

# VIRGINIA JOURNAL OF LAW & TECHNOLOGY

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FALL 2013

UNIVERSITY OF VIRGINIA

VOL. 18, NO. 01

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## *Vanished*

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## ABSTRACT

This Article identifies a gap between American free speech rhetoric and practice. We analyze data recently released by Google describing the official requests or demands to remove content made to the company by governments around the world between 2010 and 2012. Controlling for Internet penetration and Google's relative market share in each country, we find that the international trends are not consistent with conventional wisdoms. For example, the United States produces more removal demands based on allegedly defamatory content than most other countries, and vastly more than would be expected from the country responsible for *New York Times v. Sullivan*. Moreover, despite its reputation for being weak on privacy law, the United States' removal demands based on privacy are nearly identical to the European Union's. The results presented in this Article challenge long-held assumptions that American free speech values curb the country's appetite for censorship.

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He stepped across the room. There was a memory hole in the opposite wall. O'Brien lifted the grating. Unseen, the frail slip of paper was whirling away on the current of warm air; it was vanishing in a flash of flame.

- George Orwell, *1984*

## I. INTRODUCTION

Google has become the world's eraser.

The company draws unceasing attention and pressure from states. Google's eponymous search engine helps users find things, from bootleg sound recordings to political dissent, which their governments prefer they not discover. And, the firm lets consumers store and share information on its various services, from YouTube to Gmail to Orkut. Every state has some content that it wants to eliminate from the Internet, and most ask Google to assist them to that end.<sup>1</sup> Google receives a range of demands that it delete or obscure information, from court orders to informal e-mail messages.<sup>2</sup> For the last two and a half years, Google has shared aggregate information about

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<sup>1</sup> See generally Jyh-An Lee, Ching-Yi Liu, & Weiping Li, *Searching for Internet Freedom in China: A Case Study on Google's China Experience*, 31 CARDOZO ARTS & ENT. L.J. 405, 406-19 (2013); Derek E. Bambauer, *Cybersieves*, 59 DUKE L.J. 377, 395 (2009).

<sup>2</sup> See, e.g., Stephanie Condon, *Argentine Judge: Google, Yahoo Must Censor Searches*, CNET (Nov. 11, 2008, 6:58 PM), [http://news.cnet.com/8301-13578\\_3-10094597-38.html](http://news.cnet.com/8301-13578_3-10094597-38.html); THR Staff, *Brazilian Court Orders YouTube to Remove "Innocence of Muslims,"* THE HOLLYWOOD REPORTER (Sept. 26, 2012, 3:08 AM), <http://www.hollywoodreporter.com/news/brazilian-court-orders-youtube-remove-374320>.

states' demands with the public via its Transparency Reports.<sup>3</sup> This Article is the first legal scholarship to analyze that data empirically, to assess its meaning and import, and to employ the data to question long-standing assumptions about how various countries approach information restrictions online.

This data paints a fascinating and often counterintuitive picture. It should cause legal scholars to rethink standard assumptions about a trans-Atlantic divide over privacy norms and enforcement, about American free speech exceptionalism, about whether there is a single European Union approach to issues such as defamation, and about which countries are leaders in online censorship. Our analysis shows that the United States has a surprisingly high number of takedown requests given its much-touted commitments to freedom of expression online.<sup>4</sup> For example, the United States requested removal of the second-most defamation-related items,<sup>5</sup> controlling for Internet user population and Google market

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<sup>3</sup> Google, *Transparency Report*, <http://www.google.com/transparencyreport/> (last visited Jan. 19, 2014). Google also makes available information about the copyright-related requests it receives. These requests dwarf those made by governments. This report does not analyze that copyright-related data, although there are both copyright and trademark-based requests that fall within the government takedown set and not within the fuller copyright dataset. All tables and statistical figures contained herein refer to original analysis of the dataset that Google has made publicly available.

<sup>4</sup> See, e.g., *Obama Pushes China To Stop Censoring Internet*, NPR (Nov. 16, 2009, 7:47 AM), <http://www.npr.org/templates/story/story.php?storyId=120450377>; Hillary Rodham Clinton, *Remarks on Internet Freedom*, U.S. DEP'T OF STATE (Jan. 21, 2010), <http://www.state.gov/secretary/rm/2010/01/135519.htm>.

<sup>5</sup> See *supra* note 3. This figure refers to the entire dataset period from July 1, 2010-December 31, 2012.

share.<sup>6</sup> And for privacy, American enforcement appears more like that of an average European Union country, based on its takedown requests. The former result contradicts the long-standing belief that the mixture of constitutional and statutory constraints on Internet defamation claims effectively neuters the tort in the online context.<sup>7</sup> The latter result runs counter to the accepted scholarly wisdom that American privacy law is both underdeveloped and under-enforced.<sup>8</sup> These peculiarities may be driven in part by differences in substantive law if, for example, the European Union's strong privacy statutes effectively chill the offending content from being produced in the first place, but the Google transparency data do capture a state's eagerness to enforce its laws through censorship. The

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<sup>6</sup> To standardize across countries, we compared the number of items that a state requested to be removed relative to the estimated number of Google users in that state. For convenience, we report these numbers as per million Google users (MGU). To obtain MGU, we divide the number of Internet users in a country by one million, and then multiply that number by the fractional market share for Google in that country (where, for example, 80% market share would equal 0.8). We then divide the number of items for which removal was requested by the country's MGU.

<sup>7</sup> See 47 U.S.C. § 230 (2006) (providing safe harbor from most secondary tort liability for interactive computer services); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 346-47 (1974) (forbidding strict liability for defamation); *N.Y. Times v. Sullivan*, 376 U.S. 254, 283 (1964) (creating a heightened standard for defamation for public figures). See generally ERIC GOLDMAN, *The Regulation of Reputational Information*, in *THE NEXT DIGITAL DECADE: ESSAYS ON THE FUTURE OF THE INTERNET*, 293 (Berin Szoka & Adam Marcus, eds., 2010).

<sup>8</sup> See, e.g., Paul M. Schwartz, *The EU-U.S. Privacy Collision: A Turn to Institutions and Procedures*, 126 HARV. L. REV. 1966 (2013); Eric Dash, *Europe Zips Lips; U.S. Sells ZIPs*, N.Y. TIMES, Aug. 7, 2005, [http://www.nytimes.com/2005/08/07/weekinreview/07dash.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2005/08/07/weekinreview/07dash.html?pagewanted=all&_r=0); Natasha Singer, *Data Protection Laws, an Ocean Apart*, N.Y. TIMES, Feb. 3, 2013, at BU3.

United States is entirely ready to press Google to lose information.

Counterintuitively – for American scholars, at least – European Union countries showed widely divergent approaches to takedown requests. Germany used them expansively, but Spain and Italy, infrequently. There was similar diversity within content categories. For privacy, France sought to remove 22.44 items per million Google users (MGU) over the 30-month reporting period; Germany pushed to delete only 5.09 per MGU.<sup>9</sup> For defamation, Germany pursued 93.8 items per million Google users; Spain targeted 1.48 MGU. For hate speech, Germany demanded removal of a relatively large number of items (17.93 per MGU), whereas France demanded relatively few (0.7), despite similar experiences of racism, hatred, and genocide during the Second World War.<sup>10</sup> The European Union is not at all a monolith regarding restrictions on Internet information.

The data offer insight into the information that worries various states. Russia concentrates its efforts on content that it views as related to its national security, while India focuses on material that might give religious offense. Nearly all countries make some effort to suppress criticism of their governments. Turkey is particularly assiduous in trying to suppress dissent.

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<sup>9</sup> For details on calculation of MGU, *see supra* note 6.

<sup>10</sup> *See Comparing Hate Speech Laws In The U.S. And Abroad* (NPR radio broadcast Mar. 3, 2011, 3:00PM), (transcript and recording available at <http://www.npr.org/2011/03/03/134239713/France-Isnt-The-Only-Country-To-Prohibit-Hate-Speech>). *See generally* Toni M. Massaro, *Equality and Freedom of Expression: The Hate Speech Dilemma*, 32 WM. & MARY L. REV. 211 (1991).

