
Computer Law and Ethics, COSC-3325, Lecture 5

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Reminder of the last lecture

- Issues about computer malware
- Based on the paper:
 - Eugene H. Spafford: Privacy and Security: Remembrances of Things Past, *Communications of the ACM*, August 2010, vol. 53, no. 8

Overview of This Lecture

- Freedom of Speech:
 - Changing Communication Paradigms
 - Controlling Offensive Speech
 - Censorship on the Global Net
 - Political Campaign Regulations in Cyberspace
 - Anonymity
 - Protecting Access and Innovation: Net Neutrality or De-regulation?

Freedom of Speech

- Freedom of speech has always been restricted to some degree in the U.S. and to a large degree in many other countries.
- This lecture examines how principle of freedom of speech from earlier media affect the Internet and how the Internet affects them.
- Topics included are:
 - Pornography on the Internet, attempts to restrict it, and attempts to restrict access by children;
 - Advertising and commerce on the Web;
 - Spam (mass, unsolicited e-mail);
 - Anonymity as a protection for speakers.

Changing Communication Paradigms

- Mike Godwin wrote in 1994 that the Internet is a many-to-many medium compared to telephone which is a one-to-one medium and television or newspaper which is a one-to-many medium of communication.
- The First Amendment protection of freedom of speech was possible for each individual.
- The number of blogs passed 50 million in 2006.
- The modern communications technology and the Internet require that the framework be updated.

Changing Communication Paradigms

- The First Amendment protection and government regulation has to include the following three communications media:
 - Print media (newspapers, magazines, books):
 - Has strongest first amendment protection
 - Trend toward fewer government restraints on printed words
 - Broadcast (television, radio):
 - Government regulates structure of industry and content of programs
 - Government grants broadcast licenses
 - Federal Communication Commission (FCC) is the regulating body
 - Common carriers (telephones, postal system):
 - Provide a medium of communication and make service available to everyone.

Changing Communication Paradigms (cont.)

Telecommunication Act of 1996:

- Changed regulatory structure and removed artificial legal divisions of service areas and restrictions on services that telephone companies can provide.
- No provider or user of interactive computer service shall be treated as a publisher of any information provided by another information-content provider.

Changing Communication Paradigms (cont.)

Free-speech Principles:

- The First Amendment was written for offensive and/or controversial speech and ideas;
- There is no need to protect speech and publication that no one objects to.
- The First Amendment is a restriction on the power of government, not individuals or private businesses.

Changing Communication Paradigms (cont.)

Free-speech Principles (cont.):

- Supreme Court principles and guidelines
 - Advocating illegal acts is legal
 - Does not protect libel (i.e., a written defamatory statement) and direct, specific threats
 - Inciting violence is illegal
 - Allows some restrictions on advertising
 - Protect anonymous speech.

Controlling Offensive Speech

What is it? What is illegal?

- Answer depends on who you are.
- It could be political or religious speech, pornography, racial, libelous statements, abortion or anti-abortion information, advertising alcoholic beverages, discussion about how to build bombs, and so on.
- Many efforts to censor the Internet with a focus on child pornography or sexually explicit material.

Controlling Offensive Speech (cont.)

What was already illegal?

- In 1973, the Supreme Court established three-part guidelines for determining whether a material is obscene under the law.
 - Depicts a sexual act against state law
 - Depicts these acts in a patently offensive manner that appeals to marked by interest as judged by a reasonable person using community standards
 - Lacks literary, artistic, social, political or scientific value.

Controlling Offensive Speech (cont.)

- In the 1990s as more nontechnical people began using the Internet, a variety of religious organization, anti-pornographic groups, and others began a campaign to pass federal laws to censor the Internet.
- Communication Decency Act (CDA) in 1996:
 - Anyone who made available to anyone under 18 any obscene/indecent communication would be subject to \$100000 and two years in prison.
 - Federal judge stated that the Internet is the most participatory form of mass communication
 - Attempted to avoid conflict with first amendment by focusing on children
 - The Internet deserves the highest protection from government intrusion.

