

Opinion: What does Trump's election mean for digital freedom of speech?

January 16 2017, by Luis Hestres



Credit: AI-generated image ([disclaimer](#))

As the shock of Donald Trump's election victory is giving way to analysis about how his presidency will affect Americans' lives, our digital freedom of speech deserves special consideration. The ability to express ourselves freely is a fundamental right guaranteed to us all.

There are three major elements that determine how free we are in our online expression: The press must be [free to publish](#) anything newsworthy about public officials without fear of serious reprisals. Online communications must be able to reach broad audiences [without discrimination by internet service providers](#). And the government [must not be able to spy indiscriminately](#) on ordinary law-abiding Americans.

Before and during the campaign, Trump made pronouncements that suggest deep and widespread implications for digital freedom of speech if those ideas end up guiding his administration. As a scholar of digital communication, I am concerned about what he and his administration will do once in office. Trump's actions could result in weaker protections for our free press, less competition and higher prices for online consumers, certain forms of online censorship and a return to an intrusive online surveillance regime. The public must prepare to stand up to oppose these infringements on our rights.

Attacking the press

During his presidential bid, Donald Trump ran as much against the press as against his Republican primary opponents and Hillary Clinton. This was despite the fact that many press outlets were only doing what they usually do during campaigns: scrutinize both parties' front-runners and nominees.

Most candidates simply grin and bear the ritual press grillings, but not Trump. He showed an [unusually thin skin](#) for a presidential contender, directly attacking the press during raucous rallies and routinely [banning certain news outlets](#) from covering his campaign.

But he also went beyond even these extraordinary steps, suggesting that he would ["open up" libel laws](#) to make it easier for public figures to sue news outlets: "[W]hen people write incorrectly about you and you can

prove that they wrote incorrectly, we're going to get them through the court system to change and we're going to get them to pay damages," said Trump.

This is, in fact, what [current libel law](#) already allows. Strikingly, Trump has combined his seeming ignorance of libel law (despite his many years in the public eye) with a sense that today's existing restrictions on the press are too loose. This suggests that he may seek to enshrine in law or policy his particular animosity toward the press.

He also has been willing to attack any and all critics, including [private citizens](#). Combined, these elements raise questions about the degree, if any, to which Trump values freedom of the press, digital or otherwise.

His Cabinet appointments do not inspire confidence in his support of this principle, either. During his confirmation hearing, Trump's nominee for attorney general, Sen. Jeff Sessions, [dodged questions](#) about his willingness to prosecute journalists based on their reporting, including handling leaks from government employees. He has also [opposed a federal shield law](#) that would protect journalists against such prosecutions.

Threatening an open internet

Network neutrality was not a hot topic during this presidential election, but that may change during a Trump administration.

Obama's attack on the internet is another top down power grab. Net neutrality is the Fairness Doctrine. Will target conservative media.

— Donald J. Trump (@realDonaldTrump) [November 12, 2014](#)

During the [debate over net neutrality](#) in 2014, [Trump tweeted](#) that the policy was a "top down power grab" that would "target conservative media." He appears to have conflated [net neutrality](#)'s nondiscrimination principle with the now-defunct [Fairness Doctrine](#). That policy, discontinued in 1987, required broadcasters to devote equal time to opposing views about controversial public issues. It's hard to know which is more worrying: his early antipathy toward net neutrality, or his objections despite not knowing what it actually means.

Whatever Trump himself understands, his appointments look like bad news for supporters of an open internet. President-elect Trump has [named Jeffrey Eisenach and Mark Jamison](#) to oversee the transition at the Federal Communications Commission, which oversees internet communications policy. Both are [staff members](#) at the conservative [American Enterprise Institute](#) and [former lobbyists](#) for [major telecommunications companies](#). Both are also [vocal opponents of net neutrality](#). Also on his FCC transition team are Roslyn Layton, [another staff member at AEI and vocal net neutrality opponent](#), and [North Carolina telecom entrepreneur David Morken](#).

Morken is not on record as opposing net neutrality, but so far its supporters seem outnumbered. Those signs suggest that a Trump administration could enable an internet where wealthy people and companies can afford to distribute their content everywhere quickly, while regular people and small businesses can't attract an audience or deliver content efficiently.

Perpetuating the surveillance state

During the campaign, candidate Trump supported [keeping or restoring the NSA's secret surveillance programs](#), which former agency contractor [Edward Snowden revealed in 2013](#). Those programs, with a [questionable legal basis](#), collected [internet and telephone communications](#) from all

Americans, [storing them in a massive government database](#).

Although Congress [voted across partisan lines to eliminate these programs](#) in 2015, Trump's election may help revive them. He has named Rep. Mike Pompeo (R-Kansas), a supporter of the NSA surveillance programs Congress eliminated, as the [next CIA director](#).

The programs are [unpopular with Americans](#): It is perhaps no coincidence that interest in technologies that would make government surveillance more difficult, such as [encrypted email](#) and [encrypted instant messaging apps](#), has surged since Trump's election.

How successful could Trump be?

We are not necessarily doomed to lose our digital freedom of speech. As with any public policy question, the answer is more complicated. Should Trump begin to wage on a full-fledged assault on digital expression, the degree to which he can succeed may be limited.

One factor is his ability to navigate the extremely complex and time-consuming obstacle course that is the American system of government. With its separation of powers, bicameral legislature, multiple layers of jurisdiction and [endless veto points](#), the American system strongly favors inertia over just about any course of action.

But a highly motivated president with an authoritarian streak could potentially cut through this inertia by, for example, embracing a [strong unitary executive](#) view of the presidency.

When the public gets involved, even seemingly entrenched plans can be derailed, or even reversed. For example, a mass of public involvement (with a little assistance from [comedian John Oliver](#)) [transformed the initial net neutrality debate](#).

This power the public holds – if it chooses to wield it – can be used in two ways: First, it can resist unwelcome changes, by reinforcing the political tendency toward inertia and the status quo. And second, it can drive policymakers to better serve the public who employ them. It's unclear at present which tactic protecting our digital freedom of speech will require – or whether we'll need both. In American politics, elections may have consequences, but they're never the end of the story.

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