Finally, the leaders in takedown requests are not who one might expect. South Korea, Turkey, and Brazil targeted the most items for deletion per MGU. South Korea's metric was driven by a large number of privacy / security takedowns, and by Google's relatively paltry market share in the country (8%). Turkey had the highest level of items sought to be removed for government criticism – nearly ten times that of runner-up India. Brazil, though, generated perhaps the most striking set of results. The country's takedown demands were numerous and distributed across a range of categories. Brazil restricts a significant volume and diversity of information online – a trend that bears watching in one of the world's most vibrant countries both economically and politically.<sup>11</sup>

Interestingly, Google seems to view the legitimacy of these states' practices differently. Its rate of compliance for takedown requests from Brazil and Turkey has declined precipitously over the reporting period.<sup>12</sup> In the first 6-month period, Google removed 100% of the items requested from Turkey and 68% from Brazil. In the last 6-month period, it removed just over half (55%) of Turkey's requested items and only 21% of those from Brazil. Compliance with U.S. requests has also plummeted, declining from 83% in the first period to 48% in the last. South Korea, by contrast, has maintained a consistently high success rate: 100% in the first period and 88% in the last.

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<sup>11</sup> See Perry Bacon Jr. & Juan Forero, *Obama Praises Brazil as Model of Democracy*, WASH. POST (Mar. 20, 2011), [http://www.washingtonpost.com/world/obama-visits-brazil-with-libya-on-his-mind/2011/03/20/ABZrNb1\\_story.html](http://www.washingtonpost.com/world/obama-visits-brazil-with-libya-on-his-mind/2011/03/20/ABZrNb1_story.html).

<sup>12</sup> See Appendix I for table reporting compliance rates.



Google is a key chokepoint in the Internet information ecosystem. Its statistics regarding government takedown requests for content provide a window into states' practices and challenge conventional wisdom regarding those practices.

## II. DATA AND METHODS

We downloaded Google transparency data related to removal requests from governments for the 30-month period from July 1, 2010, to December 31, 2012.<sup>13</sup> Google categorizes the requests by number of items subject to removal, by country, by the reason for the request (for example, due to allegations of defamation), by the mechanism for the request (court order or other method), and by the time period collected (reported in 6-month blocks). We obtained information on the population, number of Internet users, and Google market share in each country.<sup>14</sup> Lastly, we clustered data from the countries in the European Union ("EU") as a grouping to examine EU-wide averages.<sup>15</sup> For our analysis, we selected the number of items

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<sup>13</sup> The data are available in CSV format at <http://www.google.com/transparencyreport/removals/government/data/>.

<sup>14</sup> For per country population and Internet user data, see *World Internet Users Statistics Usage and World Population Stats*, INTERNET WORLD STATS (June 30, 2012), <http://www.internetworldstats.com/stats.htm>. For Google market share per country, see LSF Interactive, *Google Market Shares Around the World*, STATE OF DIGITAL (Dec. 2010), <http://www.stateofsearch.com/wp-content/uploads/2010/12/Google-market-shares-around-the-world-infographic.jpg>.

<sup>15</sup> There are 28 member states in the European Union. *Countries*, EUROPEAN UNION, [http://europa.eu/about-eu/countries/index\\_en.htm](http://europa.eu/about-eu/countries/index_en.htm) (last visited Jan. 19, 2014). However, five did not submit any requests for removal to Google during the study period (Bulgaria, Estonia, Finland, Latvia, and Luxembourg.) Thus, our EU grouping contains only 23 countries. We also explored the possibility of creating a cluster of Islamic

“requested to be removed” as the unit of analysis. For example, if a country made one request that covered six contested items, we treated the relevant number as six (the items sought to be removed) rather than one (the number of requests). We made this choice because the number of requests could potentially be manipulated (for example, generating six requests, with one item per request, in the example above), while the number of items should not be readily subject to gamesmanship. At times, for purposes of brevity, we will refer to “removal requests”; this means the number of items sought to be taken down, not the number of contacts between a state and Google to try to vanish them.

Next, we analyzed the number of items identified for removal per 6-month period; per 12-month period; overall; and for a 12-month period at the beginning and end of the reporting period (to buffer short-term anomalies). We normalized the number of items per million Internet users, and then per million Google users (MGU).<sup>16</sup> This allowed us to compare requests to remove content across countries. We examined the relative distribution of requests among content categories in each country, and then analyzed a subset of key content categories for a group of countries.

Two methodological details bear mentioning. First, the United Kingdom (UK) reported a large number of removal

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countries, but we found that the results were entirely driven by the practices of Turkey. We do not report the results of the Islamic cluster here.

<sup>16</sup> To calculate the rate per million Google users (MGU), we divided the rate per million Internet users by Google’s market share in that country, where 1 = 100% market share. Thus, for the United States, there were 40.2 takedown requests per million Internet users. Google has a 61% market share in the United States. The rate per million Google users is therefore  $40.2 / 0.61$ , or 65.91.

requests - 93,360 - in the first reporting period (July 1, 2010 to December 31, 2010) that were categorized as “Other.” According to Google, these requests originate from a single false advertising lawsuit in the UK, which resulted in this large number of requests for Google AdWord takedowns.<sup>17</sup> In the findings below, we report UK results both with and without this set of requests, as this unusually high number may distort the overall picture of how the country employs takedowns.<sup>18</sup>

Second, South Korea requested that Google remove 32,544 items categorized as Privacy / Security.<sup>19</sup> Google uses this category to denote items related to personal security, such as credit card or Social Security numbers. According to Google, these requests were generally issued by the Korean Internet & Security Agency, and related to Resident Registration Numbers (RRNs), numbers analogous to Social Security Numbers that identify individual South Korean residents.<sup>20</sup> As with the UK requests described above, we

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<sup>17</sup> See Google, *FAQ*, TRANSPARENCY REP., <http://www.google.com/transparencyreport/removals/government/faq/> (noting that “Until the beginning of 2012, we counted the total number of ads removed (rather than the number of URLs or ads cited in the removal request).”). Google Adwords allow firms to advertise at the top of a Google search when users search for specified words or names.

<sup>18</sup> The total number of UK takedown requests, in terms of the number of items sought to be removed in the 30-month period, was 98,177. Thus, the false advertising requests represent over 95% of all UK requests to Google.

<sup>19</sup> The total number of items requested to be removed by South Korea was 33,956; thus, this set of Privacy/Security requests comprises almost 96% of the country’s total requests.

<sup>20</sup> Google, *South Korea*, TRANSPARENCY REP., <http://www.google.com/transparencyreport/removals/government/KR/>. On RRNs, see generally *Resident Registration Number*, KOREANLII, [http://koreanlii.or.kr/w/index.php/Resident\\_registration\\_number](http://koreanlii.or.kr/w/index.php/Resident_registration_number) (last modified Sept. 28, 2013).

report South Korea's results both with and without this set of requests, out of the same concern for distortion.

In discussions with the Google Transparency Report team, we learned about the firm's process for classifying requests.<sup>21</sup> Employees working on various Google products (such as YouTube) distributed around the world receive government requests to take down content. They report each request using a standardized form. The employee reporting the request is responsible for classifying it, based principally on the legal basis cited by the government for the request. However, Google classifies requests as related to government criticism based upon its own, internal criteria. Google's transparency team and legal department review almost every such request, and may reclassify them for consistency or quality control. And, there are instances where the request comes with no reason or legal basis cited; Google classifies such requests as "Removal Reason Not Specified." Finally, Google divides request mechanism into two categories: court order (including instances where a requester attaches a relevant court order, but Google is not a party), and other.<sup>22</sup>

We next report the results of our analysis.

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<sup>21</sup> Personal communication (on file with authors).

