

# Getting “Free and Open” Right

## How European Internet Foreign Policy Can Compete in a Fragmented World

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The laissez-faire understanding of a “free and open” internet is facing competition from abroad and is increasingly inconsistent with the regulatory stance of liberal democracies. To counter an emboldened authoritarian approach, address charges of hypocrisy, and carefully guide the fragmentation of content and applications on the internet, the notion of “free and open” must be updated. European policymakers should take the lead in this process and face these challenges head on. To do so, they need to strengthen their own credibility, build new coalitions, and address the effects of fragmentation.

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# Executive Summary

The “free and open” approach to internet governance originated in the US and emphasized (self-)regulation through multi-stakeholder governance processes. Using the words of US president Clinton’s internet czar Ira Magaziner, this approach argued “against a traditional regulatory role for government.”<sup>1</sup> It contributed to the many early advances that the internet and the information and communication technologies (ICT) running on it have made possible, among them the strengthening of human rights and economic growth.

That approach is now under fire on multiple fronts.

Authoritarian governments are quickly gaining ground in their efforts to control the flow of data and information. China in particular has built the technical and institutional capacity to not just limit the threats that the internet poses to the party’s authoritarian rule, but to use technology to deepen the state’s ability to exert absolute control over the lives of its citizens. China (alongside Russia and others) has also intensified its efforts to promote its approach to internet regulation abroad, directly challenging the “free and open” philosophy espoused by many democratically governed nations.

At the same time, the ultra-libertarian version of “free and open” has also been challenged by liberal democracies, especially in Europe. EU countries had originally supported the US approach to internet (foreign) policy. However, as the internet morphed from a medium for a few to the medium that organizes everyday economic, political, and personal life, democratic governments in Europe realized they had a duty toward their citizens to pursue a stronger regulatory role to guarantee rights and correct market failures. They now face charges of inconsistency, or outright hypocrisy, because their domestic regulatory action is seen as contradicting the original doctrine of an internet that is free and open, with a minimalistic role for government.

The trend of stronger regulation at the national level (in both authoritarian states and liberal democracies) is leading to a more fragmented internet, especially regarding access to applications and content. European democracies need to recast their internet foreign policies in order to tackle these challenges. To do so, they can take action on three fronts: (1) strengthening European and—more broadly—Western credibility and messaging; (2) winning new allies and building coalitions; and (3) making fragmentation work.

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1 Ira Magaziner, “Creating a Framework for Global Electronic Commerce,” *The Progress & Freedom Foundation*, July 6, 1999, accessed June 15, 2018, <http://www.pff.org/issues-pubs/futureinsights/fi6.1globaleconomiccommerce.html>.

## Strengthening European Credibility and Messaging

- 1. Develop and promote a coherent narrative about the rule of law online:** European policymakers should not shy away from regulatory action because of an unrealistic baseline of non-interference. Free and open societies follow laws, and democratically elected governments write and enforce them. It is crucial that liberal democracies highlight the fundamental differences between them and authoritarian nations when it comes to the motivation for as well as means and effects of internet regulation.
- 2. Expose the costs of the authoritarian model:** It is not only necessary to strengthen narratives, but also to highlight the weaknesses of the approach to internet policy pursued by countries like Russia and China. The model of information control can seem attractive at first, but it comes with costs that go beyond the restrictions on individual freedoms. Social tension builds up, and both users and companies must bear the financial burdens of a closed society as well as an internet that is severed from the rest of the world. And the costs of a walled-off internet are particularly high in countries that do not have huge single markets like China.

## Winning New Allies and Building Coalitions

- 3. Engage key non-Western powers and “swing states”:** With a stronger understanding of their own approach, European democracies can effectively engage key non-Western states that do not practice authoritarian digital policy. Countries like India and Brazil stand out as potential partners. Both have the capacity to shape norms and rules internationally. Other such swing states should be identified to help diplomats prioritize who they engage with bi- and multilaterally.
- 4. Help create access for and build capacity with selected partner countries:** Capacity building efforts and infrastructure support are a key means to engage new partners. They not only help other countries reap the benefits of digitization, but are also a foreign policy tool. As China expands its infrastructure support at rapid speed, more Western resources should be shifted towards ICT projects, which should, in turn, take human rights implications into account.
- 5. Hold corporations accountable:** The private sector is an important intermediary between users and governments, especially in authoritarian countries. Large technology companies should be held to their public claims that they seek to protect users, not just in liberal democracies but globally. Existing legal frameworks should be strengthened to force companies to consider the human rights implications of their work.

## Making Fragmentation Work

6. **Take cross-border implications into account:** It is likely that more states will pursue unilateral regulatory action, which increases the risk of fragmentation of the internet, or at least of the applications and content that run on it. There is an overwhelming international interest to properly guide such regulatory efforts at the national level. To increase awareness, lawmakers could add a new category to the evaluation processes in domestic legislative decision-making that deals with the cross-border implications of national efforts to regulate the internet.
7. **Ensure and improve technical and legal interoperability:** Limiting the fragmentary effects of regulation is one step; upholding and increasing interoperability another. Harmonization, standardization and mutual recognition of laws are key mechanisms to improve legal operability. Importantly, such efforts should be issue-specific; for example, to address cybercrime in e-commerce issues. Technical interoperability must be a priority to ensure that different national or regional networks can continue to operate with one another.

For Europe and its allies, it is time to enter the competition on internet foreign policy with a clear understanding of the challenges from abroad and a clear idea of their own goals and ways to shape global (internet) governance. “Free and open,” correctly understood, is still the appropriate guiding star for European internet (foreign) policy; yet it is necessary to re-define these terms for today’s world. The above-mentioned ideas can serve as first steps in that direction.

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