

THAILAND

	2011	2012
INTERNET FREEDOM STATUS	Not Free	Not Free
Obstacles to Access (0-25)	12	11
Limits on Content (0-35)	23	21
Violations of User Rights (0-40)	26	29
Total (0-100)	61	61

* 0=most free, 100=least free

POPULATION: 70 million
INTERNET PENETRATION 2011: 24 percent
WEB 2.0 APPLICATIONS BLOCKED: No
NOTABLE POLITICAL CENSORSHIP: Yes
BLOGGERS/I USERS ARRESTED: Yes
PRESS FREEDOM STATUS: Partly Free

INTRODUCTION

Although Thai citizens have been posting online commentary for well over a decade,¹ internet communications have taken on a particularly significant role since a military coup took place in September 2006. Topics of discussion restricted or censored in traditional print and broadcast media have been openly addressed via the internet, especially issues related to the monarchy. Moreover, both the red-shirted United Front for Democracy Against Dictatorship (UDD) and the yellow-shirted supporters of the People's Alliance for Democracy (PAD) have utilized digital media and online resources to mobilize constituents for popular protests.²

This has provoked greater efforts by the government to control the free flow of information over the internet and via social media tools, particularly of expression related to the monarchy, a sensitive topic in a society where the king is revered, but debates about the role and future of the institution have fueled political polarization. Since 2009, tens of thousands of webpages have been blocked and several people sentenced to long prison terms for disseminating information or views online or via mobile phone text messages. Those expecting that a new opposition-led government elected in July 2011 would loosen internet restrictions were disappointed. Instead, censorship has continued apace under the

¹ Phansasiri Kularb, "Communicating to the Mass on Cyberspace: Freedom of Expression and Content Regulation on the Internet," in *State and Media in Thailand During Political Transition*, ed. Chavarong Limpattanapane and Arnaud Leveau (Bangkok: Institute de Recherche sur l'Asie du Sud-Est Contemporaine, 2007).

² The PAD is comprised of a grouping of royalists, business elites, and military leaders with support in the urban middle class, while the UDD generally draws its support from the north, northeast, and rural areas, among whose residents former Prime Minister Thaksin Shinawatra remains popular.

administration of Yingluck Shinawatra and in some respects, become more institutionalized. In a highly polarized political environment, the fact that any citizen can lodge a *lèse-majesté* complaint against any other has opened the door for the charges to become a tool used by various actors against political opponents or to curb civic advocacy. Disturbingly, vague wording and lax adherence to due process have led to several disproportionately harsh punishments given to ordinary users based on questionable evidence.

Ironically, these measures have further deepened the politicization of the monarchy in the eyes of many Thais, while the increased content restrictions and legal harassment have contributed to greater self-censorship in online discussions. Simultaneously, these developments have helped inspire a burgeoning movement of politically conscious internet users, who favor greater protections for freedom of expression and amendment of laws used to suppress internet freedom.

The first internet connection in Thailand was made in 1987 between the Asian Institute of Technology (AIT), the University of Melbourne, and the University of Tokyo. The following year, the Australian International Development Plan (IDP) assisted Prince of Songkhla University (PSU) to set up a dial-up email connection. By 1991, five universities had established internet connectivity, and by 1995, the technology was commercialized and made available to the general public.³

OBSTACLES TO ACCESS

According to the National Electronics and Computer Technology Center (NECTEC), the number of internet users in Thailand increased from 3.5 million in 2001 to 18.3 million in 2009, or 27 percent of the country's roughly 66 million people.⁴ The International Telecommunications Union (ITU) estimated a similar penetration rate of about 24 percent in 2011.⁵ Mobile telephony is more widespread, with over 75 million mobile phone subscribers in 2011, and a penetration rate of about 112 percent.⁶

³ Sirin Palasri, Steven Huter and Zita Wenzel, *The History of the Internet in Thailand* (Eugene: University of Oregon, 1999), <http://www.nsrc.org/case-studies/thailand/english/index.html>.

⁴ National Electronics and Computer Technology Center (NECTEC), "Internet User in Thailand," accessed July 3, 2010, <http://internet.nectec.or.th/webstats/internetuser.iir?Sec=internetuser>.

⁵ International Telecommunication Union (ITU), "Percentage of individuals using the Internet, fixed (wired) Internet subscriptions, fixed (wired)-broadband subscriptions," 2011, accessed July 13, 2012, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

⁶ National Broadcasting and Telecommunications Commission (NBTC), "Thailand ICT Info," October 19, 2011, <http://www2.nbtc.go.th/TTID/> [in Thai]; See also International Telecommunication Union (ITU), "Mobile-cellular telephone subscriptions," 2011, accessed July 13, 2012, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

A growing proportion of Thais has access to a desktop or tablet computer, with an estimated 25 percent of households reportedly owning a computer in 2011. Meanwhile, smartphone use has notably increased in recent years. By late 2011, smartphone sales surpassed feature phones for the first time and an estimated four million people subscribed to third-generation (3G) services.⁷ Declining prices for the devices were a key factor, falling to 3,000 baht (US\$94) by early 2012.⁸

For these and other reasons, broadband usage has expanded since 2010, particularly in the greater Bangkok area. Most internet users have access to high-speed connections, with download speeds averaging 6 to 7 Mbps,⁹ though users often complain that connections are slower than advertised.¹⁰ The National Broadcasting and Telecommunications Commission (NBTC), Thailand's main regulatory body, reported that Thailand had over 3.6 million broadband subscribers as of October 2011, representing a 21 percent increase over the previous year.¹¹ These gains have been driven by dynamics that entice Thais to spend more time online, such as declining prices, increased demand for alternative sources of information, and growing usage of social-networking tools. When connecting at home, an ADSL broadband subscription costs US\$20 per month,¹² which can be costly for rural residents or those working at the minimum daily wage of about US\$7, but is relatively affordable for the urban, educated middle class.¹³ High-speed internet is available and affordable in cybercafes, which are used mostly by young people to play online games.

