internet Penetration (%)
Thailand
18,310,000
14,235,700
66,720,153
27.4
Indonesia
55,000,000
48,523,740
245,613,043

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22.4

Malaysia

17,723,000

12,365,780

28,728,607

61.7

Singapore

3,658,400

2,602,880

4,740,737

77.2

Vietnam

30,516,587

3,173,480

90,549,390

33.7

Myanmar

110,000

N/A

53,999,804

0.20

Source: Bergmann, Kieran. "Extending Censorship Controls in Southeast Asia." *Asia-Pacific Foundation of Canada/Foundation Asie-Pacifique du Canada*, no. 31 (October 2012), 2.

Google, conversely, has released six bi-annual Transparency Reports detailing government requests to remove content since December 2009. As part of its company policy, Google complies with local laws in countries that it operates within, and thereby accepts government requests to remove content.[50] Between January and June 2011, Google reportedly removed 90% of the 225 videos identified by the Thai MCIT to be "allegedly insulting the monarchy in violation of Thailand's lèse-majesté law.[51] Google Transparency Reports have recorded 431 total requests to restrict access to search engine links to YouTube videos in Thailand. By successfully removing

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undesirable content on Google, Thailand has also bypassed the need to seek formal court orders in ensuring that private-sector companies comply with its Internet censorship activities.[52]

Table 2: Thai Government Requests for Content Removal on Google

Time Period
Items Requested to be Removed
Restriction Rate in Thailand (%)
07/01/2010 – 12/31/2010
43
100%
01/01/2011 – 6/30/11
225
90%
07/01/2011 – 12/31/11
149
70%
01/01/2012 – 06/30/12
14
21%

Source: "Google Transparency Report: Thailand." Accessed April 22, 2013.

Political Climate in Thailand

The struggle for individual freedom of expression has challenged Thailand's credibility as a liberal democracy. The fragility of Thailand's democratic process can be attributed to a sustained period of political conflict: one between a populist-capitalist movement of illiberal democracy with the 'Red-Shirts' in the United Front for Democracy Against Dictatorship (UDD), and conservative forces of undemocratic liberalism of the 'Yellow-Shirts' in the People's Alliance for Democracy (PAD).[53] For ultra-royalists of the PAD, the enforcement of *lèse-majesté* has presented an opportunity to deflect criticisms onto their political opponents in the Red-Shirts, while also re-glorifying the constitutional monarchy. Tul Sitthisomwong, the leader of a royalist multi-coloured group, and member of the 'Citizen Protecting Homeland Group' in favour of upholding Article 112, for example, argued in an *Al Jazeera* interview that the UDD supporters under former PM Thaksin Shinawatra had been solely responsible for the proliferation of *lèse-majesté* laws prior to the coup.[54] Duncan McCargo (2005), however, has pointed to the limitations of relying upon the Thai monarchy as the ultimate arbiter or source of legitimacy in times of political crises. In other words, 'network monarchies' are inherently illiberal for two reasons: (1) it assumes the higher degree of autonomy for the monarchy within Thailand's increasingly pluralistic order; and (2), marginalizes the formation of formal political institutions and procedures.[55] Despite promises to address *lèse-majesté* issues upon entering office in 2011, PM Yingluck

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Shinawatra has since publicly stated in 2012, in response to the Chiranuch case, that she had no intention of reforming the *lèse-majesté* provisions in Article 112.[56]

The deepening tensions between the UDD (Red-Shirts), which supports the exiled Thaksin Shinawatra, and the PAD (Yellow-Shirts), which consists of royalist anti-Thaksin partisans, has only added to the political and cultural divisions in Thailand. Online censorship in Thailand has intensified since the enforcement of a State of Emergency Decree by Thai officials on April 7, 2010, which declared that the government now had the legal authority to block any website that it considered to be politically sensitive.[57] Before the Emergency Decree, ISPs were not required to comply to any MICT censorship requests without a formal court order. From April to December 2010, however, Thai officials from Bangkok and the surrounding area were permitted absolute authority to shut down any website unilaterally.[58] Amidst the political crisis, the Thai government had set out to block thirty-six websites that had primarily hosted content sympathetic to the UDD and the Red-Shirt movement.[59] According to the OpenNet Initiative, self-censorship and *lèse-majesté* accusations had also contributed to the state-sanctioned censorship during the Decree.[60]

