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4. Freedom of expression

1. Rights of free expression
2. The global information infrastructure and democracy
3. Unprotected expression

Readings: Baase, Ch. 3; D. Johnson

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Inquiry

- Do computer systems widen freedom of expression?
- Does the global information infrastructure embody democratic values?
- Do computer systems limit and constrain freedom of expression?

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Objectives

- 4a. Discuss trade-offs between conflicting legitimate concerns about freedom of expression
- 4b. Explain how IT offers opportunities for and risks to free expression
- 9d. Support opinions by evidence
- 9e. Acknowledge alternative points of view

1. Rights of free expression

- Liberties
- Human rights
- The U.S. Constitution's First Amendment
- Protection of children

Liberties

- *Liberties* are negative rights that restrict the powers of government
- *International law* and the *U.S. Constitution* protect the right of free political and religious expression, among other liberties
- *Free expression has no meaning if government* or others harm persons for expression of opinion, religion, philosophy, or esthetics
- Hence free expression entails a *claim right* that government *prevent* violations of human rights by *anyone*

The First Amendment

- U.S. Constitution: “Congress shall make no law ... abridging the freedom of speech, or of the press...”
- Protection is precisely for speech that may offend
- Covers many forms of expression
- Encodes a negative right (liberty); does not ensure that a writer gets a publisher

Legal guidelines

- Speech and action are different
- Laws must not have “chilling” effect
- Conflicts should be resolved by least-restrictive means
- Community standards of most restrictive communities must not be imposed on all communities
- Adults must not be restricted to reading only child-appropriate materials

Modes of expression covered by the First Amendment

- *Speech*
- *Print* (newspapers, magazines, books, CD, DVD)
- *Broadcast* (TV, radio, licensed)
- *Common carriers* (telephone, postal service, ISPs)

Censorship

- *Definition:* “Act of changing or suppressing speech or writing that is condemned as subversive of the common good”
- 1999, two French groups sued Yahoo because its U.S. based auction site listed Nazi artifact; French government brought criminal charges
- China, Saudi Arabia, Pakistan, Burma, Singapore, Egypt, Turkey, Thailand have restricted Internet use for political reasons

Freedom-of-expression issues

- Changes in IT raise dilemmas due to
 - Widespread access to sending or receiving
 - Easy copying
 - Faster communication
 - Anonymity
- Questions:
 - Is Internet more like TV broadcasting or like print publishing?
 - Is a link equivalent to publishing?
 - Is a chat room a public place?

ACLU recommendations for free speech in cyberspace

- (American Civil Liberties Union, founded _____)
- Internet users know best
- Let free speech be the default setting
- Buyers beware
- No government coercion or censorship
- Libraries are free speech zones

Internet risks concerning children

- Sexual content is available widely on the Internet for free
- Some sexual material depicts and exploits sexual abuse of children
- Material is easily copied
- Nonsexual images of children *or* adults may be edited and merged with sexual images
- Children use the Internet and may download material, putting themselves and parents at risk

Internet content-control legislation

- Communications Decency Act (1996) outlawed “knowing transmission of obscene or indecent” material to anyone under 18, including via the Internet
- Supreme Court ruled out any content-based regulation of the Internet (1997)
- Child Online Protection Act (1998), also overruled
- Children’s Internet Protection Act (2000) required filtering at libraries and schools

Content blocking

- Content blocking software relies on text, not image, analysis
- Blockers block some non-objectionable material (artistic, educational) and fail to block some material inappropriate for children
- Blocker software does not reveal its criteria for blocking

Other solutions to problem of child protection

- Filters (imperfect)
- Put PC in living room
- Educate children about giving out personal info

2. The global information infrastructure (GII) and democracy

- *GII*: “the coming together of computer/information technology with telecommunications”
- Telcom lines *can* connect everyone in the world to everyone else
- But millions lack access
- *Inquiry*: Is the *GII* compatible with either *inclusion* or *exclusion*?
- Its *values* include symbolizing the future

Power to the many

Argument:

1. Democracy means power in the hands of many people
2. Information is power
3. The GII puts information in the hands of many people
4. The GII is democratic (democracy is an inherent *value* of the GII)

Undemocratic features of the GII

- Q: Does “Information is power” refer to information one *gets* or information one *controls and filters for others*?
- The GII creates the possibility of *greater* concentration of filtering and packaging power
- The GII may, with a loss of shared geographical space, foster a tendency toward insularity as individuals have the option to discuss only with those they agree with

