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Home

Home > My courses > Social And Professional Issues > 09 Regulating Internet Content > Lesson Proper for Week 9

# Lesson Proper for Week 9

## Introduction

The Internet is arguably the most effective publishing and broadcasting medium that has ever been available to the general population. It is difficult to regulate – with the result that anyone can publish anything and, in theory, anyone can view anything. It is this aspect of the Internet – the content that is transmitted – that is the subject of this chapter. What content should, or should not, be allowed, and who should make such decisions? Is free expression to be protected at all costs, or should Internet content be regulated? How do we strike the balance between freedom of expression and personal responsibility – can one exist without the other?

## In Defense of Freedom of Expression

Free speech is generally understood to mean all forms of expression across all media (not just the spoken word) and in all fields of knowledge – scientific, religious and artistic. It has been taken to broadly include openness in literature, art and music, as well as religious tolerance, the allowing of political dissent, and the right to question the existing social order. The defense of free thought and expression has a long tradition in western thought. Free speech is generally accepted as a foundation of an open, democratic society, and, as such, has come to be seen as a basic human right – unfortunately, it is a right that we often take for granted.

In his famous essay *On Liberty*, the philosopher John Stuart Mill (1806–1873) advocated the importance of free speech and thought. He argued that only by open discussion could truth emerge, and falsity be revealed. He insisted that engagement in discussion encouraged people to think for themselves rather than simply accept ideas promoted by others. The suppression of political ideas, in particular, can mean that citizens no longer have the freedom to choose their political representatives, leading to a one-party, or totalitarian, state.



The denial of free speech, and the free exchange of ideas, can also have intellectual consequences. Free speech and open discussion of ideas stimulates thinking, and the questioning of ideas. So, it can be argued that the consequence of denying free expression is the suppression of intellectual activity. History has taught us that the suppression of free thought can curtail the speed of human advancement and prevent progress – holding back artistic development and scientific discovery. The right to speak freely promotes creative thinking and stimulates intellectual activity. Often, ideas that are non-mainstream and conflict with orthodox belief are initially rejected, scorned and silenced. History is full of examples of proponents of radical or new ideas that were originally banned or discredited, but later accepted. The following are just some examples.

- The Polish astronomer Nicolas Copernicus (1473–1543) challenged the established church's view that the Earth was at the center of the universe. He suggested that observational evidence showed that the Earth orbited the sun. The dethronement of the Earth from the center of the universe caused profound shock. In 1632, the Italian astronomer and physicist Galileo Galilei (1564–1642) having conducted his own experiments, dared to agree with Copernicus. For this, Galileo was hauled up before the Inquisition, the church tribunal to combat heresy. His subsequent house arrest and recantation negatively impacted on scientific discovery in Italy for many years.
- A young woman's sensual awakening is at the heart of the book, *Lady Chatterley's Lover*, which D H Lawrence (1885–1930) called 'the most improper novel in the world'. Because of its frank depiction of sex, the book was, for many years, banned. When it was finally first published in England in 1960, it was the center of a sensational obscenity trial at the Old Bailey. Yet the author attempted, via the literature, to 'urge men and women to live, to honor the quick of themselves, to glory in the exhilarating terror of this brief life'.
- Charles Darwin (1809–1882) proposed that all present species were derived from earlier species by the process of natural selection. Thus all species on Earth are related by descent from common ancestors. Many found this concept difficult to accept – especially because it does not demonstrate that the path of evolution has a direction towards the emergence of 'higher forms' – humans in particular. Instead it is determined by the particular circumstances of time and place, that is, nature favors particular characteristics under particular environmental conditions. The idea alarmed Victorian society and the church, with their strictly biblical explanation of the origins of humanity.
- The British writer Salman Rushdie (1947–) was born in India of a Muslim family. His 1988 novel *The Satanic Verses* (the title refers to verses deleted from the Koran) offended many Muslims with alleged blasphemy. In 1989 Ayatollah Khomeini of Iran called for Rushdie and his publishers to be killed. The furor caused by the publication of the book led to the withdrawal of British diplomats from Iran. In India and elsewhere, people were killed in demonstrations against the book and Rushdie was forced to go into hiding.
- Martin Scorsese (1942–), US film director, screenwriter, and producer, often deals with the notion of sin and redemption. Among his most influential and forceful films is the 1988 film *The Last Temptation of Christ*. The film offended many Christians with its alleged blasphemy by controversially depicting the sexual thoughts and actions of Christ.

