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## The internet as a democratising force

The internet has the power to be a tool of democracy, but its potential in this respect is at risk. This is because the same technology that can be a positive force for the discursive values underlying democracy can also be a tool of control. The same technology that facilitates discourse creates opportunities for censorship of information, monitoring of online practices and the subtle shaping and manipulation of behaviour. This is not to say that the architecture of the internet does not somewhat determine how it is used,<sup>1</sup> but, ultimately, the internet is neutral in the face of the human agents that control its use. As Kofi Annan stated in 2003, '[w]hile technology shapes the future, it is people who shape technology, and decide to what uses it can and should be put'.<sup>2</sup> In this chapter, I explore the positive aspects of technology. The purpose is to identify for the reader the internet's potential and what is at stake if we do not intervene to secure the requisite freedoms into the internet's governance structure. This grounds the book's inquiry into the role of private gatekeepers in facilitating or hindering this democratic potential through their control of the pathways of communication.

Based on a theory developed by Jack Balkin, the internet's democratic potential will be argued to be rooted in its ability to promote democratic culture. Threaded through this argument will be the centrality of communication to democracy. In saying that the internet has the potential to

<sup>1</sup> See L. Winner, 'Do Artifacts Have Politics?', in D. MacKenzie and J. Wajcman (eds.), *The Social Shaping of Technology*, 2nd edn (Buckingham: Open University Press, 1999), discussing whether artefacts can have built-in politics. With regard to the internet, Lawrence Lessig famously argues that the internet's code is law: L. Lessig, *Code and Other Laws of Cyberspace* (New York: Basic Books, 1999); L. Lessig, *Code: Version 2.0* (New York: Basic Books, 2006).

<sup>2</sup> K. A. Annan, 'Break the technology barrier – the world information summit' (9 December 2003), at [www.nytimes.com/2003/12/09/opinion/09iht-edannan\\_ed3.html](http://www.nytimes.com/2003/12/09/opinion/09iht-edannan_ed3.html) (last visited 16 June 2014).

be a democratising force, what will be asserted is that the internet can help facilitate deliberation and participation in the forms of meaning-making in democratic society. The distinction between the internet having potential to be a democratising force and its achieving it must be noted at the outset. Attempts have been made to prove empirically that the internet facilitates democracy, but such studies are compromised by the numerous variables present.<sup>3</sup> The goal of this chapter is more modestly to identify democratic culture as the type of democracy that the internet can facilitate and to explicate the characteristics of the internet that give it this potential.

This chapter sets up the broader investigation of this book into our reliance for facilitation of the internet's democratic potential on privately owned internet information gatekeepers (IIGs). The term IIG will be defined and examined in detail in Chapter 2; briefly, it means a gatekeeper which facilitates or hinders deliberation and participation in the forms of meaning-making in democratic culture. Every time we use the internet, we engage with IIGs. To find information, we use search engines. To access the internet, we need to use internet service providers (ISP). To be able to participate on message boards or social networking sites, we go through a host.<sup>4</sup> The role of such regulators has not yet been settled, and, as of yet, they do not have any democratic or public interest mandate<sup>5</sup> that assures the internet's democratic potential is being facilitated. If the internet is a democratising force, we inevitably at present must rely on these IIGs for the realisation of this aspect of its capacity. It is argued in this book that the corporate social responsibility (CSR) frameworks that currently govern the activities of IIGs are insufficient to meet their human rights obligations and that, without intervention, the continuation of their work in its current mode will hamper the ability of the internet to work as a tool of democracy.

<sup>3</sup> Michael Best and Keegan Wade attempted an empirical study of the effect of the internet on democracy from 1992 to 2002. The authors were only able to conclude that their study suggests a positive, but not absolute, link between internet penetration and democratic development. The authors also summarise other empirical studies of the internet's democratising effect that show mixed results: M. L. Best and K. W. Wade, 'The Internet and Democracy: Global Catalyst or Democratic Dud' (Research Publication No. 2005-12: Berkman Center, 2005).

