



Written by [Thomas R. Eddlem](#) on February 21, 2011

Does the U.S. Have an Internet “Kill Switch”

The massive protests and the move to kill the Internet also had dire economic consequences for Egypt. Bloomberg.com [reported](#) that "Egypt's benchmark stock index fell about 17 percent in two sessions before it closed on Jan. 28. Initially, trade was halted while authorities put in place measures to curb any more sharp and sudden drops. Then strikes and bank closures prolonged the shutdown." As of February 20, the Egyptian stock market has yet to re-open. Shutting off the Internet also shut off billions of dollars in commerce.



A number of political observers are now wondering: Could such a thing ever happen in the United States, the "land of the free"?

That may be the wrong question, because it already has, though on a much smaller scale. While many Americans are fixated on Connecticut Senator Joe Lieberman's so-called "[Internet Kill Switch legislative proposal](#)", the U.S. Immigration and Customs Enforcement Agency (ICE) has already been waging a clumsy war on sections of the Internet for more than a year. Through "[Operation In Our Sites](#)" and "[Operation Protect Our Children](#)," ICE has shut down tens of thousands of innocent websites in its attempts to stop unauthorized reproduction of copyrighted materials and child pornography, respectively.

"For all its positive impact, the Internet has also unfortunately created a new way for child predators to commit their inexcusable crimes," Assistant Attorney General Lanny A. Breuer of the U.S. Department of Justice, Criminal Division [wrote](#) in a Department of Homeland Security press release touting the closure of several domain roots with a court warrant. "The production and distribution of child pornography wreak havoc on innocent lives. With these domain seizures, we are taking our fight against child pornography to websites that facilitate the exchange of these abusive images."

And while no sane person thinks that child pornography falls within the purview of the First Amendment (child pornography is nothing more than evidence of a crime, and republication of it deprives children of their natural right to privacy), America's [common law](#) system has not traditionally been preemptive. Prosecutors have traditionally prosecuted those who engaged in and filmed the pornography, in addition to prosecuting those who distribute it. That's how this kind of crime has traditionally been controlled.

No longer. Now the federal government is coming in and seizing websites, which can lead to massive abuses. In fact, it already has. "DHS conveniently failed to mention that 84,000 websites were wrongfully taken down in the process, shaming thousands of people in the process," TorrentFreak.com [reported](#). According to TorrentFreak, the domain moo.com had some 84,000 subdomains leased to different customers, only one or two of which had allegedly been found by ICE to have been hosting child pornography. "Most of the subdomains in question are personal sites and sites of small businesses," TorrentFreak [reported](#). "A search on Bing still shows how innocent sites were claimed to



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promote child pornography. A rather damaging accusation, which scared and upset many of the site's owners."

Each of the 84,000 website owners found that customers and friends visiting their website found only a [banner](#) planted there by ICE accusing the site provider — and possibly the web browser as well — of being involved of child pornography:

This domain name has been seized by ICE - Homeland Security Investigations, pursuant to a seizure warrant issued by a United States District Court under the authority of Title 18 U.S.C. 2254. Advertisement, distribution, transportation, receipt, and possession of child pornography constitute federal crimes that carry penalties for first time offenders of up to 30 years in federal prison, a \$250,000 fine, forfeiture and restitution.

ICE leader Director John Morton [noted](#) in a January 18, 2010 speech on "Operation In Our Sites" that "Our seizure banners, now in place of the illegal material, have received over 25 million hits. In some cases receiving more visitors than the sites were when they were offering content and counterfeit goods illegally." The recent goof-up on moo.com may explain why their efforts on Internet copyright violation has likewise received a huge "hit" count for its own banners: They're blocking many more legitimate sites than they are blocking criminals.

Government shutdowns of Internet websites has proven to be a blunt instrument that hurts more legitimate businesses and individuals than it hurts actual criminals. As *Time* magazine [put it](#):

What if you woke up one morning and your blog's URL pointed to a Department of Homeland Security page that said, "Website seized for trafficking in child pornography"? That's what happened to 84,000 innocent site owners this week, and there's no guarantee it won't happen again.

Part of the problem is that the seizure warrants are executed [ex parte](#), meaning that the owner of the domain being seized has no opportunity to explain that he/she had no part in loading child pornography. While the ICE hasn't yet tried to seize giant domain sites like Google or Blogger, the Moo.com seizure is an indication that the judges are acting on poor information and are assuming there's only one party responsible for the content on some large web domains.

Morton [claimed](#) back in January 2010: "First, ICE is not the police of the Internet." But then in the next breath, he contradicted himself: "Second, we are not interested in limiting speech or due process. Third, we will follow criminal activity wherever it occurs, including the internet. In short, we are going to stay at it. I am unapologetic on that last point... Crime is crime."

The ICE choice to seize websites, rather than merely prosecute the criminals, proves that the federal government already has considerable ability to censor the Internet. Former DHS Secretary Michael Chertoff [told](#) the *Wall Street Journal* February 17 "that federal agencies already have tools at their disposal to deal with Internet-based attacks, including the ability to ask Internet service providers to block packets of data coming from specific Web servers, or to prioritize vital messages on the Internet. According to Mr. Chertoff, a memorandum of understanding between the Department of Defense and the Department of Homeland Security, signed last year, gives the DHS the authority over such matters, but that the capabilities for doing things like blocking traffic or decrypting coded messages resides with DoD."

Yet this is the same censorship ability that our own State Department railed against during the Egyptian crisis. During the height of the Egyptian crisis (January 28), State Department Spokesman P.J.



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Crowley [tweeted](#) several times about how governments need to trust their people and that Internet censorship is never the right course:

Reform is vital to #Egypt's long-term well-being. The Egyptian government should view its people as a partner and not as a threat.

Events unfolding in #Egypt are of deep concern. Fundamental rights must be respected, violence avoided and open communications allowed.

We are concerned that communication services, including the Internet, social media and even this #tweet, are being blocked in #Egypt.

While the clumsy efforts of ICE prosecutors thus far have been directed toward enforcing constitutional laws on the books, governments have traditionally always expanded their powers and reasons for using them. They always claim to have a really, really good reason for doing so. When Mubarak was trying to restore order in his country, he might have argued. So long as such a power remains in the hands of the federal government, the danger of more abuses will remain.



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