<sup>22</sup> The "court order" classification is complicated by the inclusion of court orders that do not technically direct Google to remove content. In instances where the court order is sent by a prevailing party, the government is not even communicating with Google, much less compelling it to censor. However, since the ultimate directive of the court order is to ensure that content is removed from the Internet, inclusion may make more sense than exclusion.

### III. FINDINGS

In this Section, we discuss our findings in overall number of requests, by content area, by mechanism, and finally in trends over time.

#### A. Total Requests

In analyzing the total volume of requests to Google to censor data, we find that America's willingness to ask the firm to remove content belies its reputation as a bastion of free speech protection, and also that South Korea, Brazil, and Turkey – new democracies with burgeoning economies – are the leaders in attempts to vanish information from Google's servers.<sup>23</sup>

The United States asked Google to remove 110.36 items per MGU during the survey period. This level of requests is similar to that of the United Kingdom (102.12) and Germany (147.10). This result is in tension with America's reputation – partly self-proclaimed – as a defender of free expression online.<sup>24</sup> While some of the requests are based on intellectual property infringement, which the United States typically views as unrelated to free speech concerns, a surprising number relate to defamation and to individual privacy / security.<sup>25</sup> The

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<sup>23</sup> Brazil shifted to democracy from military rule in 1985, South Korea in 1987, and Turkey had its last military intervention in politics in 1997.

<sup>24</sup> See generally Margot E. Kaminski, *Copyright Crime and Punishment: The First Amendment's Proportionality Problem*, 73 MD. L. REV. (forthcoming 2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2307241##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2307241##).

<sup>25</sup> On the relationship between IP enforcement and free speech, see, e.g., Derek E. Bambauer, *Orwell's Armchair*, 79 U. CHI. L. REV. 863, 872, 886-87 (2012); Mark A. Lemley & Eugene Volokh, *Freedom of Speech and*

removal request data accords with the suggestion by legal scholars that Internet censorship is on the rise in the United States.<sup>26</sup>

South Korea – a country in which Google has a small market share at 8% - had the highest rate of items requested to be removed per MGU at 587.5. This excludes the RRN removal requests; if one includes those, South Korea's rate leaps to 10,611 per MGU, an extraordinary figure. This suggests an unusual concentration upon a firm that is a small player in South Korea's search market. Behind South Korea are Turkey (356.7 items requested removed per MGU) and Brazil (318.4 per MGU). Google is the dominant search provider in both countries – it holds a 63% market share in Brazil, and a 98% market share in Turkey. Moreover, Google's Orkut social networking service is a close second to Facebook in Brazil, and accordingly draws considerable attention over issues such as copyright infringement.<sup>27</sup>

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*Injunctions in Intellectual Property Cases*, 48 DUKE L.J. 147 (1998); David S. Levine, *Transparency Soup: The ACTA Negotiating Process and 'Black Box' Lawmaking*, 26 AM. U. INT'L L. REV. 811, 826 (2011).

<sup>26</sup> Bambauer, *supra* note 25, at 866-67; *see also* Mark A. Lemley, David S. Levine, & David G. Post, *Don't Break the Internet*, 64 STAN. L. REV. ONLINE 34 (2011).

<sup>27</sup> *See, e.g.*, 2010 *Special 301 Report on Copyright Protection and Enforcement: Brazil*, INT'L INTELL. PROP. ALLIANCE 148 (Feb. 18, 2010), <http://www.iipa.com/rbc/2010/2010SPEC301BRAZIL.pdf> (stating the "major problem the music industry faces in Brazil continues to be 'Orkut,' the social site owned by Google"); Anna Heim, *With Over 36 Million Visitors, Facebook Finally Overtakes Orkut in Brazil*, THE NEXT WEB (Jan. 17, 2012, 8:51 PM), <http://thenextweb.com/facebook/2012/01/17/with-over-36-million-visitors-facebook-finally-overtakes-orkut-in-brazil/> (suggesting the survey "data doesn't include mobile access and connections from cybercafés . . . mean[ing] Orkut's share is likely underestimated; the

The EU displays a range of approaches to content removal by governments. For example, Google has roughly the same share of the market in Germany (92%), Spain (93%), and Italy (86%), yet the countries display divergent levels of items slated for removal. Germany asked for 147.1 items per MGU to be removed over the observation period, while Spain requested 26.68 per MGU and Italy 22.4 per MGU. Here, too, the conventional wisdom that the EU is relatively monolithic regarding Internet regulation and censorship is unsettled by the Google data; some countries seek to suppress content online frequently, and others only occasionally.<sup>28</sup>

Google's transparency data rewrites standard assumptions about Internet censorship: the United States tries to take down more content than expected, some European countries less, and several emerging economies lead the way.

Country	Items per Million Residents	Items per Million Google Users
South Korea	848.9	10,611
United Kingdom	1,852.4	2,081.3
South Korea*	47	587.5
Turkey	349.6	356.7
Brazil	200.6	318.4
Germany	135.3	147.1
United States	67.3	110.4
UK**	90.9	102.1
EU (average)**	52.0	57.8
Australia	45	48.4
France	38.6	42.5

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network has remained more popular among the lower middle class, who is more likely to access it from Brazil's thousands 'lan houses' and possibly through 3G").

<sup>28</sup> See, e.g., Matt Warman, *EU "Asking Google to Censor Web,"* THE TELEGRAPH (Feb. 14, 2012, 2:00 PM), <http://www.telegraph.co.uk/technology/internet/9081619/EU-asking-Google-to-censor-web.html>.

India	32.4	37.6
Spain	24.8	26.7
Italy	19.3	22.4
Russia	4.5	19.8

\*With RRN cases removed

\*\*With false advertising removed

Table 1. Items Targeted for Removal by Country

## B. Content Categories

Countries care about censoring different content online. Brazil and Turkey, for example, concentrate heavily on copyright infringement, likely because neither country has established a legal framework for a notice-and-take-down system,<sup>29</sup> like Title II of the U.S. Digital Millennium Copyright Act.<sup>30</sup> For Brazil, copyright-related items comprise 66% of removal requests; for Turkey, copyright makes up 66.5%. The United States produces fewer copyright-related requests partly because the DMCA creates incentives for a private system of notice and takedowns. Instead, the United States focuses, surprisingly, on defamation, accounting for 63.7% of U.S. removal requests. India concentrates on religious offense (55% of requests). Russia makes 56.3% of its requests upon national security grounds. While the focal points differ, the common theme is censorship: governments seek to eliminate certain content from access via Google's services. The following subsections explore different types of content, and which countries seek to remove them from Google.

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<sup>29</sup> See 2013 *Special 301 Report on Copyright Protection and Enforcement: Turkey*, INT'L INTELL. PROP. ALLIANCE 277 (Feb. 18, 2013), <http://www.iipa.com/rbc/2013/2013SPEC301TURKEY.PDF>; 2010 *Special 301 Report on Copyright Protection and Enforcement: Brazil*, *supra* note 27, at 148.

<sup>30</sup> Pub. L. No. 105-304, §§ 201-203, 112 Stat. 2860, 2877-86 (1998) (codified at 17 U.S.C. § 512).



## i. Privacy

The standard narrative of privacy norms counterposes the European model of high protection against the American model of low protection.<sup>31</sup> Indeed, a wave of American privacy scholarship advocates the adoption of European rights and expectations about privacy.<sup>32</sup> And norms in Asia, while still developing, are viewed as corresponding more closely to low-protection regimes than high-protection ones.<sup>33</sup>

Our analysis, by contrast, finds that the United States generates privacy-related takedown requests at a rate greater than that of the average EU country – and that both the United States and the EU see their efforts vastly exceeded by those of South Korea.<sup>34</sup> The United States asked Google to remove 13.67 privacy-related items per million Google users in the study period. The average for EU countries was lower, at 8.27 per MGU. Spain (21.64) and France (22.44) both made more requests per MGU than the United States; Germany (5.09) and

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<sup>31</sup> See, e.g., James Q. Whitman, *The Two Western Cultures of Privacy: Dignity Versus Liberty*, 113 YALE L.J. 1151 (2004).

