A Gift of Fire

Fourth edition

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Chapter 3: Freedom of Speech

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What We Will Cover

- Communication Paradigms
- Controlling Speech
- Posting, Selling, and Leaking Sensitive Material
- Anonymity
- The Global Net: Censorship and Political Freedom
- Net Neutrality Regulations or the Market?

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Communication Paradigms

Regulating communications media

- First Amendment protection and government regulation
  - Print media (newspapers, magazines, books)
  - Broadcast (television, radio)
  - Common carries (telephones, postal system)

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Communication Paradigms

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 services shall be treated as a publisher of any information provided by another information-content provider.

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Communication Paradigms

Communications Decency Act of 1996

- First major Internet censorship law
- Main parts ruled unconstitutional

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Communication Paradigms

Free-speech Principles

- Written for offensive and/or controversial speech and ideas
- Covers spoken and written words, pictures, art, and other forms of expression of ideas and opinions
- Restriction on the power of government, not individuals or private businesses

Corresponding page number: 137-138

Communication Paradigms

Free-speech Principles (cont.)

- Supreme Court principles and guidelines
  - Advocating illegal acts is (usually) legal.
  - Anonymous speech is protected.
  - Some restrictions are allowed on advertising.
  - Libel and direct, specific threats are not protected.
  - Inciting violence is illegal.

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Controlling Speech

Offensive speech: What is it? What is illegal?

- Answers depend on who you are.
- Most efforts to censor the Internet focus on pornographic and other sexually explicit material

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Controlling Speech

What was already illegal?

- Obscenity
  - Depicts a sexual act against state law
  - Depicts these acts in a patently offensive manner that appeals to prurient interest as judged by a reasonable person using community standards
  - Lacks literary, artistic, social, political or scientific value

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Controlling Speech

Straining old legal standards

- The definition of "community"
- The definition of "distribution"

Corresponding page number: 140

Controlling Speech

Freedom of speech guidelines

- Distinguish speech from action. Advocating illegal acts is (usually) legal.
- Laws must not chill expression of legal speech.
- Do not reduce adults to reading only what is fit for children.
- Solve speech problems by least restrictive means.

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Controlling Speech

Internet Censorship Laws & Alternatives

- Communications Decency Act of 1996 (CDA)
  - Attempted to avoid conflict with First Amendment by focusing on children
  - Made it a crime to make available to anyone under 18 any obscene or indecent communication
- Found to be unconstitutional
  - 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

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Controlling Speech

Internet Censorship Laws & Alternatives

- Child Online Protection Act of 1998 (COPA)
  - More limited than CDA
  - Federal crime for commercial Web sites to make available to minors material "harmful to minors" as judged by community standards
- Found to be unconstitutional
  - It was too broad
  - It would restrict the entire country to the standards of the most conservative community
  - It would have a chilling effect

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Controlling Speech

Internet Censorship Laws & Alternatives

- 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
  - 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

Corresponding page number: 142-143

Controlling Speech

Video Games

- A California law banned sale or rental of violent video games to minors.
- In 2011, the Supreme Court of California ruled it violated the First Amendment.

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Controlling Speech

Alternatives to censorship

- 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?

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Controlling Speech

Alternatives to censorship

- Policies
  - Commercial services, online communities, and social networking sites develop policies to protect members.
  - Video game industry developed rating system that provides an indication for parents about the amount of sex, profanity, and violence in a game.

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Controlling Speech

Discussion Question

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

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Controlling Speech

Child Pornography

- Includes pictures or videos of actual minors (children under 18) engaged in sexually explicit conduct.
- Production is illegal primarily because of abuse of the actual children, not because of the impact of the content on a viewer.

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Controlling Speech

Child Pornography

- Congress extended the law against child pornography to include "virtual" child pornography.
- The Supreme Court ruled the law violated the First Amendment.
- The Court accepted a later law providing harsh penalties for certain categories of computer-generated and cartoon-type images.

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Controlling Speech

Sexting

- Sending sexually suggestive or explicit text or photos, usually by cellphone or social media
- Can meet the definition of child pornography if subject is under 18

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Controlling Speech

Spam

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

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Controlling Speech

Spam (cont.)

- Anti-spam Laws
  - Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act)
  - Targets commercial spam
  - Criticized for not banning all spam, legitimized commercial spam

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Posting, Selling, and Leaking Sensitive Material

"Free speech is enhanced by civility."