International press freedom and human rights organizations have expressed similar concerns with the current deployment of *lèse-majesté* laws and the CCA. Reporters Without Borders has criticized the new Thai government for failing to put an end to “misuse of the country’s *lèse-majesté* laws in order to censor and detain journalists, bloggers, and netizens whose articles and posts are subject to complaints, because they are outspoken or raise sensitive issues.”[61] Human Rights Watch has similarly accused the Democratic Party under former PM Abhist Vejjajiva of abusing provisions outlined in the Criminal Code and CCA to intimidate, arbitrarily arrest, and restrict freedom of expression from journalists, academics, and activist groups in Thailand. John Ure, the executive director from the Asia Internet Coalition (AIC), has also warned that censorship controls placed on ISP intermediaries could have a “very detrimental [effect] to the whole digital economy of Thailand,” citing that “e-commerce, social networking, and the like would be completely disrupted.”[62] The United Nations Special Rapporteur has recently released a statement in 2012 urging Thailand to amend the CCA and *lèse-majesté* laws, “so that they are in conformity with [Thailand’s] international human rights obligations.”[63]

Ultra-monarchist forces, particularly from the Yellow-Shirted PAD, have countered along the lines of national security and cultural sovereignty. Thailand’s Ministry of Foreign Affairs (MFA) has issued a strong defence of its *lèse-majesté* laws, and addressed the following question: “Does the *lèse-majesté* law undermine democracy and limits on freedom of expression?”[64] The Thai MFA has maintained that, while the Thai Constitution under Section 45 guarantees the right to “freedom of speech and expression,” there is a distinction between “expression one’s opinions and making accusations.”[65] In this regard, Thailand’s *lèse-majesté* laws are acceptable under the framework of Section 3 of Article 19 in the International Covenant on Civil and Political Rights (ICCPR). Thailand’s decision to uphold Article 112 of the Criminal Code has been justified on two accounts: (1) in order to protect the rights or reputations of others; and, (2) “to protect national security or public order, or public health, or morals.”[66] The right to freedom of expression comes with “special duties and responsibilities,” and “an obligation not to infringe upon the rights and unfairly tarnish the reputations of others.”[67]

Proponents in favour of adopting reforms to Article 112 of the Criminal Code and the CCA have suggested otherwise. Critics of the ultra-royalists have often cited the fact that King Bhumibol, himself, has publicly recognized that the improper use of the laws could actually undermine the credibility of the Thai monarchy.

Speaking publicly on his seventy-eighth birthday, King Bhumibol suggested the following:

“Actually, I must be criticised. I am not afraid if criticism concerns what I do wrong, because then I know. Because, if you say the King cannot be criticized, it means that the King is not human. If the King can do no wrong, it is akin to looking down upon him, because the King is not being treated as a human being. But, the King can do wrong.”[68]

Numerous countries at the Universal Periodic Review at the United Nations Human Rights Council, including several Western European nations with *lèse-majesté* laws, have called upon Bangkok to “repeal or review the *lèse-majesté* law (Article 112 of Thailand’s [Criminal] Code) and the CCA (2007).”[69] Norway, a constitutional monarchy like

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Thailand, has recommended that the Thai government maintain a balance between protecting the Thai monarchy and the right to freedom of expression. In particular, Norwegian delegates underlined the importance of developing transparent and public proceedings in cases involving lèse-majesté laws and the CCA, and that those accused of lèse-majesté should only be prosecuted with the informed consent of the King.[70] Defenders of the current lèse-majesté laws have cited the distinct nature of Thai cultural identity, and the role of the legislation in constructing ‘Thainess’ differs from the European context. The charge of lèse-majesté is the only other crime, outside of treason, that is considered culturally damaging to Thai patriotism.[71] This proposed logic, however, fails to address the ambiguity and veiled powers behind Thailand’s lèse-majesté laws, and justifies the suppression of free expression “in the name of love [of the monarchy].”[72]

Communication Freedom and Privacy Rights in Thailand

The rapid decline in press and media freedom in Thailand has been documented in the annual press freedom indexes released by Freedom House and Reporters Without Borders from 2002-2013. Kavi Chongkittavorn (2007), the former president of the Thai Journalists Association, has argued that the sharp decline in media freedom had coincided with a period of political instability over the past ten-to-fifteen years. According to the U.S.-based Freedom House, Thailand had actually earned a press freedom rating of 30 and was considered a ‘free’ country in 2002.[73] During the leadership of former PM Thaksin Shinawatra, however, Thailand was only considered a ‘partly free’ society in 2006, due to a variety of factors: marketing regulations, stock acquisitions, and dominance of media communication outlets from the government and ruling party.[74] This was shortly followed by an increase in the promotion of royalist-friendly sources in Thai mainstream media, and heightened sensitivity in the political polarization on the issue of the Thai monarchy under the government of PM Abhisit Vejjajiva.[75] In 2011, Thailand had a paltry score of 62, and was considered a ‘not free’ society according to Freedom House rankings. These results are consistent with the rankings provided in the annual Press Freedom Index from Reporters Without Borders. Thailand had dropped from 66th (2002) to a record-low of 153rd (2007), before slightly rebounding to 137th (2011-2012) and 135th (2013).[76]