<sup>32</sup> See Michael Froomkin, *The Death of Privacy?*, 52 STAN. L. REV. 1461, 1538-39 (2000); Jerry Kang & Benedikt Buchner, *Privacy in Atlantis*, 18 HARV. J.L. & TECH. 229, 246, 255 (2004); Jessica Litman, *Information Privacy/Information Property*, 52 STAN. L. REV. 1283, 1286-87, 1290 (2000); Joel Reidenberg, *Restoring Americans' Privacy in Electronic Commerce*, 14 BERKELEY TECH. L.J. 771, 781-83 (1999).

<sup>33</sup> See Masami Kashiwagi, *Data Privacy Regulations in Asia Pacific – Do You Know Where You Stand?*, FORRESTER (June 5, 2013), [http://blogs.forrester.com/masami\\_kashiwagi/13-06-05-data\\_privacy\\_regulations\\_in\\_asia\\_pacific\\_do\\_you\\_know\\_where\\_you\\_stand](http://blogs.forrester.com/masami_kashiwagi/13-06-05-data_privacy_regulations_in_asia_pacific_do_you_know_where_you_stand) (stating the “concept of ‘privacy’ or ‘right to privacy’ is relatively new in large parts of the [Asia-Pacific] region”).

<sup>34</sup> Google classifies this type of request as Privacy/Security.

Italy (3.39) made fewer. Brazil (4.94 per MGU) and India (6.39) generated rates similar to lower-volume EU countries.

South Korea dwarfed other countries for takedowns related to privacy. The country asked Google to remove 10,156 items per MGU if one includes the RRN requests, and 146.25 if one does not.<sup>35</sup> South Korea's latter figure is more than four times greater than the next-most aggressive country for privacy items (Australia, at 37.31 per MGU).

These results suggest that the standard descriptive account of privacy norms is inaccurate. American takedown demands related to privacy occur at a rate similar to EU ones – despite having a far weaker underlying legal regime to support such demands.<sup>36</sup> And, by sheer volume, South Korea's takedown demands suggest that the country is strongly attuned to privacy issues and privacy enforcement. This fits with the political emphasis upon checking content affecting personal and reputational interests that began in summer 2008.<sup>37</sup> Internet intermediaries, such as portals and search engines, face potentially significant criminal penalties for failure to remove allegedly defamatory content under the new regulatory

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<sup>35</sup> South Korea's figure derives from the large number of items targeted (32,499) in the privacy and security category, based on 127 separate requests, and from the low market share that Google enjoys in the country (roughly 8%).

<sup>36</sup> Adam Liptak, *When American and European Ideas of Privacy Collide*, N.Y. TIMES, Feb. 27, 2010, at WK1.

<sup>37</sup> *South Korea*, OPENNET INITIATIVE (Aug. 6, 2012), <https://opennet.net/research/profiles/south-korea>; Michael Fitzpatrick, *South Korea Wants to Gag the Noisy Internet Rabble*, THE GUARDIAN (Oct. 7, 2008 7:01 PM), <http://www.theguardian.com/technology/2008/oct/09/news.internet>.

regime.<sup>38</sup> Thus, the massive volume of South Korean takedown requests may represent a new equilibrium for the country, rather than presenting as an aberration.<sup>39</sup>

Country	Items per MGU
South Korea <sup>40</sup>	146.25
Australia	37.31
France	22.44
Spain	21.64
United States	13.67
European Union (average)	8.27
United Kingdom	7.44
India	6.39
Turkey	5.47
Germany	5.09
Brazil	4.94
Italy	3.39
Russia	0.51

Table 2. Items Requested To Be Removed Based on Privacy

## ii. Defamation

As with privacy, the conventional wisdom holds that America's First Amendment precedent, along with its allocation of the burden of proof, make the country's defamation laws far more protective of defendants – the

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<sup>38</sup> *South Korea, supra* note 37; Choe Sang-Hun, *Korea Policing the Net. Twist? It's South Korea*, N.Y. TIMES, Aug. 12, 2012, <http://www.nytimes.com/2012/08/13/world/asia/critics-see-south-korea-internet-curbs-as-censorship.html?pagewanted=all>.

<sup>39</sup> See generally Graham Greenleaf & Whon-il Park, *Korea's New Act: Asia's Toughest Data Privacy Law*, 117 PRIVACY L. & BUS. INT'L REP. 1 (2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2120983](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2120983).

<sup>40</sup> These results omit the South Korea RRN removals. If those removals are included, the Items per MGU jumps to 10,170.

alleged defamers – than similar regimes in the rest of the world.<sup>41</sup> Indeed, in 2010, the U.S. Congress unanimously passed a bill (signed into law by President Barack Obama) that prevented the enforcement of foreign defamation judgments by U.S. courts, unless those judgments comported with the First Amendment.<sup>42</sup> Internet intermediaries enjoy almost complete immunity from defamation liability, unless the intermediary itself is the author of the allegedly libelous statement.<sup>43</sup> By contrast, European Union countries such as Great Britain and France have become notorious for purportedly lax standards regarding defamation that invite suits by the aggrieved or insulted.<sup>44</sup> French defamation laws, for example, heavily influenced the (lack of) media coverage of the investigation of

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<sup>41</sup> See, e.g., Andrew Albanese, *Obama Signs “Libel Tourism” Law*, PUBLISHERS WKLY. (Aug. 12, 2010), <http://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/44148-obama-signs-libel-tourism-law.html>; Timothy Zick, *Territoriality and the First Amendment: Free Speech At – And Beyond – Our Borders*, 85 NOTRE DAME L. REV. 1543 (2010); *N.Y. Times v. Sullivan*, 376 U.S. 254 (1964); *Dillon v. City of New York*, 261 A.D.2d 34, 37-39 (N.Y. App. Div. 1999) (describing New York’s defamation regime).

<sup>42</sup> See Bill Summary and Status, Securing the Protection of our Enduring and Established Constitutional Heritage Act (SPEECH Act), H.R. 2765, 111th Cong., <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR02765:@@R>.

<sup>43</sup> 47 U.S.C. § 230(c)(1) (2010); David S. Ardia, *Free Speech Savior or Shield for Scoundrels: An Empirical Study of Intermediary Immunity Under Section 230 of the Communications Decency Act*, 43 LOY. L.A. L. REV. 373 (2010).

<sup>44</sup> See, e.g., Rachel Ehrenfeld, *Britain’s Half-Hearted Bid to Reform Libel Law*, N.Y. TIMES July 24, 2012, <http://www.nytimes.com/2012/07/25/opinion/britains-half-hearted-bid-to-reform-libel-law.html>; Eriq Gardner, *Why Celebrities Will Soon Be Jetting To France Over Tabloid Gossip*, THE HOLLYWOOD REP. (Feb. 22, 2011, 9:04 AM), <http://www.hollywoodreporter.com/blogs/thr-esq/why-celebrities-will-soon-be-160070>.

Dominique Strauss-Kahn's conduct at the International Monetary Fund.<sup>45</sup>

Here, too, our analysis of the Google data suggests that America's efforts to cabin defamation on the Internet are far more vigorous than the standard story indicates. America sought to remove the second-highest number (on a per million Google user basis) of items related to defamation (70.26), after Germany (93.80). The United Kingdom – the poster child for “libel tourism” – attempted to erase less than one-tenth as many pieces of content per MGU (5.79) as the United States.<sup>46</sup> Compared to the United States, France pressed one-quarter as many takedowns (17.29), and Spain (1.48) one-fiftieth. The United States is both willing and able to issue takedown requests for allegedly defamatory content.

