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The Internet as Friend or Foe of Intellectual Freedom

Abstract:

What a long strange trip the Internet has had. From its inception and use by the American military to the billions of users world-wide who log on daily, the Internet is both the promise of access to information and the peril of surveillance and a means of curtailing intellectual freedom. This paper will review this continuum, paying close attention to recent developments in the United States that fuel the dichotomous debate surrounding intellectual freedom.

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- Relevant publications:
 - Buchanan, E. (Spring 2004). Ethics in Library and Information Science: What Are We Teaching? *Journal of Information Ethics*, 13 (1), 51-60.
 - Buchanan, E. (2002). Internet Research Ethics and Institutional Review Board Policy: New Challenges, New Opportunities. *Advances in Library Organization and Management*, 19 (85-100).
 - Lipinski, T., Buchanan, E., and Britz, J. (2002). Sticks and Stones and Words that Harm: Liability vs. Responsibility, section 230 and defamatory Speech in Cyberspace. *Ethics and Information Technology*, 4 (143-158).
 - Buchanan, E. (1999). An Overview of Information Ethics Issues In a World-Wide Context. *Ethics and Information Technology*, 1, (4), 193-201.
 - Buchanan, E. (Editor). (2003). *Readings in Virtual Research Ethics: Issues and Controversies*. Hershey, PA: Idea Group.
 - Buchanan, E. and Campbell, J. (2004). New Threats to Intellectual Freedom: The Loss of the Information Commons through Law and Technology in the United States. In *Intellectual Property Rights in a Networked World: Theory and Practice*. Edited by R. Spinello and H. Tavani. Idea Group.
 - Buchanan, E. (2004). Ethical Considerations for the Information Professions. In *Readings in Cyberethics*. (2nd Edition) . Edited by R. Spinello and H. Tavani. Jones and Bartlett.
 - Lipinski, T., Buchanan, E., and Britz, J. (2004). Agents of Harm or Agents of Grace? The Legal and Ethical Aspects of Identifying Harm and Assigning Responsibility in a Networked World. In *Readings in Cyberethics*. (2nd Edition) . Edited by R. Spinello and H. Tavani. Jones and Bartlett.

Introduction and Context

Definitions of intellectual freedom reveal consistency across global boundaries: The Universal Declaration of Human Rights, Article 19, states "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers" (CDT, 2000); the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10, asserts "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of borders" (CDT, 2000). In the United States, intellectual freedom is best codified in law under the First Amendment to the Constitution, stating, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances," while intellectual freedom itself is articulated by, for instance, the American Library Association as the "right of every individual to both seek and receive information from all points of view without restriction. It provides for free access to all expressions of ideas through which any and all sides of a question, cause or movement may be explored. Intellectual freedom encompasses the freedom to hold, receive and disseminate ideas" (ALA, Office of Intellectual Freedom, 2002). Showing the cohesiveness surrounding the principle of intellectual freedom among the library and information professions, many other library associations worldwide have similar statements (IFLA, 2002).

In many ways, these statements typify the Internet and its plurality of ideas and expressions, which has notably evolved from its early days of a few isolated nodes at military institutions and institutions of higher education to its current status as a global marketplace of ideas. Nearly every conceivable idea, ranging from the highly controversial to the most mundane, can be found online. This is the Internet's promise—and its peril, perhaps. Tensions exist in light of this diversity and freedom to express oneself freely: Where does one's right to expression violate another's right to privacy, or to not be offended, or to be safe from harassment or violence or worse? These tensions are mounting as nations embrace the Internet; tensions between law and

ethics within nations constitute one parameter, while tensions between and among nations themselves exist surrounding the exercise of intellectual freedom online.

Intellectual freedom must be considered along both legal and moral grounds, and the two may not always be in sync. Lipinski, Buchanan, and Britz (2004) have reviewed the discrepancy between legal and moral liability in and of ISPs, and concluded that a higher moral standard than what the current US law provides is indeed necessary when considering, for example, dangerous, threatening, or libelous speech online. A similar moral framework for discussing intellectual freedom in general may be requisite. Are we as a body of information professionals ready to embrace this challenge? On its surface, this question seems fairly simple and straightforward. Intellectual freedom has been and continues to be the bedrock of our professional identity, and it remains a cause worth championing. Yet, once this question begins to unfold, moving from the theoretical to the practical, great complexity abounds. A goal of this paper is to encourage a global discussion of intellectual freedom online; this meeting of international information ethics scholars (ICIE) is a prime meeting point from which this discussion can continue.

