

**The Nuclear Option for Content Control:
Online Payment Intermediaries as Proxy Censors**

Annemarie Bridy
University of Idaho
College of Law

Online payment intermediaries like PayPal, Mastercard, and Visa are generally agnostic about the substance of the online transactions they facilitate. They have no direct knowledge of or control over the content of their customers' websites, which means that they have no secondary liability for the infringing or other bad acts of individual payers and payees. Despite their freedom from liability, however, online payment intermediaries have recently been willing to accede to government and other third-party pressure to stop processing payments for websites that allegedly traffic in illegal or offensive content. Some prominent examples are PayPal's blockade of Wikileaks, instituted at the government's request, and Mastercard's decision to stop processing payments for mug-shot-removal sites, apparently precipitated by a well-placed inquiry from a reporter at *The New York Times*. Google, which dislikes demoting so-called "pirate sites" in its search results, supports voluntary payment blocking for such sites, which can present no demotion dilemma if they're squeezed off the Internet altogether.

When it comes to controlling content on the Internet, payment blocking is the nuclear option: Unlike a notice-and-takedown regime or a selective filtering regime, which raises costs for website operators but otherwise leaves them free to go about their business, a payment blocking regime poses an existential threat to any web-based business affected by it. This project will explore the payment blocking phenomenon and the role of online payment intermediaries as "proxy censors"¹ who indirectly but powerfully control what (dis)appears online.

¹ Seth Kreimer uses this term to denote private sector actors who are pressured by the government to create a system for controlling expression that permissibly undermines First Amendment values. See Seth F. Kreimer, *Censorship by Proxy: The First Amendment, Internet Intermediaries, and the Problem of the Weakest Link*, 155 U. PA. L. REV. 11 (2006).