<sup>4</sup> See discussion by Sandor Vegh, 'Profit Over Principles: The Commercialization of the Democratic Potentials of the Internet', in K. Sarikakis and D. K. Thussu (eds.), *Ideologies of the Internet* (Cresskill, NJ: Hampton Press, 2006).

<sup>5</sup> P. M. Shane (ed.), *Democracy Online: The Prospects for Political Renewal Through the Internet* (New York: Routledge, 2004), p. 54.

To that end, this chapter first orients the reader with a history of the rise and fall of the concept of the internet as a democratising force. It then examines the elastic concept of democracy and articulates the substance and appropriateness of democratic culture as the type of democracy most capable of facilitation by the internet. This includes an analysis of the narrower and, for our purposes, ill-fitting concept of deliberative democracy most famously discussed by Jürgen Habermas. Last, this chapter looks more closely at the ways that the internet is promoting democratic culture and the criticisms thereof, focusing on the internet's facilitation of information access and participation in politics and culture.

### 1.1. The historical context of the internet

The internet was celebrated in its infancy as a democratising force. Its decentralised structure invited anti-establishment-type rhetoric arguing that it was uncontrollable by governments and that it was a new space outside of legal institutions and territoriality.<sup>6</sup> 'Information wants to be free'<sup>7</sup> was the slogan. This optimism was reflected by the courts, particularly in the United States, with the U.S. Supreme Court noting the increasingly important role of the internet in facilitating communication in democratic society.<sup>8</sup> In *ACLU v. Reno*,<sup>9</sup> one opinion famously described the internet as a vast library which anyone can access and a platform from which anyone can publish, continuing that anyone 'can become a town crier with a voice that resonates farther than it could from any soapbox'.<sup>10</sup>

In the late 1990s, however, the reality of the internet's regulability began to crush cyberlibertarian idealism. Discussions no longer centred on the internet as a democratising force and instead were about the forces waiting to clamp down on it. With publications by Joel Reidenberg<sup>11</sup> and

<sup>6</sup> D. R. Johnson and D. G. Post, 'Law and borders – The rise of law in cyberspace' (1996), at [www.temple.edu/lawschool/dpost/Borders.html](http://www.temple.edu/lawschool/dpost/Borders.html) (last visited 16 June 2014).

<sup>7</sup> Popularised by John Perry Barlow in 'Selling wine without bottles: economy of mind on the global net' (March 1994), at <http://virtualschool.edu/mon/ElectronicFrontier/WineWithoutBottles.html> (last visited 16 June 2014), although it has been attributed originally to Stewart Brand, who stated, 'Information wants to be free because it has become so cheap to distribute, copy and recombine – too cheap to meter. It wants to be expensive because it can be immeasurably valuable to the recipient': *The Media Lab: Inventing the Future at MIT* (New York: Penguin Group, 1987), p. 202.

<sup>8</sup> See, most famously, *ACLU v. Reno* (1997) 521 U.S. 844, Justice Stevens delivering the opinion of the Court.

<sup>9</sup> *Ibid.* <sup>10</sup> *Ibid.*, pp. 852–53, 896–97.

<sup>11</sup> J. R. Reidenberg, 'Lex Informatica: The Formulation of Information Policy Rules Through Technology', *Tex. L.R.*, 76(3) (1998) 553.

Lawrence Lessig,<sup>12</sup> a new constraint was recognised. It was not just governments and laws that regulated behaviour, but those entities (inevitably private) that controlled the technology – the code writers and engineers who, as a result of their work, delineated the environment of our social life.<sup>13</sup> The message was that treating cyberspace as a separate place that will flourish if left alone by governments will not ensure the freedoms sought because that ignores the indirect ways that governments can regulate, as well as the ways architecture can be harnessed by private parties to constrain behaviour.