The main factor contributing to low penetration rates is a long-standing lack of government effort to improve the fixed-line infrastructure and boost the development of information and communication technologies (ICTs). Although lessening the digital divide was a notable part of the Pheu Thai party's platform ahead of the July 2011 elections, since taking office, the government has had limited success implementing this upgrade. This was due in part to the extensive flooding that struck Thailand in October 2011, the worst in decades.

In recent years, the Thai telecommunications market has liberalized and diversified. Prior to 2006, the country only had one international internet gateway controlled by the

⁷ Business Monitor International, "Thailand Telecommunications Report Q3 2012," June 12, 2012, <http://www.marketresearch.com/Business-Monitor-International-v304/Thailand-Telecommunications-Q3-7027556/>.

⁸ Suchit Leesa-nguansuk, "Smartphones to rule the roost," Bangkok Post, May 15, 2012, <http://www.bangkokpost.com/business/telecom/293824/smartphones-to-rule-roost>.

⁹ "Download Index," Net Index, accessed June 21, 2012 <http://www.netindex.com/download/2,23/Thailand/>.

¹⁰ "Civic Sector Submitted a Complaint to TCI to Solve Problem on Telecommunications Services," Telecommunications Consumer Protection Institute (TCI), December 14, 2010, http://www.tci.or.th/newshot_detail.php?id=23#newshot [in Thai].

¹¹ NBTC, "Thailand ICT Info."

¹² "ADSL Internet Prices in Thailand-November 2010," Select IT, accessed February 16, 2011, <http://www.select.co.th/2010/11/adsl-internet-prices-in-thailand/> (site discontinued).

¹³ Petchanet, "Thailand Raises Minimum Wage," Thailand Business News, December 10, 2010, <http://thailand-business-news.com/economics/27852-thailand-raises-minimum-wage>.

government-run Communication Authority of Thailand (CAT).¹⁴ Today, out of nine National Internet Exchanges (NIXs), CAT Telecom operates only two, including the country's largest.¹⁵ As of mid-2012, there were over 100 ISPs with active licenses, though ten provided most of the connection services for individual consumers and households.¹⁶ Among them, True Internet had the largest market share for high-speed internet services, with 36 percent in mid-2011,¹⁷ surpassing the state-owned Telephone Organization of Thailand (TOT) (34.4 percent)¹⁸ and the private 3BB (26.5 percent).¹⁹ The three main mobile phone service providers are the Singaporean-owned Advanced Info Service (AIS), the Norwegian-controlled DTAC, and True Corporation's True Move. The first two operate under concessions from TOT and CAT, an allocation system that does not entirely enable free-market competition. Opening a cybercafe involves a relatively simple registration process and is regulated by the Film and Video Act.

Political and legal disputes have repeatedly delayed the licensing process for 3G mobile phone service and wireless broadband. By May 2012, however, the auction of the 3G spectrum appeared imminent. In April, the National Broadcast and Telecommunications Commission (NBTC), a new regulatory body, proposed a plan for auctioning the spectrum, which the industry greeted with approval.²⁰ While awaiting the completion of the licensing process, TOT and CAT reached partnership agreements to lease part of their spectrum to private providers so they could begin offering 3G services to customers, though the National Anti-Corruption Commission questioned the legality of the arrangement.²¹ Observers predicted that with the auction expected to conclude by the end of 2012, the prevalence of mobile web use would increase dramatically in the coming years.²²

Legislation creating a single regulatory body for both the broadcast and telecommunications sectors passed parliament in late 2010. After a long and dispute-filled selection process, the

¹⁴ World Bank, "Telecommunications Sector," *Thailand Infrastructure Annual Report 2008*, World Bank, accessed May 1, 2012, <http://siteresources.worldbank.org/INTTHAILAND/Resources/333200-1177475763598/3714275-1234408023295/5826366-1234408105311/chapter4-telecommunication-sector.pdf>.

¹⁵ Internet Information Research Network Technology Lab, "Thailand Internet Map," NECTEC, accessed July 4, 2012, http://internet.nectec.or.th/webstats/internetmap.current.iir?Sec=internetmap_current [in Thai].

¹⁶ NBTC, "List of Licensed Telecommunications Businesses," accessed July 4, 2012, <http://apps.nbtc.go.th/license/> [in Thai].

¹⁷ True Internet is a subsidiary of the communications conglomerate True Corporation, which also controls Thailand's largest cable TV provider True Visions and its third-largest mobile phone operator True Move.

¹⁸ Both CAT Telecom and TOT are supervised by the Ministry of Information and Communication Technology (MICT).

¹⁹ NBTC, "Telecommunication Market Report Q2 2011," accessed July 4, 2012, http://nbtc.go.th/wps/portal/NTC/TDC/telecommunications_market [in Thai].

²⁰ Komsan Tortermvasana, "3G auction plan lauded," Bangkok Post, April 26, 2012, <http://www.bangkokpost.com/business/telecom/290487/3g-auction-plan-lauded>.

²¹ Business Monitor International, "Thailand Telecommunications Report Q2 2012," March 20, 2012, <http://www.marketresearch.com/Business-Monitor-International-v304/Thailand-Telecommunications-Q2-6869918/>; Komsan Tortermvasana, "NACC: True-CAT deal breaches law," Bangkok Post, April 24, 2012, <http://www.bangkokpost.com/business/telecom/290130/nacc-true-cat-deal-breaches-law>.

²² Leesa-nguansuk, "Smartphones to rule the roost."

Senate appointed the members of the new NBTC in September 2011. From among the 11 commissioners, five are from the military, reflecting the army's deep interests in the communications sector. The remaining members are three former bureaucrats, two civil society representatives, and one police officer.²³ Some observers have complained that the NBTC lacks commissioners with industry experience, that the regulatory structure is incapable of dealing with converging communications platforms, and that coordination across different parts of the commission is weak.²⁴ Despite these shortcomings, the NBTC's decisions and proposed plans regarding the telecommunications sector have largely been viewed as fair thus far and an improvement over its predecessor.²⁵

LIMITS ON CONTENT

Although the Thai government has been blocking some internet content since 2003, restrictions have expanded in recent years in both scale and scope. This trend continued, and to an extent accelerated, under the new government elected in July 2011. In December, the ICT Minister attributed the intensified censorship to the growing popularity of social media tools, which allow users to share information more widely and rapidly than before.²⁶

Most of the websites blocked by the Thai authorities prior to 2007 involved pornography, online gambling, or circumvention tools, although some politically oriented websites were also found to be inaccessible.²⁷ Since then, the number of blocked websites has grown exponentially, particularly those with content perceived as critical of the monarchy.²⁸ A 2010 academic study reported that between 2007 and 2010 there were 117 court orders

²³ Usanee Mongkolporn, "Strong military role in NBTC," *The Nation*, September 6, 2011, <http://www.nationmultimedia.com/home/Strong-military-role-in-NBTC-30164583.html>.