Controlling Offensive Speech (cont.)

- The Communication Decency Act (CDA) (cont.)
 - Found to be unconstitutional (1997):
 - The worst material threatening children was already illegal
 - It was too vague and broad
 - It did not use the 'least restrictive means' of accomplishing the goal of protecting children.

The 'least restrictive means' test

- ... is a standard imposed by the courts when considering the validity of legislation that touches upon constitutional interests.
- If the government enacts a law that restricts a fundamental personal liberty, it must employ the least restrictive measures possible to achieve its goal.
- This test applies even when the government has a legitimate purpose in adopting the particular law.
- The 'least restrictive means' test has been applied primarily to the regulation of speech.
- It can also be applied to other types of regulations, such as legislation affecting interstate commerce.

Controlling Offensive Speech (cont.)

Internet Censorship Laws & Alternatives (cont.):

- Child Online Protection Act of 1998 (COPA):
 - Federal crime for commercial web sites to make available to minors harmful material by FCC standards: \$50000 and 6 months in prison.
 - Found to be unconstitutional by several courts (2000):
 - Government did not show that COPA was necessary to protect children
 - Child Online Protection Commission concluded that less restrictive (that is, filtering), was superior to COPA.

Controlling Offensive Speech (cont.)

Internet Censorship Laws & Alternatives (cont.):

- Children's Internet Protection Act of 2000 (CIPA):
 - Requires schools and libraries that participate in certain federal programs to install filtering software
 - Upheld in court:
 - In 2003, the Supreme Court concludes that CIPA does not violate First Amendment since it does not require the use of filters, impose jail or fines;
 - It sets a condition for receipt of certain federal funds.

Controlling Offensive Speech (cont.)

Internet Censorship Laws & Alternatives (cont.):

■ Filters:

- ❑ Blocks sites with specific words, phrases or images
- ❑ Parental control for sex and violence
- ❑ Updated frequently but may still screen out too much or too little
- ❑ Not possible to eliminate all errors
- ❑ What should be blocked?

Controlling Offensive Speech (cont.)

Spam:

- What's the problem?
 - Loosely described as unsolicited bulk email
 - Mostly commercial advertisement
 - Angers people because content and the way it is sent.
- Free speech issues:
 - Spam imposes a cost on others not protected by free speech
 - Spam filters do not violate free speech (free speech does not require anyone to listen).

Controlling Offensive Speech (cont.)

Spam (cont.):

■ Anti-spam Laws:

- ❑ A Federal Act, called Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act), went into effect in 2004.
- ❑ It targets commercial spam asking them to include valid mail header information, a valid return address, and a valid postal address information.
- ❑ This act was criticized by some antispam organizations for not banning all spam, rather than making commercial spam legitimized.

Controlling Offensive Speech

Discussion Questions

- Why is 'least restrictive means' important?
- Do you consider the Internet an appropriate tool for young children? Why or why not?

Censorship on the Global Net

Global Impact of Censorship:

- Global nature of the Internet protects against censorship (banned in one country, move to another)
 - May impose more restrictive censorship (block everything in an attempt to block one thing).
 - Yahoo and French censorship:
 - Display and sale of Nazi memorabilia are illegal in France and Germany, with some exceptions for historical purposes.
 - Two antiracism organizations sued Yahoo in a French court in 1999 because French people can view Nazi memorabilia offered for sale on Yahoo's U.S.-based auction sites.
 - Yahoo, eBay, and others make decisions to comply with foreign laws for business reasons.
 - Free-speech advocates worried how one government imposed censorship standards in other countries.
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Censorship on the Global Net (cont.)

Censorship in Other Nations:

- Attempts to limit the flow of information on the Internet similar to earlier attempts to place limits on other communications media.
- Some countries own the Internet backbone within their countries (such as China and Saudi Arabia), block at the border specific sites and content.
- Some countries ban all or certain types of access to the Internet.