The three leaders in submitting takedown requests all had significant volumes of removal demands for defamation, though the top by a fair margin was Brazil at 51.55 items per MGU.<sup>47</sup> Brazil, which has been contemplating comprehensive online privacy and user rights legislation since 2009, has drawn

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<sup>45</sup> Adam Gopnik, *D.S.K.: French Lives, French Laws*, THE NEW YORKER (May 16, 2011), <http://www.newyorker.com/online/blogs/newsdesk/2011/05/dsk-french-lives-french-law.html>. Strauss-Kahn was later prosecuted for the rape of the employee of a New York City hotel. *See Settlement Reached in Strauss-Kahn, NYC Hotel Maid Case*, CBS NEWS (Dec. 10, 2012, 3:05 PM), [http://www.cbsnews.com/8301-201\\_162-57558280/settlement-reached-in-strauss-kahn-nyc-hotel-maid-case/](http://www.cbsnews.com/8301-201_162-57558280/settlement-reached-in-strauss-kahn-nyc-hotel-maid-case/).

<sup>46</sup> *See* Lili Levi, *Social Media and the Press*, 90 N.C. L. REV. 1531, 1577-78 (2012).

<sup>47</sup> South Korea had a high rate of requests per million Google users (21.56), but both Google's market share in the country (8%) and the absolute number of such requests (69) were low. Turkey asked for 18.06 per MGU.

scrutiny for its willingness to issue takedown notices.<sup>48</sup> This is partly explained by the strong market share for Google's search engine and the continued (though declining) relevance of its Orkut social networking site,<sup>49</sup> and partly by the ease with which private defamation litigants in Brazil can obtain court orders requiring deletion of online content.<sup>50</sup> Google has been explicitly targeted by Brazil's legal system: its local director was arrested in 2012 after the company ignored a legal order mandating the removal of a political YouTube video<sup>51</sup> (The company eventually complied.<sup>52</sup>). Brazil's willingness to issue defamation-related takedowns is part of a larger pattern of the country's move towards greater restrictions on information online.<sup>53</sup>

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<sup>48</sup> Danny O'Brien, *Is Brazil the Censorship Capital of the Internet? Not Yet*, COMM. TO PROTECT JOURNALISTS: CPJ BLOG (Apr. 28, 2010, 3:32 PM), <https://cpj.org/blog/2010/04/is-brazil-the-censorship-capital-of-the-internet.php>.

<sup>49</sup> Anna Heim, *2012 in the Crazy World of Brazilian Memes and Internet Culture*, THE NEXT WEB (Dec. 25, 2012, 8:30 PM), <http://thenextweb.com/la/2012/12/25/2012-in-the-crazy-world-of-brazilian-memes-and-internet-culture/> (describing Orkut decline).

<sup>50</sup> *Id.*; Denelle Dixon-Thayer, *Brazil's Groundbreaking Internet Civil Rights Bill Needs Support!*, MOZILLA BLOG (Apr. 16, 2013), <http://blog.mozilla.org/blog/2013/04/16/marco-civil/>; Marcel Leonardi, *Proposed Internet Regulation In Brazil Might Curb Online Speech*, TECH. & MKTG. L. BLOG (May 3, 2010), [http://blog.ericgoldman.org/archives/2010/05/proposed\\_intern.htm](http://blog.ericgoldman.org/archives/2010/05/proposed_intern.htm).

<sup>51</sup> Heim, *supra* note 49.

<sup>52</sup> *Id.*

<sup>53</sup> See, e.g., *Freedom on the Net 2012: Brazil*, FREEDOM HOUSE, <http://www.freedomhouse.org/report/freedom-net/2012/brazil>; Natalia Mazotte, *Article 19 Report Outlines State of Internet Freedom in Brazil*, JOURNALISM IN THE AMERICAS BLOG (Aug. 30, 2012, 4:54 PM), <https://knightcenter.utexas.edu/blog/00-11239-article-19-report-outlines-state-internet-freedom-brazil>; Rob Waugh, *Brazil First Country to Try and*

Country	Items per MGU
Germany	93.80
United States	70.26
Brazil	51.55
European Union (average)	24.42
South Korea	21.56
Turkey	18.06
France	17.29
Italy	7.59
United Kingdom	5.79
India	4.76
Australia	1.51
Spain	1.48
Russia	0.58

Table 3. Items Requested to be Removed Based on Defamation

### iii. Hate Speech

With hate speech, by contrast, American free speech exceptionalism holds sway, but there is considerable divergence on takedown requests within the European Union.<sup>54</sup> American First Amendment case law largely forecloses government regulation of hate speech.<sup>55</sup> By contrast, hate speech is banned in countries such as Germany and France, as a response to those states' experiences during the first half of

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*Use Twitter's New Censorship Policy to Silence its Citizens*, DAILY MAIL ONLINE (Feb. 10, 2012, 10:41 AM), <http://www.dailymail.co.uk/sciencetech/article-2099391/Brazil-country-use-Twitter-new-censorship-policy-silence-citizens.html>.

<sup>54</sup> See Zick, *supra* note 41, at 1627. In the latest reporting period, Google has added a new category for requests, Bullying / Harassment. It is possible that some takedown requests in this new category would have been classified as Hate Speech previously, which presents potential problems of backwards compatibility in our analysis.

<sup>55</sup> See, e.g., Snyder v. Phelps, 131 S.Ct. 1207, 1219 (2011); Nat'l Socialist Party of Am. v. Vill. of Skokie, 432 U.S. 43, 43-44 (1977). See generally Alexander Tsesis, *Dignity and Speech: The Regulation of Hate Speech in a Democracy*, 44 WAKE FOREST L. REV. 497 (2009).

the twentieth century.<sup>56</sup> Also, certain EU legal instruments contain prohibitions on hate speech.<sup>57</sup>

Surprisingly, Germany and France have widely divergent levels of takedown requests related to hate speech. Germany (17.93) seeks removal of more than twenty-five times as many items as France (0.70), on a per million Google user basis. France's rate of hate speech objections is similar to those of other EU countries such as the United Kingdom (0.38), Italy (0.10), and Spain (0.10). Thus, despite similar histories of fascist governments and persecution of minority groups, France, Germany, and Spain have widely varying approaches to hate speech online.<sup>58</sup>

Despite the robust protections afforded hate speech under the First Amendment, the United States, too, occasionally tries to take down this content (0.04 per MGU).<sup>59</sup> While the total number of items was only 6, the existence of such requests (in contrast to countries such as Russia and South Korea, which had none), suggests that here, too, American free speech exceptionalism is not absolute.

Lastly, Brazil's trend of controlling online content applies to hate speech as well. Brazil attempted to remove

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<sup>56</sup> See Bambauer, *supra* note 1, at 395, 419.

<sup>57</sup> See, e.g., Directive 2010/13, art. 6, of the European Parliament and of the Council of 10 March 2010 on the Audiovisual Media Services Directive, 2010 O.J. (L 95) 1, 15 (requiring member states to ensure that "audio-visual media services . . . do not contain any incitement to hatred based on race, sex, religion or nationality").

<sup>58</sup> See STANLEY G. PAYNE, *FASCISM IN SPAIN, 1923-1977* (1999); ROBERT SOUCY, *FRENCH FASCISM: THE SECOND WAVE, 1933-39* (1997); RICHARD J. EVANS, *THE COMING OF THE THIRD REICH* (2005).

<sup>59</sup> See generally JEREMY WALDRON, *THE HARM IN HATE SPEECH* (2012).



twice as many items (1.39) as France (0.70) on a relative basis, and fourteen times as many as Spain (0.10). While Brazil pursued only 7% as many content items as Germany on an absolute basis (77 versus 1105), it went after more than twice as many as France (33). Brazil, which has a population with diverse ethnic backgrounds and religious views, has applied legal restrictions to hate speech to prevent exacerbation of societal tensions.<sup>60</sup> This approach extends to online content.

The United States remains chary of restricting hate speech – but not implacably so. Despite its robust protections for freedom of expression, Brazil employs hate speech takedowns to maintain equilibrium in its diverse democracy. EU countries, despite similar histories with fascism and hate speech, display widely diverging approaches to censoring such content online.