We also witnessed the increased regulation of the internet by states, which continues today.<sup>14</sup> Through the use of filtering and blocking technologies, countries such as China and Syria have developed tools to prevent their population accessing undesirable content. China's filtering system is complex, with the famous outer layer known as the 'great firewall of China' blocking access at international gateways and the inner layer comprising internet companies required by the government to monitor and remove objectionable content.<sup>15</sup> Syria prevents access to the entire Israeli.il domain, and many other states routinely filter access to websites with pornography and dissident or human rights-oriented content.<sup>16</sup> Sites such as [www.youtube.com](http://www.youtube.com), are routinely blocked. For example, from 2007 to 2010, Turkey blocked access to YouTube, sparked by the posting of videos deemed offensive to the memory of its founding father Mustafa Kemal Atatürk.<sup>17</sup> In 2014, Turkey passed a controversial law allowing its telecommunications regulator to block access to websites without court order. As a result, in 2014, the authority blocked access to YouTube and Twitter, the latter being overturned quickly by court

<sup>12</sup> Lessig n. 1. <sup>13</sup> *Ibid.*, pp. 85–86.

<sup>14</sup> See R. J. Deibert et al., *Access Controlled: The Shaping of Power, Rights, and Rule in Cyberspace* (MIT Press, 2010), and the earlier R. J. Deibert et al., *Access Denied: The Practice and Policy of Global Internet Filtering* (MIT Press, 2008).

<sup>15</sup> See R. MacKinnon, *Consent of the Networked: The Worldwide Struggle for Internet Freedom* (New York: Basic Books, 2012), pp. 34–40.

<sup>16</sup> R. J. Deibert and N. Villeneuve, 'Firewalls and Power: An Overview of Global State Censorship of the Internet', in M. Klang and A. Murray (eds.), *Human Rights in the Digital Age* (London: Cavendish Publishing, 2005), pp. 121–22.

<sup>17</sup> The ban was briefly lifted between 30 October 2010 and 3 November 2010: A. Hudson, 'Turkey lifts its ban on YouTube-agency' (30 October 2010), at <http://uk.reuters.com/article/2010/10/30/oukin-uk-turkey-youtube-idUKTRE69T1JE20101030> (last visited 16 June 2014), and I. Villelabeitia, 'Turkey reinstates YouTube ban' (3 November 2010), at [www.reuters.com/article/2010/11/03/us-turkey-youtube-idUSTRE6A227C20101103](http://www.reuters.com/article/2010/11/03/us-turkey-youtube-idUSTRE6A227C20101103) (last visited 16 June 2014).

order.<sup>18</sup> Saudi Arabia now requires a licence to post content to YouTube.<sup>19</sup> During the protests across Africa and the Middle East in 2010 and 2011, filtering technologies were readily employed by states to block access to communication technologies that were seen as enabling and mobilising the protesters.<sup>20</sup>

Filtering is not limited to Asian or Middle Eastern countries. Germany blocks certain Nazi/hate websites.<sup>21</sup> The European Union provides the framework for national-level notice and takedown regimes for unlawful content.<sup>22</sup> Russia has blocked access to news sites for what the government describes as calling for participation in authorised rallies.<sup>23</sup> In 2014, the United Kingdom implemented an opt-in filter through agreement with four major ISPs, whereby access to content that is pornographic (though legal) is blocked unless a broadband user opts in with its provider to access such sites.<sup>24</sup> Naturally, much material lies at the

<sup>18</sup> C. Letsch and D. Rushe, 'Turkey blocks YouTube amid "national security" concerns' (28 March 2014), at [www.theguardian.com/world/2014/mar/27/google-youtube-ban-turkey-erdogan](http://www.theguardian.com/world/2014/mar/27/google-youtube-ban-turkey-erdogan) (last visited 16 June 2014).

<sup>19</sup> See H. Noman, 'Saudi Arabia to impose restrictions on online content production, including on YouTube' (3 December 2013), at <https://opennet.net/blog/2013/12/saudi-arabia-impose-restrictions-online-content-production-including-youtube> (last visited 16 June 2014).