Censorship on the Global Net (cont.)

Aiding Foreign Censors:

- Companies who do business in countries that control Internet access must comply with the local laws.
- Google argued that some access is better than no access.

Censorship on the Global Net

Discussion Questions

- What impact does the global net have on free speech?
- Does censorship in other countries have an impact on free speech in the U.S.?
- How does free speech in 'free countries' impact more restrictive countries?

Political Campaign Regulations in Cyberspace

- Many politicians did their Campaign using the Internet (most of them since 2004).
- Bipartisan Campaign Reform Act of 2002 (BCRA)
 - Prohibits corporations, unions and other organizations from paying for ads that show a candidate's name or face close to an election (60 days for elections, 30 days for primaries or conventions).

Political Campaign Regulations (cont.)

Campaign Laws and the Internet (cont.):

- Federal Election Commission (FEC) administers election laws:
 - Covers content placed on the Internet for a fee;
 - Unpaid individuals may put political content on their Web site, send emails, blog, create or host a campaign-related Web site and provide links to campaign sites;
 - Media exemption applies to traditional news media and those whose only presence is on the Web.

Anonymity

Common Sense and the Internet:

- The anonymity is protected by the First Amendment
- Services available to send anonymous email (Anonymizer.com)
- Anonymizing services are used by individuals, businesses, law enforcement agencies, and government intelligence services.
- Example: People use “handles” or aliases to keep their real name private when discussing personal things on Internet forums.

Anonymity (cont.)

Is Anonymity Protected?

- Reporting requirements in election campaign laws restrict anonymity;
- However, FEC exempted web sites and blogs of individuals and organizations (non-corporations) if they are not compensated for their campaign activities;
- Supreme Court has overturned state laws that restrict anonymity;
- SLAPP, a Strategic Lawsuit Against Public Participation - lawsuits filed (generally libel) used to obtain the identities (via subpoena) of those expressing critical or dissenting opinions.

Anonymity (cont.)

Against Anonymity:

- Fears:
 - It hides crime or protects criminals
 - Glowing reviews (such as those posted on eBay or Amazon.com) may actually be from the author, publisher, seller, or their friends.
- U.S. and European countries are working on laws that require ISPs to maintain records of the true identity of each user and maintain records of online activity for potential use in criminal investigations.

Anonymity Discussion Questions

- Where (if anywhere) is anonymity appropriate on the Internet?
- What are some kinds of Web sites that should prohibit anonymity?
- Where (if anywhere) should laws prohibit anonymity on the Internet?

Protecting Access and Innovation

Net Neutrality or De-regulation?

- Direct censorship is not the only factor that can limit the amount and variety of information available to us on the Internet.
- Businesses sometimes use the government's regulatory power to delay or prevent competition.
- Federal Communication Committee (FCC) eliminated line-sharing requirements (2003-2005).
- Should companies be permitted to exclude or give special treatment to content transmitted based on the content itself or on the company that provides it?
- Should companies be permitted to provide different levels of speed at different prices?

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- Net Neutrality refers to a variety of proposals for restrictions on how telephone companies interact with their broadband customers and how they set the charges.
 - Advocates of “Net Neutrality” argue for equal treatment of all customers.
- The opponents of “Net Neutrality” (called De-regulation supporters) argue that neutrality will slow the advance of high-speed Internet connection and improvements in infrastructure.

Discussion Questions

- What are the pros and cons to anonymity on the Internet?
- The First-Amendment was created to protect political and offensive speech. Anonymity is key to that protection. Should the free speech principles of the First Amendment apply to the Internet, even to speech outside the U.S.?

Summary

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Reading suggestions

- From [Baase; 2008]
 - Chapter 3

Coming up next

- Intellectual Property:
 - [Baase; 2008], Chapter 4

Thank you for your attention!

Questions?