²⁴ Don Sambandaraksa, "Thai regulator lacks unity," *Telecomasia.net* (blog), October 7, 2011, <http://www.telecomasia.net/blog/content/thai-regulator-lacks-unity>.

²⁵ Komsan Tortermvasana, "NBTC approves spectrum, broadcasting master plans," *Bangkok Post*, March 22, 2012, <http://www.bangkokpost.com/business/telecom/285448/nbtc-approves-spectrum-broadcasting-master-plan>; Tortermvasana, "3G auction plan lauded."

²⁶ "MICT: More cyber offenders to be arrested soon," *Prachatai*, December 3, 2011, <http://www.prachatai.com/english/node/2930>.

²⁷ They included an anti-coup site (www.19sept.com) and sites related to the Patani region in the south, including the Patani Malay Human Rights Organization (www.pmhro.org). Several individual URLs selling texts critical of the monarchy were found to be blocked on the online bookseller Amazon.com. See, OpenNet Initiative, "Country Profile: Thailand," May 9, 2007, <http://opennet.net/research/profiles/thailand>.

²⁸ Freedom Against Censorship Thailand (FACT), "Thai Website Censorship Jumps by More Than 500% Since Coup!" news release, January 1, 2007, <http://factthai.wordpress.com/2007/01/15/thai-website-censorship-jumps-by-more-than-500-since-coup/>.

issued to block access to nearly 75,000 URLs.²⁹ On average, 690 URLs were blocked daily. The research also showed that the vast majority of the websites (57,330 URLs) were blocked due to *lèse-majesté* content, while a much smaller number were blocked for containing material involving pornography (16,740 URLs), abortion (357 URLs), gambling (246 URLs), or other matters.³⁰

Online censorship intensified after April 7, 2010, when the government declared a state of emergency and created a mechanism allowing the authorities to suddenly block—without a court order—any website considered to be publishing politically sensitive or controversial information. A large number of websites focused on the opposition red-shirt movement were blocked. These included individual YouTube videos, Facebook groups, and Google groups. Also filtered were less clearly partisan online news outlets or human rights groups, such as Freedom Against Censorship Thailand (FACT), the online newspaper Prachatai, the Political Prisoners in Thailand blog, and Asia Sentinel.³¹ International news websites and human rights groups remained accessible.

In December 2010, the state of emergency was repealed and in July 2011, a new, opposition-led and democratically elected government took office. However, hopes that the new government would loosen internet censorship were quickly dashed.³² In August 2011, the deputy prime minister explicitly vowed to curb the activities of websites with *lèse-majesté* content.³³ This approach was strengthened after massive flooding struck the country in October 2011. The government was criticized for its inept handling of the situation, while the military's role was perceived as positive in the public eye. Observers believed this left the government in a weaker political position to challenge the military and its royalist supporters on an issue as sensitive as *lèse-majesté* content.³⁴

As of May 2012, some of the websites blocked in 2010 were accessible, including FACT and the Political Prisoners in Thailand. Also unblocked were websites related to the red-shirt movement, a key constituency of the new ruling Pheu Thai party. However, many other

²⁹ Sawatree Suksri, Siriphon Kusonsinwut, and Orapin Yingyongpathana, *Situational Report on Control and Censorship of Online Media, Through the Use of Laws and the Imposition of Thai State Policies* (Bangkok: iLaw Project, 2010), http://www.boell-southeastasia.org/downloads/ilaw_report_EN.pdf [henceforth iLaw Project Report].

³⁰ Ibid.

³¹ Pavin Chachavalponpun, "Thailand's Massive Internet Censorship," Asia Sentinel, July 22, 2010, http://asiasentinel.com/index.php?option=com_content&task=view&id=2601&Itemid=164.

³² Joshua Kurlantzick, "Is Thailand Regressing on Lese-Majeste?" Asia Unbound (blog), Council on Foreign Relations, September 12, 2011, <http://blogs.cfr.org/asia/2011/09/12/is-thailand-regressing-on-lese-majeste/>.

³³ "Chalerm warns lese majeste websites," Bangkok Post, August 26, 2011, <http://www.bangkokpost.com/news/politics/253608/chalerm-to-curb-lese-majeste-websites>.

³⁴ Joshua Kurlantzick, "U.S. Citizen Sent to Jail in Thailand for Insulting the King," Asia Unbound (blog), Council on Foreign Relations, December 12, 2011, <http://blogs.cfr.org/asia/2011/12/12/6649/>.

websites—including Prachatai and Asia Sentinel—remained partially or fully blocked.³⁵ Moreover, according to media reports citing government officials, thousands of webpages have been added to the blacklist under the new administration. In March 2012, a police spokeswoman announced that 5,000 webpages had been blocked between December and March for containing content critical of the royal family.³⁶ In December 2011, the ICT Minister told reporters that during the previous three-month period, the ministry had overseen the blocking of over 60,000 pages, stating that this demonstrated the government’s loyalty to the king. It remained difficult to confirm these statistics due to a lack of publicly available information on the precise list of blocked sites. In addition, according to one source in the MICT, the minister may have inflated the scale of censorship for political gains by misrepresenting the method of counting.³⁷

In addition to blocking, the Thai government engages in administrative and political pressure to limit the spread of certain information online, particularly via social media applications. This includes reaching out to international providers and requesting that they delete content. Google reported that between January and December 2011, the Thai government (under two prime ministers) sent six requests without a court order to remove a total of 374 clips from the YouTube video-sharing platform for allegedly insulting the monarchy. Google largely complied, restricting Thai users from accessing 80 percent of them.³⁸ In a similar vein, the MICT claimed in November that Facebook had responded to its complaints by eliminating over 10,000 URLs and 50 user accounts, though the social-networking site did not confirm this assertion.³⁹ In January 2012, when the microblogging service Twitter announced a new feature enabling country-specific censorship of tweets,⁴⁰ MICT officials welcomed the announcement, the first government to do so.⁴¹ In an incident unrelated to

³⁵ Freedom House tests conducted in mid-2012 on access to *Prachatai* and *Asia Sentinel* indicated that the sites loaded more slowly than others and that some pages were inaccessible, with the user redirected to a message stating that it had been blocked by the MICT, though other pages were available.