<sup>20</sup> See, for example, discussion of blocking of access to Twitter: D. Kravets, 'What's fueling Mideast protests? It's more than Twitter' (28 January 2011), at [www.wired.co.uk/news/archive/2011-01/28/middle-east-protests-twitter?page=all](http://www.wired.co.uk/news/archive/2011-01/28/middle-east-protests-twitter?page=all) (last visited 16 June 2014). Egypt went so far as to shut down connection to the internet nationwide in January 2011 (see M. Crete-Nishihata, 'Egypt's internet blackout: extreme example of just-in-time blocking' (28 January 2011), at <http://opennet.net/blog/2011/01/egypt%E2%80%99s-internet-blackout-extreme-example-just-time-blocking> (last visited 16 June 2014)). Google and Twitter created a 'Speak to Tweet' tool that enabled Twitter users to post tweets by leaving voice messages which the tool then turned into tweets: Google, 'Some weekend work that will (hopefully) enable more Egyptians to be heard' (31 January 2011), at <http://googleblog.blogspot.com/2011/01/some-weekend-work-that-will-hopefully.html> (last visited 16 June 2014).

<sup>21</sup> Diebert and Villeneuve n. 16, p. 121.

<sup>22</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

<sup>23</sup> Agence France-Press, 'Russia censors media by blocking websites and popular blog' (4 March 2014), at [www.theguardian.com/world/2014/mar/14/russia-bans-alexei-navalny-blog-opposition-news-websites](http://www.theguardian.com/world/2014/mar/14/russia-bans-alexei-navalny-blog-opposition-news-websites) (last visited 16 June 2014), and E. Galperin and D. O'Brien, 'Russia blocks access to major independent news sites' (13 March 2014), at [www.eff.org/deeplinks/2014/03/russia-blocks-access-major-independent-news-sites](http://www.eff.org/deeplinks/2014/03/russia-blocks-access-major-independent-news-sites) (last visited 16 June 2014).

<sup>24</sup> 'Online pornography to be blocked by default, PM announces' (22 July 2013), at [www.bbc.co.uk/news/uk-23401076](http://www.bbc.co.uk/news/uk-23401076) (last visited 16 June 2014).

boundary of what would be blocked or material might be blocked accidentally, such as sex education sites. The government has also stated its intentions to extend the opt-in filter to extremist sites.<sup>25</sup> Companies such as BT have implemented such filters under the framework of parental controls, in which new users now must opt in to a variety of content, ranging from obscene content to content featuring nudity, drugs and alcohol, self-harm and dating sites.<sup>26</sup>

John Palfrey would describe this as comprising the second and third phases of what he frames as four phases in the evolution of internet regulation.<sup>27</sup> The first phase, paralleling the preceding discussion, was the phase of the *open internet*, in which the internet was seen as a separate space outside of governmental and other legal control. The second phase, from 2000 to 2005, he describes as the *access-denied phase*, in which the internet was seen by states as something to be managed; this period was therefore characterised by the use of filtering technologies. The third phase – *access-controlled*, from 2005 to 2010 – was characterised by more nuanced and sophisticated forms of control often layered on other forms of regulation. Filters were still used, but they could be targeted to particularly sensitive political events, such as the filtering of a controversial photo from the Tiananmen Square massacre leading up to the twenty-year anniversary. Additionally, it was characterised by the increasing use of private companies to regulate online content through data collection and sharing or blocking, licensing schemes to publish online, or a combination of filters combined with laws, as seen in cases like *Twentieth Century Fox Film Corp & Ors v. British Telecommunications Plc*,<sup>28</sup> where a UK court ordered ISPs to block access to file-sharing sites.

We have moved into a new phase, aptly described by one scholar as the time of the ‘cyberrealists’,<sup>29</sup> where discussions of the internet as a democratising force are re-emerging but with more sophistication and less naivety than in the past. Partly, this is due to the speed with which the internet is becoming the very things that the writers of the early 1990s forecast it would be. The internet has quickly moved from primarily

<sup>25</sup> G. Halfacree, ‘Government extends porn filter to “extremist” content’ (29 November 2013), at [www.bit-tech.net/news/bits/2013/11/29/extremism-filter/1](http://www.bit-tech.net/news/bits/2013/11/29/extremism-filter/1) (last 16 June 2014).