Architectures of freedom and of control

- Government may regulate to ensure regulability – e.g., forcing backdoors to encryption schemes
- U.S. global market dominance gives any U.S. government policy a global effect and relevance
- U.S. enforcement of an architecture of control, by virtue of this, would enable any local government to control the use of technology as it saw fit

Election campaigns

- *Hard money* (controlled by candidates) is strictly limited
- Bipartisan Campaign Reform Act (McCain-Feingold), 2002, restricted *soft* money use, including for issue ads; judge ordered rules to apply it to Web
- Federal Election Commission issued rules for Web, 2006:
 - Regulations apply to paid content
 - Individuals were to campaign freely if not compensated
- Supreme Court rules that issue ads are protected, 2007

Corporations and First Amendment

- 2010 Supreme Court decision extended free-speech coverage to corporations
- *Question:* are corporations persons in the sense intended by the First Amendment?
- *Citizens United* case was about funding of a documentary/advocacy video to affect an election campaign

Electronic voting

- *Question:* are voting machines that run proprietary software, whose code is a business secret, compliant with election transparency expectation?

Net neutrality

- *Definition:* delivery of content by service providers without preference for some content over others
- *Example:* an ISP is net neutral if it charges uniform rates regardless of content; is not neutral if it blocks some content (e.g., of competitors) or charges more for delivering it
- *Enforcement:* only a government agency, such as the Federal Communications Commission, can assure net neutrality

Net neutrality vs. deregulation

- FCC required phone companies to meet open-access requirements for Internet service, e.g., leasing lines at “neutral” prices
- *Net neutrality* means that government should require telcoms to treat all content on broadband lines alike
- *Motivation:* To prevent telcoms from excessively influencing content on Internet
- *Counter-argument:* Want to maintain incentive to improve infrastructure

3. Unprotected expression

Defamation

- Not protected as free speech
- Elements of a claim of defamation:
 - False and defamatory statement exposing someone to contempt or ridicule
 - Published to one or more third parties
 - Negligence or worse by publisher
 - Result is presumed or actual damage
- *Distributors* of information are not liable as *publishers* are

Forms of defamation

- *Libel*: defamation in print or other visual form
- *Slander*: defamation by oral communication
- Defamation is not protected freedom of speech
- Remedy is civil action of lawsuit

Dilemmas about defamation online

- Is ISP or other intermediary a publisher?
- Is anonymous speech threatened?
- Can you be sued in many countries for your posting?
- Example: Is French ban on Nazi paraphernalia applicable to Yahoo (US)?

Incitement, threats, and cyberbullying

- Inciting crimes is not a protected form of expression
- Physical threats are not protected
- *Cyberbullying* is a widely recognized problem that includes *harassment* with or without threats and defamation
- Cyberbullying is a special concern because young persons have been harmed by it and some have harmed themselves

Spam

- Free speech or unprotected activity?
- *Estimate*: 30 billion spam messages per day, 2006
- AOL blocked mail from spammer company Cyber Promotions, 2006; later sought injunctions against spammers
- Advocacy groups solicit web-site visitors to send messages to politicians: spam?

Antispam solutions

- Challenge-response spam filtering: Auto-response to mail is a request to confirm message, which puts sender on white list
- Pay-to-email imposes small cost to sender per message
- CAN-SPAM legislation, 2004, regulated commercial spam

Anonymity

- Many classic works have been published anonymously
- *Remailers* enable email anonymity
- *Anonymizer.com* provides tools
- A federal court overruled a Georgia law against false names on Internet, 1996
- Anonymity does not protect against consequences of libel
- Some groups file suit to obtain identities of critics

Case: video games and children

- The June, 2011, article, “Justices reject ban on violent video games for children,” discusses a law that banned the selling of certain video games to children.
- Give reasons for a rise in legitimate concern about video games and reasons for opposing such legislation. Support your view with specifics.

Key concepts

challenge-response spam filtering	Internet service provider
chilling effect	least-restrictive means
content blocking software	libel
content filter	media
cyberbullying	net neutrality
defamation	publishers
distributors	remailers
First Amendment	soft money
global information infrastructure	slander
	spam

References

- S. Baase. *A Gift of Fire*, 3rd ed. Pearson Prentice Hall, 2008, Ch. 3.
- M. Castells. *Rise of the Network Society*, 2nd ed. Blackwell, 2000.
- D. Johnson. Is the global information infrastructure a democratic technology? *Computers and Society*, September 1997.
- R. Spinello and H. Tavani, Eds. *Readings in CyberEthics*, 2nd ed. Jones and Bartlett, 2004, Ch. 1-2.