³⁶ AFP, “Thailand blocks 5,000 ‘royal insult’ web pages.”

³⁷ For example, according to one source inside the MICT, the 60,000 figure actually included the number of “shares” that a post received as counted within the total number of pages blocked in addition to the original post or page. For example, if a hyperlink was “shared” ten times, this would count as eleven “blocks.” Interview with mid-ranking MICT employee who requested to remain anonymous, December 2011.

³⁸ The above statistics take into account Google’s two separate reports for January to June 2011, and July to December 2011. Interestingly, the two segments correspond closely to the timing of the change in government, reflecting the continuation of *lèse-majesté* censorship policies under the Shinawatra administration. “Government requests,” Google Transparency Report – Thailand, accessed September 19, 2012, <https://www.google.com/transparencyreport/governmentrequests/TH/?p=2011-06>; Google Transparency Report – Thailand; “Removals,” Google Transparency Report – Thailand, accessed September 19, 2012, <https://www.google.com/transparencyreport/removals/government/TH/?p=2011-12>.

³⁹ Bangkok Pundit, “Thailand: Is a lese majeste crackdown around the corner? UPDATE: ICT asks FB to block thousands of sites,” Asian Correspondent, November 25, 2011, <http://asiancorrespondent.com/70492/is-a-lese-majeste-crackdown-around-the-corner/>; “MICT has requested Facebook to delete over 10,000 pages offensive to the monarchy,” Prachatai, November 24, 2011, <http://www.prachatai.com/english/node/2913>.

⁴⁰ “Tweets still must flow,” Twitter (blog), January 26, 2012, <http://blog.twitter.com/2012/01/tweets-still-must-flow.html>.

⁴¹ Jon Russel, “Thailand is the world’s first government to endorse Twitter’s censorship feature,” The Next Web, January 30, 2012, <http://thenextweb.com/asia/2012/01/30/thailand-is-the-worlds-first-government-to-endorse-twitters-censorship-feature/>.

lèse-majesté rules, the citizen journalist website *Thaiflood*—which hundreds of thousands of Thais were following for updates on high-water warnings and relief efforts—complained in October 2011 that the official relief agency it had been working alongside had tried to censor its updates by seeking the right to screen them before publication.⁴²

Internet censorship in Thailand is carried out through judicial orders, extrajudicial blocking decisions by the executive branch, and preemptive action by ISPs and content hosts. Judicial orders are typically issued under the 2007 Computer Crime Act (CCA). The law was passed by a military-appointed legislature less than a year after the 2006 coup. It groups broad content-regulation issues with more straightforward criminal activities like hacking, email phishing, uploading personal content without consent, and posting obscene material. A range of civil society groups and scholars opposed the law on the grounds that it infringes on the right to privacy, the right to access information, and freedom of expression.⁴³ For example, provisions in Articles 14 and 15 allow the prosecution of any content providers or intermediaries—such as webmasters, administrators, and managers—accused of posting or allowing the dissemination of content considered harmful to national security or public order.⁴⁴ The executive authorities are left to decide what amounts to a violation under these vaguely defined terms, and criminal courts make the final judgments. In practice, several individuals have indeed been charged under section 15 of the CCA for content posted by other users on websites or bulletin boards they hosted.⁴⁵

Under the emergency declaration in effect from April to December 2010, top security officials held the power to shut down any website unilaterally. Thousands of websites were reportedly blocked under this extrajudicial mechanism.⁴⁶ Although this procedure was abolished with the end of the state of emergency, the censorship system in Thailand continues to lack transparency and accountability.⁴⁷ Reports emerged in 2011 of two other government bodies tasked with monitoring and curbing the circulation of lèse-majesté

⁴² “Thailand tries to censor site devoted to flood news,” Committee to Protect Journalists, October 25, 2011, <http://cpj.org/2011/10/thailand-tries-to-censor-site-devoted-to-flood-news.php>.

⁴³ Sarinee Achavanuntakul, “Danger! Computer Crimes Act,” Fringer Blog, July 18, 2007, <http://www.fringer.org/?p=259> [in Thai].

⁴⁴ Sections 14(1), 14(3), and 14(5) and Article 15 of the 2007 Computer Crimes Act pertain to crimes that “involve import to a computer system of forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to a third party or the public; that involve import to a computer system of any computer data related to an offense against the kingdom’s security under the criminal code; that involve the dissemination or forwarding of computer data already known to be computer data [which are illegal].” The act states that “any service provider intentionally supporting or consenting to an offense...within a computer system under their control shall be subject to the same penalty as that imposed upon a person committing an offense.” For an unofficial translation of the Act in English, see <http://www.prachatai.com/english/node/117>.

⁴⁵ iLaw Project Report pg. 13.

⁴⁶ CJ Hinke, “Thailand Now Blocking 277,610 Websites,” Global Voices Advocacy, November 8, 2010, <http://advocacy.globalvoicesonline.org/2010/11/08/thailand-now-blocking-256110-websites/>; iLaw Project Report pg. 17.

⁴⁷ For example, in seeking to collect details of blocked websites, iLaw researchers found government agency response inconsistent with several entities being unable or unwilling to provide the requested data on the number and content of censored sites.

content. The first entity belongs to the Technology Crime Suppression Division that operates under the Royal Thai Police.⁴⁸ Media reports describe an entity with several dozen computer technicians scouring thousands of websites, manually and with automated crawlers, for potential insults of the royal family.⁴⁹ The second is the Cyber-Security Operation Center (CSOC) inaugurated by the MICT in December 2011.⁵⁰ The CSOC is an upgrade of a previously existing entity called the Internet Security Operation Center (ISOC) that was created in 2010. Its precise mandate and activities remain unclear.⁵¹ Once an offending site or post is identified, a court order for blocking is requested and almost always granted. Such court decisions are usually made quickly and with minimal deliberation. In addition, the judicial reasoning is typically vague, with little indication of what the problematic content was or why it was deemed to violate the law.