<sup>26</sup> S. Curtis, ‘BT forces porn filter choice’ (16 December 2013), at [www.telegraph.co.uk/technology/internet-security/10520537/BT-forces-porn-filter-choice.html](http://www.telegraph.co.uk/technology/internet-security/10520537/BT-forces-porn-filter-choice.html) (last visited 16 June 2014).

<sup>27</sup> J. G. Palfrey, ‘Four Phases of Internet Regulation’, *Social Research*, 77(3) (Fall 2010).

<sup>28</sup> [2011] EWHC 1981 (Ch). See also *Dramatico Entertainment Ltd. v. British Sky Broadcasting Ltd.* [2012] EWHC 268 (Ch) and [2012] EWHC 1152 (Ch).

<sup>29</sup> Shane n. 5, p. xii.

being used for information access to become a participatory environment more closely mimicking the democratic participation traditional in the physical world. Although this interactivity was available on the early internet in the form of message boards and the like, they were not mainstream and did not offer the same range of tools available now. This participative environment, coined ‘Web 2.0’ by Tim O’Reilly,<sup>30</sup> is difficult to define comprehensively, although it is best captured by Stephen Fry’s definition:

Web 2.0 is an idea in people’s heads rather than a reality. It’s actually an idea that the reciprocity between the user and the provider is what is emphasised. In other words, genuine interactivity, if you like, simply because people can upload as well as download.<sup>31</sup>

It is a notion that describes the maturing internet’s combination of ‘aspects of the telephone, post office, movie theatre, television, newspaper, shopping mall, [and] street corner’.<sup>32</sup> Users are simultaneously creators and consumers of content.<sup>33</sup>

Indeed, it is this combination of public awareness, increasing private power and the importance of the internet to daily life that defines Palfrey’s current and fourth phase of internet regulation. He calls this the *access-contested phase*, in which ‘the regulation that states have imposed in the earlier phase is giving rise to strong responses from the private sector and from other states unhappy with this regulation . . . Regulation online is increasingly a blend of the public and private’.<sup>34</sup> The key aspect of this period, he posits, will be the interplay among these various forms of regulation.

The internet will potentially become increasingly participatory as it continues to develop, thus opening up increasing possibilities for democracy. The next generation of the internet is the *semantic web*.<sup>35</sup> In this

<sup>30</sup> See the discussion by Tim O’Reilly about the coining of the term: ‘What is Web 2.0’ (30 September 2005), at [www.oreillynet.com/pub/a/oreilly/tim/news/2005/09/30/what-is-web-20.html](http://www.oreillynet.com/pub/a/oreilly/tim/news/2005/09/30/what-is-web-20.html) (last visited 16 June 2014).

<sup>31</sup> Video interview with Stephen Fry, at [www.videojug.com/interview/stephen-fry-web-20](http://www.videojug.com/interview/stephen-fry-web-20) (last visited 16 June 2014).

<sup>32</sup> R. Rosenzweig, ‘How Will the Net’s History Be Written? Historians and the Internet’, in H. Nissebaum and M. E. Price (eds.) *Academy & Internet* (New York: Peter Lang Publishing, 2004), p. 26.

<sup>33</sup> D. Rowland, ‘Free Expression and Defamation’, in Klang and Murray n. 16, p. 56.

<sup>34</sup> Palfrey n. 27, p. 992.

<sup>35</sup> See L. Feigenbaum et al., ‘The Semantic Web in Action’, *Scientific American* (Dec. 2007), reproduced with permission, at [www.thefigtrees.net/lee/sw/sciam/semantic-web-in-action](http://www.thefigtrees.net/lee/sw/sciam/semantic-web-in-action) (last visited 16 June 2014). The vision of the semantic web was articulated by Tim Berners-

future, it is predicted that computers will be able to meaningfully read and process the data on networks such that if I input a question online, the answer is customised to me; data will be mashed together and information managed for you. Pictures you take might be linked to your calendar so that you know where and when you took them, planned travel might trigger updates of your medical file and in the booking of flights, car rentals and entertainment.<sup>36</sup> The World Wide Web Consortium sees the semantic web as a standardisation of two things: first, of the formats integrating and combining data and, second, of the languages used to relate data to the real world.<sup>37</sup> It is within this interactive environment that we can readily identify opportunities for participation in democratic culture and identify the growing power of private gatekeepers to shape discourse.