Pro-Anas as a Case in Point

An interesting example of this tension between what is legally permissible and morally responsible in terms of intellectual freedom online has arisen with the so-called "pro-ana" web sites. This vast array of sites created by individuals who embrace anorexia as a life style choice, not a disease, have exacerbated the tension between one's right to expression and one's right to access all expressions to violating one's safety through dangerous information. While one is never forced to view these sites, of course, should there be a right to provide "dangerous" information? Many pro-anas, for instance, provide "tips" or "strategies" on how to reduce caloric intake, how to hide one's food, how to conceal one's "choices" to be anorexic (Pro-anas encompass all eating disorders, not just anorexia.). Many provide "thinspiration," in the forms of photographs of both overweight and severely underweight individuals.¹

While legally, under the First Amendment in the United States, such information is permissible, the moral implications of such sites blur the line. It would unlikely be a First Amendment issue, as seen

by the courts, if someone did in fact die, or otherwise suffer, from using the information on such a site; most likely, any case would fall under US Tort law. Perhaps in an attempt to protect themselves, many pro-anas now include disclaimers, such as the following:

Disclaimer

If you are currently in recovery from an eating disorder or if you are offended or otherwise disturbed by the existence of pro-ana, I suggest you go no further. XXX is not responsible for the content of the sites linked in this listing. Nor are we responsible for what you do with any of the information you may find here. Only you, yourself, are.We are also not interested in talking to reporters or researchers. Thank you for understanding and respecting this.ⁱⁱ

Too, perhaps ISPs are considering their roles more seriously in light of such information as the pro-anas, or hate sites, or gay bashing sites provide, as many remove these sites in a form of industry self-censorship, or self-regulationⁱⁱⁱ. Oftentimes, accessing a pro-ana or a hate site becomes a maze of broken links, redirections, forced downloads, and dead ends. Oftentimes, one must use "insider language" to find such sites in a search engine, while moreover, many require "membership" or registration.

Pro-anas are but one growing example of information found online that can deeply challenge one's thinking about intellectual freedom—it is easy to accept the premise of free expression and access, as we in the information professions often defer to the "slippery slope" argument. The oft-cited slippery slope, "if we curtail that sort of information, what is next," prominently rises yet again to the fore in this discussion, though perhaps the stakes are even larger in the Internet's domains, given the global implications and complexities. What would a moral framework for intellectual freedom online in a global context resemble? We are in the midst of creating a global narrative through the Internet, and the plot is taking many twists and turns, challenging not only information professionals to think critically about our professional core values but also all of us as individuals contributing to this narrative. Could we borrow from James Moor's principles, or his set of shared core values to which society or a group of people adhere in formulating a framework to describe specific acts of expression online as "good" or "bad," "right" or "wrong," "responsible" or "irresponsible?" Moor, for instance, names life and happiness, ability, freedom, knowledge, resources,

and security^{iv} in his goal to find core values that apply internationally and imply mutual acceptance. But, as Moor identified, a significant problem surrounds the identification and acceptance of this set of core values/norms that can be used to regulate the Internet. Law gets us no closer to resolution, as we shall see further.

Pornography, Intellectual Freedom, and Beyond

Ranging from pornography to hate to violence, Internet sites can be regulated anywhere from industry self-censorship to national laws. In the United States, most recent discussions and concerns surrounding intellectual freedom online are focused on pornography. In particular, the two major cases in which the ALA, the ACLU, among other entities, were involved dealt with children and potential access to pornography (The Communications Decency Act, 1997, and the Children's Online Protection Act, 2002). While the former was struck down as unconstitutional, with Justice John Paul Stevens asserting that speech on the Internet is entitled to the highest level of First Amendment protection, similar to the protection the Court gives to books and newspapers (not broadcast or cable television, which have stricter enforcement), the CIPA was carefully interjected into a spending bill and turned less into a discussion of intellectual freedom than of funding priorities and the role of congressional oversight: Ultimately, the CIPA decision held that "the First Amendment does not prohibit Congress from forcing public libraries - as a condition of receiving federal funding - to use software filters to control what patrons access online via library computer" (Hilden, 2003). Libraries in the United States have worked to balance CIPA with the First Amendment, often having different sets of computers for adults and children, with filters installed only on those accessible by children.

It is unfortunate that the US discussions about intellectual freedom focus almost solely on pornography: in one sense, this obsession sets the United States apart from other countries that focus their concern on different and some would (rightly) contend more socially significant issues, such as hate sites and the promotion of racial, religious, or sexual discrimination. The Simon Wiesenthal Center (2004), which tracks hate sites alone, found over 4000 hate sites in 2004. Such sites as the World Church of the Creator, Stormfront, and the Christian Gallery, expound hate speech which borders on harassment, and threatening or dangerous speech^v,

in addition to the latest use of intimidation and privacy violations documented on the Christian Gallery of "abortion cams," which take still and video images of health clinic workers, patients, and others, and post them online, sometimes with names, vehicle license plates, and other forms of personal information. While legally protected in the US, many ISPs have begun to shut down sites such as the Nuremburg Trials (its latest iteration states it has been shut down 43 times since 1998).

And, the Anti-Defamation League explains:

In most countries, hate speech does not receive the same constitutional protection as it does in the United States. In Germany, for example, it is illegal to promote Nazi ideology. In many European countries, it is illegal to deny the reality of the Holocaust. Authorities in Denmark, France, Britain, Germany and Canada have brought charges for crimes involving hate speech on the Internet.