Because those providing hosting services are held responsible for comments posted by third parties, they have an interest in censoring their own sites. Self-censorship is encouraged through the work of volunteers who monitor suspicious websites and report their findings to the MICT. In October 2009, the ministry opened a call center to receive reports of offensive websites. These reporting hotlines remained in effect as of May 2012 and were joined by a Facebook group called the “Reporting Association of Thailand.”⁵² In 2010, the MICT and Ministry of Justice introduced a controversial “cyber scout” project that aims to train students as volunteer web monitors.⁵³ By mid-2011, several dozen such “cyber scouts” had been recruited and were patrolling online forums and social networks without clearly identifying themselves as working with the government.⁵⁴ According to one such scout, their task was to alert users who may have posted *lèse-majesté* content, urge them to change their views, and if they refused, report them to the authorities.⁵⁵

⁴⁸ Also called Office of Prevention and Suppression of Information Technology Crimes and referred to as a ‘war room’ for stopping *lèse-majesté* content. See, Thomas Fuller, “A High-Tech War Against Sights to a Centuries-Old Monarchy,” *New York Times*, October 2, 2011, <http://www.nytimes.com/2011/10/03/world/asia/03iht-thailand03.html?pagewanted=all>.

⁴⁹ Martin Petty and Natnicha Chuwiruch, “Thais test taboos as war on royal slurs heats up,” *Reuters*, December 6, 2011, <http://www.reuters.com/article/2011/12/07/us-thailand-monarchy-idUSTRE7B605920111207>.

⁵⁰ “MICT: More cyber offenders to be arrested soon,” *Prachatai*, December 3, 2011, <http://www.prachatai.com/english/node/2930>.

⁵¹ “Centre starts monitoring lese majeste,” *Bangkok Post*, December 24, 2011, <http://www.bangkokpost.com/lite/topstories/272260/centre-starts-monitoring-lese-majeste>.

⁵² Reporting Association of Thailand’s Facebook page, <https://www.facebook.com/reportthailand>. As of August 2012, the page had over 22,000 “likes.”

⁵³ “Prime Minister Inaugurates ‘Cyber Scout’ Project; Support the MICT in building the Cyber Scout Program to Protect the Online World,” Ministry of Information and Communication Technology (MICT), accessed December 13, 2010, http://www.mict.go.th/ewt_news.php?nid=3430&filename=index [in Thai]; Mong Palatino, “Cyber Scout: Thailand’s Internet Police?” *Global Voices*, December 24, 2010, <http://globalvoicesonline.org/2010/12/24/cyber-scout-thailand%E2%80%99s-internet-police/>.

⁵⁴ Cyber Scout webpage: <http://www.justice-cyberscout.org/General/home.aspx>.

⁵⁵ Daniel Rook, “Thai ‘cyber scouts’ patrol web for royal insults,” *AFP*, May 10, 2011, http://www.google.com/hostednews/afp/article/ALeqM5iMwhnHSt36x-Hm-Wm_Y3thBV_t9w?docId=CNG.66922326b86c84d2b0f3ebc395ad2035.1c1.

The creation of programs employing citizens informants, along with prosecutions initiated against internet users in recent years, has generated a chilling effect among some members of the online community. In November 2011, the ICT Minister warned users that “liking” lèse-majesté content on Facebook could be a violation of the CCA and suggested they delete their reactions to avoid prosecution for “indirectly distributing inappropriate content.”⁵⁶ Many internet users thus engage in self-censorship when communicating online, even when the exchange is among friends within a closed network.

Despite this constraining environment, outside of comments perceived as critical of the monarchy, most other areas of discussion on political, social, and human rights issues are freely and passionately debated in Thailand. Thus, in the run-up to the July 2011 elections, there was a rather free atmosphere for public debate and for political parties to mobilize supporters, contributing to the opposition’s victory in an election deemed free and fair. Even with regards to lèse-majesté, observers noted more open public discussion on the possibility of amending the relevant provisions since July 2011.

Political propagandizing and proactive state manipulation of online discussions happen occasionally but have not had a significant impact on online discourse. The military has special units tasked with creating media content to counter criticism of the monarchy, such as the navy’s Network for Promoting and Protecting the Monarchy over the Internet.⁵⁷

In terms of the financial sustainability of online news outlets, there appeared to be a fairer distribution of advertisements across the political spectrum under the new government. In addition, red-shirt supporters have created their own advertising market to sustain news websites that share their political perspective, even if other businesses shy away.

As internet usage expands, online communication tools and resources are growing in importance for Thai citizens, particularly youth. While many blogs and discussion sites are blocked, users can access them with readily available circumvention software, and content producers often republish information on alternate sites. These techniques have undermined the MICT’s censorship efforts.

Meanwhile, social media applications have grown in popularity. Advanced web applications such as YouTube, Facebook, Twitter, and international blog-hosting services like Blogger are freely available in Thailand, though individual pages or videos may be blocked. According to one study, at the end of 2011, 85 percent of Thai internet users visited a social

⁵⁶ Hana Stewart-Smith, “Thai Facebook users warned over anti-monarchy ‘Likes’,” ZDNet, November 26, 2011, <http://www.zdnet.com/blog/asia/thai-facebook-users-warned-over-anti-monarchy-likes/286>.