Country	Items per MGU
Germany	17.93
European Union (average)	3.71
Brazil	1.38
France	0.70
Turkey	0.57
India	0.42
United Kingdom	0.38
Australia	0.16
Spain	0.10
Italy	0.10
Russia	0.06
United States	0.04
South Korea	0

Table 4. Items Requested to be Removed for Hate Speech

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<sup>60</sup> Taylor Barnes, *Watch Your Tongue: Prejudiced Comments Illegal in Brazil*, THE CHRISTIAN SCI. MONITOR (Dec. 4, 2012), <http://www.csmonitor.com/World/Americas/2012/1204/Watch-your-tongue-Prejudiced-comments-illegal-in-Brazil>.

Country	Total Items
European Union (total)	1,169
Germany	1,105
Brazil	77
India	50
France	33
Turkey	20
United Kingdom	18
United States	6
Australia	3
Spain	3
Italy	3
Russia	1
South Korea	0

Table 5. Absolute Number of Items Requested to be Removed for Hate Speech

#### iv. Government Criticism

Criticism of the ruling government seems to be at the heart of free speech protections.<sup>61</sup> Yet, most countries submitted requests to remove items that Google considered to constitute government criticism. Even the United States (0.07 items per million Google users), Australia (0.05), and Great Britain (0.36) – countries lauded as providing robust protections for political dissent – submitted politically-based takedown requests. So did most other EU countries. Italy sought to erase 0.10 items per MGU, Spain pursued 0.07, Germany went after 0.05, and France 0.02.

But, these numbers pale in comparison to efforts to suppress dissent in non-EU countries. Turkey sought to quash 17.0 items per million Google users – 242 times as many as the

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<sup>61</sup> See Bambauer, *supra* note 1 at 410 (noting “It is easier to undercut political opponents or critics when material supporting their views is unavailable”).

United States, and 47 times as many as the United Kingdom. India tried to interdict 2.26 such items per MGU. In absolute numbers, Turkey pursued over twice as many content pieces as India. These efforts come at a time of political tension in Turkey, particularly with respect to the country's Kurdish minority, and with concomitant concerns about the government's attempts to suppress dissent.<sup>62</sup> India, too, sought to crack down on political dissent after the terrorist attacks in Mumbai in 2008.<sup>63</sup> The country famously asked social networking sites to pre-screen content that might be inflammatory or disparaging, most refused.<sup>64</sup> And, in 2012, the government ordered Internet Service Providers (ISPs) to block over three hundred web sites, and over twelve Twitter feeds, based on fears that the information was exacerbating ethnic tensions.<sup>65</sup> Both Turkey and India face contentious political

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<sup>62</sup> Alexander Christie-Miller, *Is Model Turkey Sliding Into Authoritarianism?*, THE CHRISTIAN SCI. MONITOR (Dec. 26, 2011), <http://www.csmonitor.com/World/Middle-East/2011/1226/Is-model-Turkey-sliding-into-authoritarianism>; David Rohde, *Will Turkey Squander Its Opportunity to Lead?*, N.Y. TIMES, Dec. 30, 2012, <http://rendezvous.blogs.nytimes.com/2012/12/30/will-turkey-squander-its-opportunity-to-lead/>; *Freedom in the World 2012: Turkey*, FREEDOM HOUSE, <http://www.freedomhouse.org/report/freedom-world/2012/turkey>.

<sup>63</sup> Rebecca Grant, *Eric Schmidt Tells India to Choose – Internet Freedom or Censorship?*, VENTUREBEAT (Mar. 19, 2013, 10:55 AM), <http://venturebeat.com/2013/03/19/eric-schmidt-tells-india-to-choose-internet-freedom-or-censorship/>.

<sup>64</sup> Heather Timmons, *India Asks Google, Facebook to Screen User Content*, N.Y. TIMES, Dec. 5, 2011, <http://india.blogs.nytimes.com/2011/12/05/india-asks-google-facebook-others-to-screen-user-content/>.

<sup>65</sup> James Crabtree, *Criticism Mounts Over Internet Censorship*, FIN. TIMES (Aug. 24, 2012), <http://www.ft.com/intl/cms/s/0/7660233c-ede4-11e1-a9d7-00144feab49a.html>. *But see* Max Fisher, *When Is Government Web Censorship Justified? An Indian Horror Story*, THE ATLANTIC (Aug. 22, 2012, 1:26 PM), <http://www.theatlantic.com/international/archive/2012/08/>

situations, with governments that do not hesitate to restrict online information in response.

Russia did not submit a single request for a takedown of government criticism, and South Korea pursued but one item. These examples illustrate why Google data can only be one input into analysis of Internet censorship. It is likely, given Russia's definition of "information security,"<sup>66</sup> and increased legal and extra-legal pressures on political dissent, that any efforts to take down criticism were guised as "national security," where the country submitted requests to erase 174 items (11.13 per million Google users). Moreover, the country's new Internet censorship law enables the government to order ISPs to block sites, in addition to compelling hosts such as YouTube to remove content<sup>67</sup> (YouTube has pushed back against the new regime, including via a lawsuit to overturn a removal order.<sup>68</sup>). And, it is likely that South Korea issued no requests because the country uses a combination of Internet censorship and defamation prosecutions to deal with unwanted dissent.<sup>69</sup> Thus, an absence of takedown requests

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[when-is-government-web-censorship-justified-an-indian-horror-story/261396/](http://www.npr.org/templates/story/story.php?storyId=130052701).

<sup>66</sup> Tom Gjelten, *Seeing the Internet as an "Information Weapon,"* NAT'L PUB. RADIO (NPR radio broadcast Sept. 23, 2010, 12:00 AM), <http://www.npr.org/templates/story/story.php?storyId=130052701>; see also *Freedom on the Net 2012: Russia*, FREEDOM HOUSE, <http://www.freedomhouse.org/report/freedom-net/2012/Russia>; Bill Keller, *A Blogger on Trial*, N.Y. TIMES, Apr. 21, 2013, at A21.

<sup>67</sup> Andrew E. Kramer, *Russians Selectively Blocking Internet*, N.Y. TIMES, Apr. 1, 2013, at B2.

<sup>68</sup> *Id.*

<sup>69</sup> See *supra* notes 38 and 39; John M. Glionna, *South Korea Security Law Is Used to Silence Dissent, Critics Say*, L.A. TIMES, Feb. 5, 2012, <http://articles.latimes.com/2012/feb/05/world/la-fg-south-korea-bookseller-20120205>. See generally *South Korea*, *supra* note 37.

does not necessarily indicate a tolerance for political criticism on the Internet.

Even democratic governments press Google to remove material critical of the ruling administration – a cautionary tale about the pressures upon free speech and political activism.

Country	Items per MGU
Turkey	16.95
India	2.26
Brazil	0.56
United Kingdom	0.36
South Korea	0.31 <sup>70</sup>
European Union (average)	0.12
Italy	0.10
United States	0.07
Spain	0.07
Australia	0.05
Germany	0.05
France	0.02
Russia	0

Table 6. Items Requested to be Removed for Government Criticism

#### v. Country Priorities

A final way of examining removal requests based on content category is to analyze what types of information a particular country is most concerned with. Some states concentrate upon particular content to the exclusion of most other varieties. For example, 81.1% of the items Spain sought to delete relate to personal privacy/security; two-thirds of both Brazil and Turkey's items are framed under copyright; nearly 64% of items requested to be removed for both the United States and Germany relate to defamation.

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<sup>70</sup> South Korea had only 1 request, for 1 item, in absolute terms.

Overall, two trends are noticeable. First, nearly all of the countries upon which we concentrate have a principal focus for their takedown efforts: every one except Italy had more than half its targeted items in a single category, and eight of twelve countries had more than 60% of items in one category. Second, defamation and privacy dominate removal attempts. Defamation was the top focus for four countries, and the second-greatest focus for two others. Privacy / security was the top category for three countries, and the second greatest for two others.