-Tim O'Reilly

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Posting, Selling, and Leaking Sensitive Material

- Policies of large companies
- A Web site with risks

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Posting, Selling, and Leaking Sensitive Material

- Leaks
  - Type of material
  - Value to society
  - Risks to society and individuals

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Posting, Selling, and Leaking Sensitive Material

- Leaks (cont.)
  - Examples
    - WikiLeaks
    - Climategate

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Posting, Selling, and Leaking Sensitive Material

- Leaks (cont.)
  - Potentially dangerous leaks
  - Releasing a huge mass of documents

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Posting, Selling, and Leaking Sensitive Material

Discussion Question

- *Does the value of informing the public of controversial and sensitive information outweigh the dangers and risks?*

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Posting, Selling, and Leaking Sensitive Material

- Leaks (cont.)
  - Responsibilities of operators of Web sites for leaks

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Anonymity

- *Common Sense* and Federalist Papers

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Anonymity

- Positive uses of anonymity
  - Protect political speech
  - Protect against retaliation and embarrassment
- Anonymizing services
  - used by individuals, businesses, law enforcement agencies, and government intelligence services

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Anonymity

- Negative uses of anonymity
  - protects criminal and antisocial activities
  - aids fraud, harassment, extortion, distribution of child pornography, theft, and copyright infringement
  - masks illegal surveillance by government agencies

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Anonymity

- Is anonymity protected?
  - Many legal issues about anonymity are similar to those discussed in Chapter 2.

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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?*

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The Global Net: Censorship and Political Freedom

Tools for communication, tools for oppression

- Authoritarian governments have impeded flow of information and opinion throughout history.
- The vibrant communication of the Internet threatens governments in countries that lack political and cultural freedom.

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The Global Net: Censorship and Political Freedom

Tools for communication, tools for oppression (cont.)

- 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 and block specific sites and content at the border
- Some countries ban all or certain types of access to the Internet

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The Global Net: Censorship and Political Freedom

Tools for communication, tools for oppression (cont.)

- Avoiding censorship: the global nature of the Net allows restrictions (or barriers) in one country to be circumvented by using networks in other, less restrictive countries.
- Creating censorship: the global nature of the Net makes it easier for one nation to impose restrictive standards on others.

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The Global Net: Censorship and Political Freedom

"The office of communications is ordered to find ways to ensure that the use of the Internet becomes impossible. The Ministry for the Promotion of Virtue and Prevention of Vice is obliged to monitor the order and punish violators."

- Excerpt from Taliban edict banning Internet use in Afghanistan (2001)

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The Global Net: Censorship and Political Freedom

Discussion Question

- *Will the Internet and related communication technologies be tools for increasing political freedom, or will they give more power to governments to spy on, control, and restrict their people?*

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The Global Net: Censorship and Political Freedom

Aiding foreign censors and repressive regimes

- Yahoo and French censorship
  - Yahoo, eBay and others make decisions to comply with foreign laws for business reasons
- Skype and Chinese control
  - Chinese government requires modified version of Skype

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The Global Net: Censorship and Political Freedom

Aiding foreign censors and repressive regimes

- 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

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The Global Net: Censorship and Political Freedom

Discussion Questions

- *When U.S. or other non-Chinese companies set up branches in China and comply with restrictive laws, should we view them as providing more access to information in China than would otherwise exist, albeit not as much as is technically possible?*
- *Should we view them as partners in the Chinese government's ethically unacceptable restriction on debate and access to information by its citizens?*
- *Should we view them as appropriately respecting the culture and laws of the host country?*

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The Global Net: Censorship and Political Freedom

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?*

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The Global Net: Censorship and Political Freedom

Selling surveillance tools

- Repressive governments intercept citizens' communications and filter Internet content.
- Companies in Western democracies sell them the sophisticated tools to do so.

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The Global Net: Censorship and Political Freedom

Shutting down communications in free countries

- Public safety
- In the U.S., the Supreme Court would probably declare unconstitutional a law that authorized a government agency to order a private communications service to shut down.

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Net Neutrality Regulations or the Market?

- Net Neutrality
  - Refers to a variety of proposals for restrictions on how telephone and cable companies interact with their broadband customers and set fees for services.

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Net Neutrality Regulations or the Market?

- Net Neutrality
  - Argue for equal treatment of all customers
- Market
  - Flexibility and market incentives will benefit customers

Corresponding page number: 169-171

Net Neutrality Regulations or the Market?

Discussion Questions

- *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?*

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