⁵⁷ Website: <http://www.navyfamilylovetheking.com/>.

media website at least once a week.⁵⁸ Such sites have become important spaces for political expression, including messages that implicitly challenge the existing sociopolitical power structures and prevalence of elite politics. They have also become a key channel for citizen journalists to disseminate updates on breaking news. Social media played a particularly important role during the flooding crisis in late 2011.⁵⁹ For example, Twitter usage jumped by 20 percent to 600,000 accounts within the first two months of the flooding.⁶⁰ The microblogging application was widely used to share photos, provide updates on conditions in specific locations, and inform donors of what relief materials were needed where. Alongside YouTube and Facebook, it was among the top 20 most visited websites in Thailand as of mid-2012.⁶¹ The number of Facebook users has also increased exponentially, growing from approximately 250,000 in January 2009 to over 14 million—approximately one in five Thais—by May 2012.⁶²

Although the scale of mobilization was not as intense as in previous years, when the red-shirt and yellow-shirt movements used social media to organize offline actions like flash mobs and protests, these tools remained important to Thai politics. In advance of the July 2011 elections, the main candidates and political parties used Twitter and Facebook to communicate with supporters. Nonetheless, with under one-third of Thais having internet access, traditional media—especially television—remained the most important source of information for many voters, particularly in rural areas.⁶³

As internet freedom has come under growing pressure, online activists have organized to push back. The Political Prisoners in Thailand blog provides information on lèse-majesté prosecutions.⁶⁴ The Thai Netizen Network (TNN) was founded in early 2009 to uphold users' right to access, free expression, and privacy via public statements and other advocacy initiatives.⁶⁵ In January 2012, a coalition of academics and civil society groups calling itself the Campaign Committee for the Amendment of Article 112 launched an initiative to collect signatures urging the government to change the lèse-majesté provision of the criminal code.⁶⁶ Under the constitution, lawmakers must consider citizen-initiated legislative changes if they receive at least 10,000 signatures. The campaign sparked public

⁵⁸ Simon Kemp, "Social Digital and Mobile in Thailand," *we are social* (blog), January 3, 2012, <http://wearesocial.net/blog/2012/01/social-digital-mobile-thailand/>.

⁵⁹ Thai Netizen Network, *Thailand Internet Freedom and Online Culture Report 2011* (Bangkok: Thai Netizen Network, 2011): 112-129, <https://thainetizen.org/docs/netizen-report-2011/>.

⁶⁰ <http://www.nationmultimedia.com/technology/SOCIAL-NETWORKING-A-GROWING-PHENOMENON-30172722.html>

⁶¹ "Top Sites in Thailand," Alexa, accessed May 1, 2012, <http://www.alexa.com/topsites/countries/TH>.

⁶² "Thailand Facebook Statistics," Social Bakers, accessed September 18, 2012, <http://www.socialbakers.com/facebook-statistics/thailand#chart-intervals>.

⁶³ Jon Russell, "How influential is social media in Thailand's election?" *Asian Correspondent*, June 10, 2011, <http://asiancorrespondent.com/56997/how-influential-is-social-media-in-thailands-election/>.

⁶⁴ The blog is located at <http://thaipoliticalprisoners.wordpress.com>.

⁶⁵ The Thai Netizen Network website is located at <https://thainetizen.org>.

⁶⁶ Campaign Committee for the Amendment of Article 112's website: <http://www.ccaa112.org/>.

discussions both online and offline about the role of the monarchy. At end of April 2012, the campaign was still gathering signatures, but planned to soon submit the petition to parliament. The proposed legislative revisions were prepared by legal scholars and included changes such as reducing punishments for violations and enabling only the king's private secretary to initiate charges.⁶⁷ Despite such efforts, most observers were skeptical about the chances of the changes being adopted given the political environment and government fears that supporting such an amendment might spark another military coup.

VIOLATIONS OF USER RIGHTS

Since January 2011, legal harassment to *lèse-majesté* provisions and the CCA have continued, and in some respects worsened. Notably, these provisions have not only been used by political opponents against each other, but have also led to the imprisonment of citizens with little or no political connections, often following questionable legal proceedings.

The 2007 constitution, which replaced an interim charter imposed by the military government after the 2006 coup, guarantees freedom of expression. However, other laws have been used to curtail free expression. These include the Internal Security Act of 2007 and the CCA. Legal experts have criticized the CCA for its vague language, reliance on the “intent” of the accused, and lack of specificity regarding how an intermediary should receive a take down notice or know within what time frame to implement it.⁶⁸ In addition, harsh defamation and *lèse-majesté* provisions in the penal code, particularly Article 112, assign penalties of up to 15 years in prison for criticism of the king, the royal family, or Buddhism.⁶⁹ These provisions have generally been applied to online expression in much the same way as for traditional media.

Since 2007, hundreds of people have been charged under Article 112 or the CCA for communications sent via ICTs, reflecting a dramatic increase compared to previous years. Statistics from the Office of the Judiciary indicate 478 *lèse-majesté* cases were filed in 2010 under Article 112.⁷⁰ Between July 2007 and July 2010, a reported 185 legal cases were initiated against internet users under the CCA. Of these, 31 involved *lèse-majesté* charges, 54 involved defamation, and six involved actions considered by the authorities to threaten

⁶⁷ “Article 112 amendment bill to House,” Bangkok Post, May 29, 2012,

<http://www.bangkokpost.com/breakingnews/295588/article-112-amendment-draft-to-house>.

⁶⁸ “Freedom of Expression (Still) Under Attack,” Political Prisoners of Thailand (blog), June 12, 2012,

<https://politicalprisonersofthailand.wordpress.com/2012/06/12/freedom-of-expression-still-under-attack/>.

⁶⁹ Karin Deutsch Karlekar, ed., “Thailand,” in *Freedom of the Press 2010* (New York: Freedom House, 2010),

<http://www.freedomhouse.org/template.cfm?page=251&year=2010>.

⁷⁰ “Freedom of Expression (Still) Under Attack,” Political Prisoners of Thailand (blog).

national security. The remainder related to fraud, pornography, and other commonly recognized computer crimes.⁷¹ As of May 2012, the government had published neither official figures on new prosecutions for 2011 or early 2012, nor updates on the number of convictions from earlier cases.