### 1.2. Which democracy for the internet?

Every communication technology from the printing press to the radio has at one time been celebrated as having a democratising force, but, in this context, few ask what is meant by democracy.<sup>38</sup> This is compounded by the difficulty in defining the very idea of democracy, depending so much (as it invariably does) on one's discipline or perspective. It is an elastic concept that can be approached both as an institutional construct and as an aspiration. It has cynically been described as a nonexistent<sup>39</sup> or as a 'vague endorsement of a popular idea'.<sup>40</sup> The goal here is neither to join the debate with my view of the proper definition of democracy, nor to engage in a discussion of the various forms of government in which

Lee. See 'The Semantic Web' (17 May 2001), at [www.scientificamerican.com/article.cfm?id=the-semantic-web](http://www.scientificamerican.com/article.cfm?id=the-semantic-web) (last visited 16 June 2014).

<sup>36</sup> Feigenbaum, *ibid.*

<sup>37</sup> See explanation by the World Wide Web Consortium, at [www.w3.org/2001/sw/](http://www.w3.org/2001/sw/) (last visited 16 June 2014).

<sup>38</sup> For a discussion more broadly about technology and democracy in history, see B. R. Barber, 'Three Scenarios for the Future of Technology and Strong Democracy', *PSQ*, 113(4) (1998–99) 573–75.

<sup>39</sup> B. R. Barber, 'Which Technology for Which Democracy? Why Democracy for Which Technology?', *IJCLP*, 6 (2001) 1, commenting '[b]ut there is no such thing as democracy. There are only a variety of forms of governments, which have a variety of characteristics that can be labelled under different groupings that define (not without controversy) distinctive forms of democracy': p. 3.

<sup>40</sup> R. A. Dahl, *Democracy and Its Critics* (Yale University Press, 1989), p. 2. See also R. A. Dahl et al. (eds.), *The Democracy Sourcebook* (MIT Press, 2003).



democracy is manifest;<sup>41</sup> rather, it is to articulate the democracy most capable of facilitation by the internet and most capable of facilitation or hindrance by IIGs.

We are living in an Information Age,<sup>42</sup> where access to information and participation in the circulation of information is a distinguishing feature of our world.<sup>43</sup> It is an era represented by a shift from the manufacturing jobs typical of an industrial society to a world in which jobs are increasingly devoted to the creation, handling or circulation of information. In this networked society, information flows dominate and shape our ways of life because of the speed and distance that information circulates<sup>44</sup> and our dependence on ‘the production and distribution of information [as] a key source of wealth’.<sup>45</sup> In this information society, the internet has emerged as a key tool for the creation and circulation of information, but, more broadly, it has developed into an important mechanism for participation in democracy.

Yochai Benkler was correct in commenting that the early internet theorists’ beliefs that the internet is a democratising force ‘was correct but imprecise’.<sup>46</sup> With the costs of entry low and the architecture decentralised,<sup>47</sup> the internet invites mass participation at unprecedented levels. In this sense, it finds favour with Ithiel de Sola Pool’s seminal work *Technologies of Freedom*, in which the author describes decentralisation of communication networks as the ‘fostering’ of freedom.<sup>48</sup> Yet, if the

<sup>41</sup> See discussion by Barber n. 39, pp. 3–4.

<sup>42</sup> For a discussion of the notion of information society, see R. F. Jørgensen, *Framing the Net: The Internet and Human Rights* (Cheltenham: Edward Elgar, 2013), pp. 17–18.