While national borders have little meaning in cyberspace, Internet users who export material that is illegal in some foreign countries may be subject to prosecution under certain circumstances. An American citizen who posts material on the Internet that is illegal in a foreign country could be prosecuted if he subjected himself to the jurisdiction of that country or of another country whose extradition laws would allow for his arrest and deportation. However, under American law, the United States will not extradite a person for engaging in a constitutionally protected activity even if that activity violates a criminal law elsewhere.

Are hate sites, or pro-anas, new ethical issues for us as information professionals? Are they simply old forms of "questionable" expression available to a wider audience? As information professionals, our ability to select or acquire materials has certainly changed in light of the Internet, and if we maintain an absolute commitment to intellectual freedom, such sites should not give us pause. Maybe.

Dilemmas for Information Professionals

Where does this leave information professionals in light of the globalness of the Internet? What standard should we uphold? Is an absolute freedom of speech or expression a world-wide goal worth striving for? What about conflicting laws and the

transparency of Internet communications? In the US, we are seeing more discussions and debate concerning the First and Fourteenth Amendment, which guarantees equal protection under the laws, and the contention is "how can an individual feel equal in the face of racism, hatred, or harassing words?" One may also ask, "if there is hate speech, does that mean there is hate?" What is the value of *speech* itself—or *expression* itself? While some scholars (eg, MacKinnon) equate speech with action, and therefore, consider certain types of speech harmful to society, use of the equal protection amendment tends to break down legally in most cases. When we consider the Internet and its many-to-many communicative mode, assigning responsibility (either legal or moral) becomes complex. It is debatable whether use of the Fourteenth Amendment to eliminate certain types of speech or expression is a significant step away from the First Amendment and its guarantee of expression and access. It could be, however, a step towards a more just Internet environment. Canada, France, and Germany are but three countries that have firm national laws disallowing materials that incite racial violence and hatred, and these laws include Internet materials. While an international legal consensus seems unlikely, could a moral consensus be reached?

In many ways, the discussion surrounding intellectual freedom on the Internet is stuck in a descriptive mode—we assign labels to certain sites, whether in the form of PICS, or industry self regulation, or filters, etc. A more significant discussion lies in the normative realm, where also great complexities reside. With this brief discussion, this author hopes we as information ethics scholars can look for some resolution. The Internet is truly a global phenomena and its strengths may also be its weaknesses.

References

- American Library Association. (2004). Intellectual Freedom Manual. Chicago: ALA.*
- Anti-Defamation League. (2001). Responding to Extremist Speech Online*
- 10 Frequently Asked Questions. Retrieved from the World Wide Web at http://www.adl.org/issue_combating_hate/10faq_extremist_online.asp - 8*
- Center for Democracy and Technology. (2000). The Internet and human rights: An overview. Retrieved from the World Wide*

Hilden, J. (2003.) *A Recent Supreme Court Decision Allowing the Government to Force*

Public Libraries to Filter Users' Internet Access Is Less Significant Than It Might At First Appear. FindLaw's Legal Commentary. Retrieved from the World Wide Web at <http://writ.news.findlaw.com/hilden/20030701.html>

International Federation of Library Associations and Institutions. (2002). *Intellectual freedom statements.* Retrieved from the World Wide Web at <http://www.ifla.org/faife/ifstat/ifstat.htm>

Lipinski, T., Buchanan, E. & Britz, J. (2004). *Agents of Harm or Agents of Grace? The Legal and Ethical Aspects of Identifying Harm and Assigning Responsibility in a Networked World.* In *Readings in Cyberethics. (2nd Edition)* . Edited by R. Spinello and H. Tavani. Jones and Bartlett.

Peck, R. (2000). *Libraries, the first amendment, and cyberspace.* Chicago: ALA.

Simon Wiesenthal Center. (2004). *Digital terrorism and hate.* Press Release. Retrieved from the World Wide Web at http://wiesenthal.com/social/press/pr_print.cfm?ItemID=9277

Proceedings of the symposium "Localizing the Internet. Ethical Issues in Intercultural Perspective" sponsored by Volkswagen*Stiftung*, 4-6 October 2004, Zentrum für Kunst und Medientechnologie (ZKM, Karlsruhe)

^v But are legally different from "fighting words," which Peck defines as words "which by their very utterance inflict injury or tend to incite an immediate breach of peace" (2000, p. 8).

ⁱ Under the heading "Hardcore Thinspiration," one site shows a 41 year old woman weighing 48 pounds, among other images (<http://angelana.bravehost.com/xtremethinspiration.html>). On the opposite extreme, another site shows excessively overweight women: <http://broken-bits.tripod.com/id23.html>.

ⁱⁱ To protect this site from excessive research, according to their wishes, I will not list the web address.

ⁱⁱⁱ One report states that Yahoo and AOL have shut down all pro-anas on their hosting services, starting in 2002.

^{iv} J. Moor, "Reason, Relativity, and Responsibility in Computer Ethics," in *Readings in Cyberethics* (Eds. R. Spinello and H. Tavani), Boston: Jones and Bartlett, 2001.