From incomplete records compiled by lawyers and free expression groups, it appears that most of the defendants in CCA and Article 112 cases have been ordinary Thais, rather than well-known activists or government opponents. For example, in February 2012, Abhinya Sawatvarakorn (nicknamed Kantoop), a 19-year-old university student, became the youngest person to appear before a judge on *lèse-majesté* charges for a comment she had posted to Facebook in 2009.⁷² As of May 2012, her case was still pending.⁷³

Throughout 2011 and early 2012, guilty verdicts were returned in several *lèse-majesté* cases. They drew international condemnation because of the disproportionately harsh punishments imposed and the judges' reliance on questionable evidence. In November 2011, 61-year-old Ampol Tangnopakul was sentenced to twenty years in prison for violating Article 14 of the CCA and Article 112 of the penal code when he allegedly sent a high-ranking government official four mobile phone text messages deemed to have insulted the monarchy.⁷⁴ Human rights groups criticized that the burden was placed on the defendant to prove he had not sent the messages, although the prosecutor failed to definitively prove that he had and Ampol claimed he did not even know how to send a text message. Exacerbating his situation, Ampol was suffering from cancer and not receiving adequate medical attention in custody. Relative to other *lèse-majesté* prosecutions, the case received attention from traditional media, who referred to Ampol as "Uncle SMS."⁷⁵

Shortcomings in judicial knowledge and the extensive use of pretrial detention have also been pronounced in the prosecution of internet-related cases. Specifically, judges hearing the cases often display a limited understanding of the technical dimensions of digital communications, causing them to convict users even when the evidence of their supposed guilt is inconclusive. For example, in March 2011, website designer Thantawut Thaweewarodomkul was sentenced to 13 years in prison despite discrepancies in the

⁷¹ iLaw Project Report.

⁷² Nirmil Ghosh, "Thai Divide Growing Over Lese Majeste Law," Jakarta Globe, January 25, 2012, <http://www.thejakartaglobe.com/international/thai-divide-growing-over-lese-majeste-law/493508>; Pavin Chachavalponpun, "Kantoop and lese-majeste," New Mandala (blog), February 3, 2012, <http://asiapacific.anu.edu.au/newmandala/2012/02/03/kantoop-and-lese-majeste/>.

⁷³ "Case #236: Kantoop," iLaw Freedom, accessed September 18, 2012, <http://freedom.ilaw.or.th/case/236>.

⁷⁴ "THAILAND: Twenty years in prison for four SMS messages," Asian Human Rights Commission, November 24, 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-180-2011>.

⁷⁵ Ampol later died in prison from his illness on May 8, 2012. See, "An inconvenient death," The Economist, May 12, 2012, <http://www.economist.com/node/21554585>; "Case #21: Uncle SMS," iLaw Freedom, accessed September 18, 2012, <http://freedom.ilaw.or.th/case/21>.

electronic evidence tying him to the offending content.⁷⁶ In February 2012, Human Rights Watch also voiced concerns over the repeated denial of bail to lèse-majesté defendants, particularly those affiliated with the red-shirt movement, and referred to the phenomenon as politically motivated.⁷⁷ A typical example was the case of Joe Gordon (also known as Lerpong Wichaikhammat), a dual Thai-U.S. citizen.⁷⁸ Gordon was sentenced in December 2011 to two and a half years in prison for posting on his blog excerpts from the banned book *The King Never Smiles* while living in the United States.⁷⁹ He was denied bail eight times and kept in pretrial detention for 84 days until he pleaded guilty in an apparent effort to reduce his sentence and expedite his release.⁸⁰

Some prosecutions have not only targeted those who posted critical comments, but also sought punishment for content hosts who failed to remove comments posted by other users quickly enough. In one high-profile case, police raided Prachatai's offices and arrested Chiranuch Premchaiporn, the outlet's director and discussion-board moderator, in March 2009. She was accused of supporting a comment critical of the royal family by allowing it to remain posted for 20 days. Chiranuch was released, then arrested again in September 2010 on a second charge of "defaming the royal family," and of violating Articles 14 and 15 of the CCA, and Article 112 of the penal code. She was released after posting a 200,000 baht (US\$6,500) bail.⁸¹ Multiple hearings were subsequently held, but as of May 1, 2012, no verdict had been reached. Given the potential liability a guilty verdict would impose on intermediaries—including social media applications and other content providers—the case has far-reaching implications for internet freedom and the IT sector in Thailand.⁸²

Besides the state's use of the CCA and penal code provisions to suppress dissent, a June 2011 report by Thai civil society groups and legal experts pointed to a "growing trend of companies, interest groups, and individuals using these laws to stop legal reform campaigns, social movements, and trade unions."⁸³ For example, in April 2011, activist Preeyanan

⁷⁶ "Nor Por Chor USA web designer sentenced to 13 years in jail," Prachatai, March 16, 2011,

<http://www.prachatai.com/english/node/2366>.

⁷⁷ "Thailand: Courts Denying Bail in Lese Majeste Cases," Human Rights Watch, February 23, 2012,

<http://www.hrw.org/news/2012/02/24/thailand-courts-denying-bail-lese-majeste-cases>.

⁷⁸ Ibid.

⁷⁹ "U.S. citizen jailed for insulting Thai monarchy," Reuters, December 8, 2011,

<http://af.reuters.com/article/worldNews/idAFTRE7B709A20111208>.

⁸⁰ Gordon subsequently applied for a royal pardon, which was granted, leading to his release in July 2012. See, Kocha Olarm and

Jethro Mullen, "Thai-American jailed for insulting monarchy receives royal pardon," CNN, July 11, 2012,

<http://edition.cnn.com/2012/07/11/world/asia/thailand-american-pardon/index.html>.

⁸¹ "Prachatai Editor Released on Bail," Reporters Without Borders, September 24, 2010, http://en.rsf.org/thailand-news-website-editor-arrested-on-24-09-2010_38440.html.

⁸² At the end of May 2012, a Thai court found Chiranuch guilty and handed down an eight-month suspended sentence and 20,000

Baht (US\$630) fine. See, James Hookway, "Conviction in Thailand Worries Web Users," Wall Street Journal, May 30, 2012,

<http://online.wsj.com/article/SB10001424052702303674004577435373324265632.html>.

⁸³ "Thailand: Cybercrime Acts vs. the Right to Freedom of Expression," Thai Netizen Network, June 2, 2011,

<https://thainetizen.org/docs/thailand-cybercrime-acts-vs-the-right-to-freedom-of-expression/>.