Country	Top Category	Second Category	Third Category
Australia	Privacy/Security 77.1%	Trademark 13.8%	Copyright 3.3%
Brazil	Copyright 66.1%	Defamation 16.2%	Impersonation 6.2%
EU (average)	Defamation 42.3%	Other 22.3%	Privacy/Security 14.3%
France	Privacy/Security 52.8%	Defamation 40.7%	Adult Content 1.8%
Germany	Defamation 63.8%	Hate Speech 12.2%	Other 8.3%
India	Religious Offense 55%	Privacy/Security 17%	Defamation 13%
Italy	Defamation 33.9%	Copyright 22.1%	Privacy/Security 15.2%
Russia	National Security 56.3%	Suicide Promotion 18.1%	Drug Abuse 16.5%
Spain	Privacy/Security 81.1%	Other 9.7%	Defamation 5.5%
South Korea	Other 69.2%	Privacy/Security 24.9%	Defamation 3.7%
Turkey	Copyright 66.5%	Religious Offense 8.1%	Other 7.5%
United Kingdom	Other 63.6%	National Security 17.9%	Privacy/Security 7.3%
United States	Defamation 63.7%	Other 18.0%	Privacy/Security 12.4%

Table 7. Distribution of Removal Requests, in Items, per Country<sup>71</sup>

<sup>71</sup> For this table, we omit the abnormally large requests for South Korea (RRNs) and the United Kingdom (false advertising). If we included these

### C. Request Mechanism

Google divides the mechanism of a removal request into two categories: a court order or something else (such as an informal request or executive agency order). American constitutional scholarship tends to prefer the former to the latter, since courts implement countermajoritarian checks, justify their decisions, and (generally) provide an opportunity for affected parties to be heard.<sup>72</sup> Most democracies provide for court oversight of executive action; thus, our initial hypothesis is that democracies should tend to suppress speech via court action rather than executive.

Unsurprisingly, the United States had the second-highest proportion of requests issued via court order in the 30-month period studied, at 73.6%. European Union countries had divergent results. Germany's proportion was similar to that of the United States: 70.5% of requests issued from court orders, and France submitted over half (54.9%) of takedown demands via courts. But, Spain (24.7% court orders) and the United Kingdom (27.3%) relied principally on other mechanisms, such as executive orders.

Results from other major countries studied demonstrate that not all democracies utilize court orders as their primary

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requests, the top content category for the UK would remain unchanged (Other); the top content category for South Korea would become Privacy/Security.

<sup>72</sup> See generally Bambauer, *supra* note 56. But see Bambauer, *supra* note 25 (describing lack of process in U.S. domain name seizures).

takedown mechanism. Australia submitted 31.2% of requests via court order, Russia 5%, Turkey 23%, India 15%, and South Korea a mere 2%.

The one exception was Brazil, which used court orders for over 76% of its requests. If one accepts that court orders provide important protection for free speech interests – an assumption that some commentators contest in the Brazilian context – then Brazil’s uptick in online censorship seems less problematic.<sup>73</sup>

Analysis of the mechanism for Google takedown requests depends almost entirely upon one’s assumptions regarding the relative merits of court orders versus other procedures. American constitutional scholarship and precedent tends to prefer judicial review to executive fiat.<sup>74</sup> From that perspective, the United States, Germany, France, and Brazil fare well in terms of legitimacy of such demands, while other EU countries, India, Turkey, and South Korea have takedowns that seem less defensible.

Country	Percentage via Court Orders
Brazil	76.3%
United States	73.6%
Italy	70.5%
Germany	70.5%

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<sup>73</sup> See, e.g., Natalia Mazotte, *Judicial Harassment Against Journalists: A New Form of Censorship in Brazil?*, JOURNALISM IN THE AMERICAS (Mar. 7, 2011, 1:13 PM), <https://knightcenter.utexas.edu/blog/judicial-harassment-against-journalists-new-form-censorship-brazil>; Francis Augusto Medeiros, *Understanding the Brazilian Court Decision to Arrest Google’s Representative*, CIRCLEID (Sept. 27, 2012, 9:01 AM), [http://www.circleid.com/posts/20120527\\_understanding\\_brazilian\\_court\\_decision\\_to\\_arrest\\_google\\_rep/](http://www.circleid.com/posts/20120527_understanding_brazilian_court_decision_to_arrest_google_rep/).

<sup>74</sup> See, e.g., *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).



France	54.9%
European Union	52.4%
Australia	31.1%
United Kingdom	27.3%
Spain	24.7%
Turkey	23.4%
India	15.0%
Russia	4.7%
South Korea	2.0%

Table 8. Percentage of Removal Requests in the Form of a Court Order

#### D. Recent Trends

To detect recent trends in how countries seek to suppress information online, we analyzed the latest period of transparency data, for the last six months of 2012. Turkey (284.50 items requested removed per MGU) and South Korea (225.31) continue to dwarf other countries in the level of removal requests. Brazil, by contrast, has reduced its requests in relative terms; its 31.22 items per MGU is similar to the level of U.S. demands (26.47). In the European Union, Germany leads in items for which it sought removal (17.93 per MGU), with particular focus on defamation, adult content, and hate speech. The remaining EU countries had similar aggregate numbers: France sought to have 7.02 items taken down per MGU; Spain 6.35; the United Kingdom 6.06; and Italy 3.59. Both Russia (7.29) and Australia (7.8) generated takedown volumes similar to EU countries.

Some countries shifted emphasis in the content targeted for removal, and some increased their focus on extant priorities. The United Kingdom demonstrated an uptick in national security requests (20.6%), and had 12.6% of its items categorized under bullying / harassment, a new category compiled by Google for this period. France submitted 81.1% of its items targeted for removal as related to defamation – double that of its emphasis on the category over the total 30-month

period (40.7%). Australia concentrated heavily on trademark-related takedowns, as 85.5% of items targeted for removal fell into that category. And, Russia shifted to an emphasis on suicide promotion (49.1%) and drug abuse (44.7%). Lastly, Brazil generated 44.2% of requested items under electoral law, likely related to its municipal elections held in October 2012.<sup>75</sup>

Other states redoubled their efforts in ongoing areas of emphasis. The United States saw an increase in defamation-related items, which comprised 81.2% of its requests. Similarly, Turkey's copyright-related requested items rose to 83.2% of its demands for takedowns, and India's focus on religious offenses resulted in 79% of its items falling into that category.

Recently, then, Turkey and South Korea continue to press Google with more demands per MGU than other countries, by far. Brazil's requests fell, at a relative level, and the U.S. emphasis on defamation continued.

Country	Removal Items per Million Internet Users	Removal Items per MGU
Turkey	278.8	284.5
South Korea	18.0	225.3
Brazil	19.7	31.2
United States	16.1	26.5
India	21.5	25.0
Germany	16.5	17.9
Australia	7.3	7.8
European Union	6.7	7.5

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<sup>75</sup> Vincent Bevins, *Municipal Elections in Brazil Provide Welcome News for President Rousseff*, L.A. TIMES, Oct. 7, 2012, [http://latimesblogs.latimes.com/world\\_now/2012/10/brazil-municipal-elections-president-dilma-rousseff-workers-party-rio-.html](http://latimesblogs.latimes.com/world_now/2012/10/brazil-municipal-elections-president-dilma-rousseff-workers-party-rio-.html); Marilia Brocchetto, *Brazilian Court Orders Google Exec's Arrest Over Online Videos*, CNN (Sept. 26, 2012, 5:31 AM), <http://www.cnn.com/2012/09/25/tech/brazil-google>.

Russia	1.7	7.3
France	6.4	7.0
Spain	5.9	6.4
United Kingdom	5.4	6.1
Italy	3.1	3.6

Table 9. Items Targeted for Removal July 1, 2012 – December 31, 2012

### E. Global Longitudinal Trends

To examine longer-term trends, we analyzed changes between items requested to be removed during the first twelve months of the study period, and the last twelve months of it.<sup>76</sup> (This buffered approach mitigates the impact of anomalous short-term shifts in requests, providing a clearer picture of long-term trends.) Our analysis included aggregate items targeted, and material that fell into four content categories of particular interest: government criticism, privacy/security, defamation, and hate speech. Overall, every country studied increased the number of items slated for takedown over time.