Table 3: Annual Press Freedom Index on Thailand (Freedom House and Reporters Without Borders, 2002-2013)[77]

Press Freedom Index Ranking
(Reporters Without Borders)
Press Freedom Status
(Freedom House)
Press Freedom Score
(Freedom House)

2002
66
Free
30
2003
82

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Partly Free

36

2004

59

Partly Free

39

2005

107

Partly Free

42

2006

122

Partly Free

50

2007

135

Partly Free

59

2008

124

Partly Free

56

2009

130

Partly Free

57

2010

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153

Partly Free

58

2011

137

Not Free

62

2012

137

Partly Free

60

2013

135

N/A

N/A

Source: Freedom House, "Thailand: Freedom House." Accessed April 22, 2013. Reporters Without Borders, "Thailand – Reporters Without Borders." Accessed April 22, 2013.

Since its original inception, Thailand has made some strides towards amending provisions in the CCA with a new cyberspace law.[78] The CDT has commended Thai authorities for their latest efforts, but reiterated that the current CCA laws have failed to comply with international standards, as presented at the Council of Europe's (COE) Convention on Cyberspace. The CDT has also documented a general trend amongst Internet-open and Internet-restrictive governments: the countries that are of the former have sought to maximize growth and limit the criminal liability of intermediaries, whereas countries in the latter category often hold intermediaries responsible for illegal content posted by online users, and take on the role of 'content gatekeepers' within a national surveillance society.[79] Many ISP intermediaries operating in Thailand, whether it is via web forums, social networks, or search engines, have found themselves criminally liable for content posted by third-party members. ISPs, therefore, have been confronted with the unenviable task of either committing substantial resources to police their own networks, or abandoning their services altogether.[80] Another significant problem confronting Thailand is that many start-up businesses or new media technologies could elect to leave Thai markets, if they choose not to comply with the additional costs of maintaining a self-surveillance security system.

There has also been a disparity between socioeconomic groups with regards to public knowledge of privacy and information rights in Thai cyberspace. The enforcement of both lèse-majesté and CCA laws had come at a moment in which Internet activity was beginning to establish itself as a popular means of communication for Thai citizens, particularly those from urban environments and higher socioeconomic classes. Nearly fifty-five percent of Thai users that have access to high-speed Internet resources, however, are currently disproportionately concentrated in Bangkok and the greater Bangkok region.[81] Given that the majority of Thailand's ICT infrastructure is located in

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The lack of transparency behind Thailand's censorship decisions has been a subject of heavy scrutiny amongst Thai civil society organizations. Several joint initiatives and public education campaigns have been adopted by these organizations to raise awareness about privacy rights, and develop strategies to resist the restrictive controls on Internet communication in Thailand. The Freedom Against Censorship Thailand (FACT), a Bangkok-based communication freedom group, has been particularly active in publishing a list of blocked URLs onto its own website (www.facthai.wordpress.com).^[84] Another movement led by the Thai Netizen Network (TNN) called 'We Stand for Cyber-Liberty' in 2009 had sought to coordinate Thai online protest groups, and form partnerships with several International NGOs committed to media freedom, including Freedom House and the Electronic Frontier Foundation.^[85] Many technology-literate activists have resorted to relocating hosting services overseas, and using anonymizers and circumvention software as a means of evading state-monitoring censors in Thailand.^[86] Giles Ji Ungpakorn, a Thai scholar who had fled lèse-majesté charges in early 2009 for his book, 'A Coup for the Rich,' was forced to leave Thailand after joining the Red-Shirted UDD. Ungpakorn had sought to start up his own personal blog, *Red Siam Manifesto*, where he primarily criticized the Thai monarchy from abroad in Britain. His blog material was later identified by state-censors at the MICT in Thailand, and ISP intermediaries were ordered to 'follow suit' and filter Ungpakorn's manifesto for the sake of Thai 'national security.'^[87]

The freedom to express and exchange ideas has often been viewed as the pre-requisite for any liberal democracy. The lèse-majesté laws in Article 112 of the Criminal Code, initially conceived to protect the Thai monarchy, have increasingly been used in conjunction with the CCA to silence opposition critics. The continued deployment of both Article 112 and the CCA has resulted in the exploitation of Thailand's lèse-majesté provisions that were originally intended to protect the Thai monarchy. Despite recognizing itself as a liberal democracy, Thailand has been faced with the considerable challenge of balancing the right to freedom of expression, while still preserving the cultural sovereignty of the Thai monarchy. Although the proliferation of lèse-majesté charges, as well as those in the CCA, has temporarily silenced opposition, it has inevitably undermined what it claims to promote. The frequent misuse of these far-ranging powers has raised serious concerns about the future state of freedom of expression and communication freedom in Thailand.

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