Lorsermvattana of the Medical Error Network, was accused by a doctor of “forging computer data” under the CCA after she posted online figures of patient fatalities as part of a campaign to support victims of medical malpractice.⁸⁴ In May 2011, prosecutors launched a case against Songkram Chimcherd, a labor union activist at Thai Industrial Gases, on charges of defamation and importing “false computer data.” The charges were based on a series of emails Songkram had sent to various organizations regarding a dispute with the company over unpaid worker compensation.⁸⁵

New prosecutions were also documented after the Yingluck Shinawatra administration took office. For example, in September 2011, a computer programmer, Surapak Phuchaisaeng, was arrested in Bangkok for allegedly creating a Facebook page with messages deemed insulting to the monarchy; he was indicted in November 2011 and his requests for bail were rejected.⁸⁶ In December 2011, two people—a 45-year-old store owner and a 30-year-old graduate student and blogger—were detained, interrogated, and had their computer equipment confiscated by police after someone reported they might be collecting or disseminating information detrimental to the monarchy.⁸⁷

The scale of ICT surveillance in Thailand is unclear, but recent directives and public announcements indicate the government is trying to increase its capacity to intercept private communications. The CCA requires ISPs and webmasters to retain data logs for up to 90 days and turn data over to investigators upon request. In December 2011, the cabinet approved a directive placing ten types of cases, including violations of the CCA, under the jurisdiction of the Department of Special Investigation (DSI).⁸⁸ Under the rules regulating DSI operations, this means that intercepting internet communications and collecting personal data in CCA cases will no longer require a court order. The regulations came into effect in May 2012 upon publication in the Royal Gazette.⁸⁹ There have also been initial reports of the government delegating substantial resources to create a system that allows law enforcement agencies to directly access user data held by ISPs rather than having to request it from telecom employees. In December 2011, the government announced the proposed procurement of 400 million Baht (US\$13 million) for a “lawful interception” system, but provided few additional details.⁹⁰ In most instances, obtaining user information would still require a court order, though as with censorship decisions, Thai judges typically approve

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ “Surapak Puchaisaeng,” Political Prisoners in Thailand (blog), accessed September 18, 2012, <http://thaipoliticalprisoners.wordpress.com/pendingcases/surapak-puchaisaeng/>.

⁸⁷ “Recent crackdown on cyber dissidents,” Prachatai, March 10, 2012, <http://www.prachatai.com/english/node/3096>.

⁸⁸ “Cabinet approves draft directive for setting guidelines of DSI cases,” The Nation, December 19, 2011, <http://www.nationmultimedia.com/breakingnews/Cabinet-approves-draft-directive-for-setting-guide-30172173.html>.

⁸⁹ “DSI added special case for 9 offenses” [in Thai], VoiceTV, May 25, 2011, <http://news.voicetv.co.th/thailand/40014.html>.

⁹⁰ “Web censor system hits protest firewall,” Bangkok Post, December 15, 2011, <http://www.bangkokpost.com/news/local/270812/web-censor-system-hits-protest-firewall>.

such requests without serious deliberation. In addition, the above-mentioned changes regarding the role of the DSI mean that no court order would be needed in some cases. In practice, police reportedly need up to three days to trace the source of offensive online comments.⁹¹

Concerns about surveillance have led some political activists to use caution when communicating online and to employ additional security and privacy tools. Customers at cybercafes must present identification cards, though smaller businesses do not always comply with this rule. Mobile phone users are required to register their real names and national ID with their carrier upon purchasing a SIM card, whether prepaid or for a long-term subscription. Although the rule is less strictly enforced for prepaid SIM cards, those who do not register are unable to receive certain services, including roaming or mobile phone reception in the southern provinces of Pattani, Yala, and Narathiwat.⁹²

Besides legal repercussions, internet users who post controversial content can face societal harassment and at times, physical attacks. Abhinya Sawatvarakorn, the 19-year-old mentioned above, was refused a place at Silpakorn University because of the lèse-majesté charges against her for Facebook postings.⁹³ In February 2012, professor Worachet Pakeerut, one of several academics leading the petition campaign to amend lèse-majesté provisions, was assaulted by two unidentified men who then fled on motorbikes. The Asian Human Rights Commission advocacy group said the attack represented an “ominous escalation of the dangers” faced by those promoting critical discussion of Article 112.⁹⁴ In December 2011, police raided the office of an editor of Thai E-News, the second most popular alternative source of online news after Prachatai; the catalyst for the search was unclear and no one was detained as the editor was not present at the time.⁹⁵

A network of users calling themselves the “Social Sanction” group has launched online campaigns to vilify individuals who express views deemed disrespectful of the monarchy, sometimes sparking official investigations of the targeted user.⁹⁶ Other internet users have launched their own countermeasures against groups like “Social Sanction,” posting online the personal information of individuals they believe belong to such communities.⁹⁷

⁹¹ Personal conversation with a senior police officer specializing in ICT crimes, March 27, 2009.

⁹² “Register SIM Card,” Happy, accessed September 18, 2012, http://www.happy.co.th/index.php?option=com_content&view=article&id=159&Itemid=169&lang=en.

⁹³ Nirmal Ghosh, “Thai Divide Growing Over Lese Majeste Law,” Jakarta Globe, January 25, 2012, <http://www.thejakartaglobe.com/international/thai-divide-growing-over-lese-majeste-law/493508>.

⁹⁴ “Thailand’s struggle to face its future,” Asia Sentinel, April 27, 2012, http://www.asiasentinel.com/index.php?option=com_content&task=view&id=4459&Itemid=189.

⁹⁵ Interview with online journalist who requested to remain anonymous, December 2011.

⁹⁶ iLaw Project Report pg 14.

⁹⁷ Thai Netizen network, *Thailand Internet Freedom and Online Culture Report 2011* (Bangkok: Thai Netizen Network 2012): 54-76.

There have been sporadic reports of hacking attacks on online news outlets. Prachatai repeatedly faced denial-of-service (DoS) attacks during periods of political turmoil in 2009 and 2010 before being blocked by the authorities. The attacks forced the outlet to change servers and set aside large sums to pay for extra bandwidth. A web administrator for the news outlet reported in February 2012 that the site continued to face attacks, but was able to stay online thanks to the bandwidth upgrade.