Country	Percent Change in Aggregate Take-Downs
Turkey	4109%
Russia	1833%
Australia	1294.1%
United Kingdom	608.55% <sup>77</sup>
India	451%
France	332.24%

<sup>76</sup> Thus, the first period captures takedown requests from July 1, 2010 through June 30, 2011; the last period includes requests from January 1, 2012 through December 31, 2012.

<sup>77</sup> This result omits the false advertising takedowns. If one includes those results, the trend shifts direction and scale; the United Kingdom's takedowns would decrease by 96.2% between the two periods. We omitted these 93,360 requests because they are greater, by an order of magnitude, than the next-highest total number of items submitted by the UK in any 6-month period (3193). Thus, they would unduly influence the overall trends for the UK – in short, they are aberrational.

United States	272.96%
Spain	192.74%
Italy	81.6%
South Korea	25.9%
Germany	-30.64%
Brazil	-69%
European Union (average)	-90.47%

Table 10. Change in Aggregate Take-Downs, First 12 Months to Last 12 Months

Requests related to government criticism were up in all countries except India and Italy (where the number of items fell from 2 to 1), and stasis in France and Russia (neither country submitted a request classified in this category during the study period). The increase was particularly sharp in Turkey. The aggregate numbers for items targeted for takedowns for government criticism remained small everywhere except Turkey. In the last 12-month period, for example, Turkey submitted 564 items related to criticism of its government for removal. Every other country included in this study submitted a total of 54 during that period, and the next highest country after Turkey, Brazil, was responsible for 21 of those. Thus, Google saw a surge in efforts by Turkey to censor content perceived to be critical of the country's government, while most other states maintained a low level of this type of takedown.

Privacy was mixed, even in the EU; Spain and France increased their takedown efforts for privacy, while the UK, Germany, and Italy saw decreases. Brazil, India, and Australia all augmented their privacy efforts, while Turkey, South Korea, and Russia saw falls.<sup>78</sup> Finally, the United States saw an uptick in its privacy-related takedowns.

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<sup>78</sup> In this comparison, we omit the South Korea RRN takedowns. *See id.*

Country	Percent Change in Privacy Take-Downs
France	26,200%
Australia	880%
India	793%
Brazil	395.5%
Spain	304.11%
European Union (average)	122.37%
United States	84.34%
Russia	-25%
Italy	-66.7%
Turkey	-66.9%
United Kingdom	-72.15%
Germany	-77.18%
South Korea	-99.4%

Table 11. Change in Privacy Take-Downs, First 12 Months to Last 12 Months

For defamation, the United States and Turkey saw significant increases in takedowns, both in percentage terms and in absolute numbers. Most EU countries, along with Australia and Russia, had increases, though against a small base. France, the UK, Italy, and Brazil saw increases over a substantial base of requests in absolute terms.

Country	Percent Change in Defamation Take-Downs
Australia	950%
Turkey	723.1%
Russia	400%
United States	224.27%
United Kingdom	93.51%
Brazil	90.21%
South Korea	56.52%
India	50.60%
Spain	35.30%
France	23.66%
Italy	18.68%
European Union (average)	-24.79%
Germany	-51.15%

Table 12. Change in Defamation Take-Downs, First 12 Months to Last 12 Months

Lastly, for hate speech, virtually all of the action is in Germany. The country saw an increase of almost 31% in items requested to be removed between study periods. And, the

lowest number of items Germany sought to eliminate during any 6-month period for which data was available compares roughly to the largest number of such items put forward by any other country during any of the 6-month periods (Brazil with 51). The only countries, other than Germany, to submit more than 10 requests in any 6-month period were France (once), Brazil (twice), the UK (once), and India (twice). In short, while a number of countries we studied have some interest in removing hate speech from Google's servers, Germany is the only state that pays sustained, concentrated attention to this goal.

Our global, longitudinal analysis suggests that when you give governments a tool to restrict speech, they gladly use it. The trend is of increasing use of takedown notices by states with time.

#### IV. LIMITATIONS

Our analysis faces both empirical and theoretical limitations. First, we are limited by the granularity of the data Google provides. For example, Google breaks out request mechanism only in binary fashion: either court order, or not a court order. And, we do not have information to determine which demands Google complied with or rejected.

Second, Google's market share, and societal importance, vary greatly in the countries we studied. The firm has 98% of the search market in Turkey, but only 8% in South Korea. When more than 9 out of every 10 searches are performed on Google, we are confident that the company plays an important role in a country's Internet ecosystem. The converse, though, may not be true: Google's visibility and international reputation may make it an important player even where its market share is small.

Third, takedown requests are only one mechanism for restricting speech online. Countries can use supply-side pressure, such as defamation laws or criminal penalties, to keep authors from creating information.<sup>79</sup> They can engage in technological censorship via filtering.<sup>80</sup> Governments can attempt to drown out disfavored speakers by paying for the production of more favorable content, as China does with its “Fifty-Cent Army.”<sup>81</sup> Thus, our analysis provides important context about how countries seek to shape their online information environment, but it is necessarily incomplete.

## V. CONCLUSION

Google’s Transparency Report data offers an invaluable window into the pressures that countries place upon it. And, it provides a means to test our assumptions about how various states seek to implement their legal regimes and social norms on the Internet’s wealth of information. Our analysis shows, for example, that America’s self-image as a bulwark of free speech protection is not borne out by the data: the United States regularly employs takedown requests for subjects ranging from defamation to privacy to even government criticism. Similarly, the image of a trans-Atlantic divide over privacy and defamation does not fit the data. EU countries vary widely in

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<sup>79</sup> See, e.g., Chico Harlan, *In S. Korea, A Shrinking Space for Speech*, WASH. POST, Dec. 22, 2011, [http://www.washingtonpost.com/world/asia\\_pacific/in-s-korea-a-shrinking-space-for-speech/2011/12/21/gIQAmAHgBP\\_story.html](http://www.washingtonpost.com/world/asia_pacific/in-s-korea-a-shrinking-space-for-speech/2011/12/21/gIQAmAHgBP_story.html).

<sup>80</sup> See ACCESS CONTROLLED: THE SHAPING OF POWER, RIGHTS, AND RULE IN CYBERSPACE (Ronald Deibert, John Palfrey, Rafal Rohozinski, & Jonathan Zittrain, eds., 2010).

<sup>81</sup> Selina Wang, *China’s Fifty Cent Party*, HARV. POL. REV. (Feb. 7, 2012, 1:01 AM), <http://hpronline.org/world/chinas-fifty-cent-party/>.

their use of takedowns for these purposes, and America's efforts place the country in the middle of the EU pack. And, emerging powers such as Brazil, South Korea, and Turkey have shown an enthusiasm for employing these new tools of content control. The Google data demonstrate what countries do, not merely what they say, making these seemingly dry statistics an invaluable tool to analyze content control in cyberspace. The numbers offer a glimpse into what information various states would like to discard down the digital memory hole.

Lastly, our longitudinal analysis is limited by the data available: Google has made only five 6-month segments public. Further work, with more data, is needed to determine whether the trends we identify are transient or enduring.



## APPENDIX I

Country	Period Ending:					
	6/2010	12/2010	6/2011	12/2011	6/2012	12/2012
Australia	93%	80%	40%	35%	15%	31%
Brazil	68%	76%	67%	54%	55%	21%
France	100%	96%	78%	56%	73%	69%
Germany	94%	97%	86%	77%	81%	77%
India	53%	22%	51%	29%	33%	36%
Italy	97%	100%	84%	64%	68%	70%
Russia	-	-	-	-	-	77%
South Korea	100%	100%	84%	81%	56%	88%
Spain	27%	38%	18%	37%	19%	31%
Turkey	100%	100%	74%	56%	45%	55%
United Kingdom	63%	89%	82%	55%	61%	48%
United States	83%	87%	63%	42%	45%	45%

Table 13. Rate of Google Compliance with Removal Requests Over Time

A dash indicates that there were either no removal requests submitted during the period, or that there were fewer than 5, such that the compliance rate is not meaningful.