<sup>43</sup> See F. Webster (ed.), *The Information Society Reader* (London: Routledge, 2004), p. 1, which describes information as a ‘distinguishing feature of our modern world’. M. Castells calls it an era of ‘information capitalism’: F. Webster, *Theories of the Information Society*, 2nd edn (London: Routledge, 2002), p. 100. See M. Castells, *The Rise of the Network Society*, 2nd edn (Oxford: Blackwell, 2000), and M. Castells, *The Internet Galaxy: Reflections on the Internet, Business, and Society* (Oxford University Press, 2001).

<sup>44</sup> M. Castells, ‘An Introduction to the Information Age’, in F. Webster (ed.), *The Information Society Reader*, *ibid.* For criticisms of Castells, see A. Halcli and F. Webster, ‘Inequality and Mobilization in the Information Age’, *European Journal of Social Theory*, 3 (1) (2000) 67, and N. Garnham, ‘Information Society Theory as Ideology’, *Loisir et Societe*, 21 (1)(1998) 97.

<sup>45</sup> J. M. Balkin, ‘Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society’, *NYULR*, 79(1) (2004) 1, 3.

<sup>46</sup> Y. Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (Yale University Press, 2006), p. 271.

<sup>47</sup> *Ibid.*, p. 212.

<sup>48</sup> I. de Sola Pool, *Technologies of Freedom* (Cambridge, MA: Belknap Press, 1983), p. 5.

internet is to achieve its democratic potential, it must tackle difficult problems of the Digital Divide, that the division between the haves and have-nots of the information society; concentration of the market; fragmentation of discourse and of quality control.<sup>49</sup> There are also problems such as the balkanisation of knowledge through the continual viewing of the same small group of websites<sup>50</sup> and the entrenchment of these websites at the top by the self-referencing of these sites in blogs, Twitter or on search engine results.<sup>51</sup> However, this does not mean that the internet does not have democratic potential, but rather that it is more complex than was previously thought. It means that how we think of notions of democracy, the public sphere and information must be tweaked to better reflect the complex and swiftly evolving internet.<sup>52</sup>

Under traditional conceptions of democracy, there are three types that the internet might facilitate: electoral, monitorial and deliberative.<sup>53</sup> *Electoral democracy* is commonly known in the internet context as 'e-government', the direct political communication between the state and its citizens. For example, countries are increasingly delivering public services and information to citizens directly through the internet by setting up websites to recruit volunteers and seek financial support for

<sup>49</sup> Although the digital divide between those with the wealth, literacy and language to access and fully enjoy the internet is a critical issue, particularly between First and Third World countries, it will not be discussed here. For more on this topic, see P. Norris, *Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide* (Cambridge University Press, 2001), particularly chapter one.

<sup>50</sup> See Benkler n. 46, p. 234.

<sup>51</sup> In the context of search engines, see E. Goldman, 'Search Engine Bias and the Demise of Search Engine Utopianism', *YJLT*, 8 (2005–6) 188.

<sup>52</sup> Keeping in mind the pangloss scenario cautioned by B. Barber in examining technology and democracy, where complacency leads to a naivety about possible corruption: Barber n. 38, pp. 576–80.

<sup>53</sup> There are many ways that democracy can be divided for the purpose of the internet. This division was made in G. Longford and S. Patten, 'Democracy in the Age of the Internet', *UNBLJ*, 56 (2007) 5. In contrast, in a speech, Benjamin Barber simplified democracy into three types for a discussion about technology: representative, plebiscitary and deliberative; Barber n. 39, p. 3. Leni Wild divided democracy into three strands of liberal representative (the rational, autonomous individual), communitarian (participation in communities) and deliberative (participation in the dialogue); L. Wild, 'Democracy in the Age of Modern Communications: An Outline' (2008), paper for Freedom of Expression Project, Global Partners & Associates, pp. 5–6. In addition, some attempts have been made to differentiate between individual-oriented democracy and communitarian democracy, but this will not be discussed here because the internet can be both a place for individual growth and participation in the community, which duality is accounted for in J. Balkin's theory of democratic culture discussed herein. See, for example, L. Dahlberg, 'Democracy via Cyberspace', *New Media & Society*, 3(2) (2001) 157.