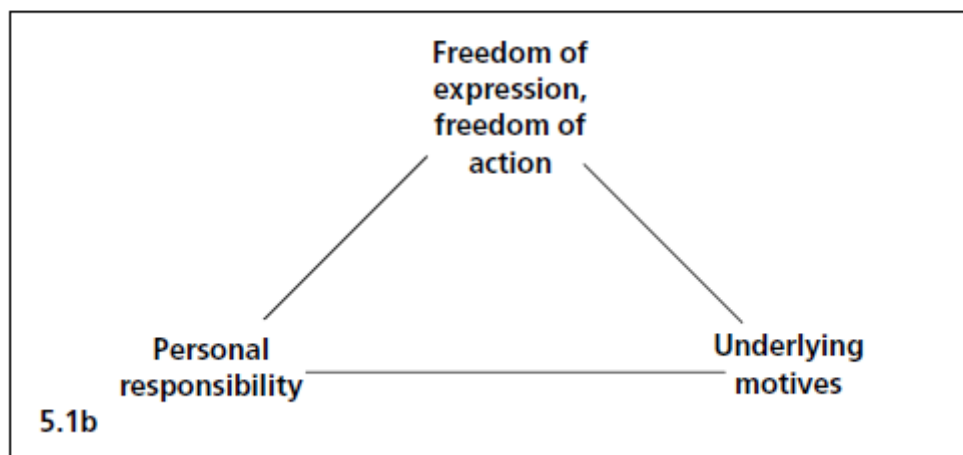
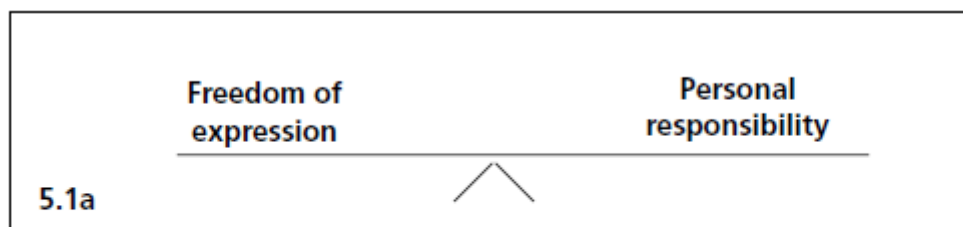


These last two examples highlight an important issue. As we depict in Figure 5.1(a), freedom of expression and personal responsibility are closely linked – and we must continually strike a balance between the two. In this sense we cherish and guard freedom of expression and at the same time use this freedom wisely. If, for example, we use freedom of expression to ferment religious hatred, then we are not acting with wisdom and the motives behind our actions need to be considered. In cases in which we seek to use freedom of expression to cause outrage (and so perhaps make a financial gain via the sales of a film or article) then we are exploiting freedom of expression for our own ends.

## Censorship

There is another, equally long, tradition of thought in which it has been argued that freedom of speech is not absolute and unlimited, and should be subject to certain restrictions. These arguments have been used to support various forms of censorship. Censorship is defined as the suppression or regulation of speech (in its broadest definition) that is considered immoral, heretical, subversive, libelous, damaging to state security, or otherwise offensive. It is the control and regulation both of what people can and cannot say or express, and what they are permitted to see, read and view. Censorship tends to be more stringent in times of war, and under totalitarian regimes. However, in many societies, there is a constant struggle over what material ought to be censored, and who should decide. In the US, for example, government agencies and various groups continually make attempts at imposing censorship. The question is often tested in the courts, especially with respect to sexually explicit material. Recently, efforts have been made to suppress certain pieces of music and works of art on the grounds of obscenity.

As we shall see later in the chapter, laws relating to obscenity, libel and national security act as a form of censorship. The media also exercise a degree of self-censorship deciding to report some stories, and not others, sometimes for legal reasons, and at other times for political or ideological reasons.



**Figure 5.1:** As indicated in 5.1a, freedom of expression is generally tempered by our sense of personal responsibility – and a careful balance (at least in principle) maintained between the two. In addition, when we make use of our right of free expression, we need to continually examine the motives that underpin our actions – see 5.1b.

## Laws Upholding Free Speech

Articles 18 and 19 of the United Nations' Universal Declaration of Human Rights, 1948 affirm the value and importance of free speech, internationally.

Protection of the right to freedom of speech is also enshrined in the legislation of individual countries. Perhaps the most well-known and widely cited of these is the First Amendment to the US Constitution, 1791. One of ten amendments made to the original US Constitution, which were designed to protect the rights of US citizens (known as the Bill of Rights), the First Amendment guarantees freedom of speech and the press, in the following terms:

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.

Similarly, in the UK the more recent Human Rights Act, 1998 states, in Article 10, that: Everyone has the right of 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 frontiers.

## Laws Restricting Free Speech

In both the US and the UK there are some categories of speech is not protected by free speech legislation. In the US the most important of these is obscene speech. US obscenity laws are complex, and there have been several cases where the meaning of the law has been tested – with different outcomes. However, the basic framework for determining 'obscene speech' is provided by the landmark case of *Miller v California* (1973). In this case, the US Supreme Court established a three-part test to determine whether or not speech was considered 'obscene'. Obscene speech, or expression, is anything that falls within all of the following three categories:

- Depicts sexual (or excretory) acts explicitly prohibited by state law
- Appeals to prurient interests as judged by a reasonable person using community standards, and
- Has no serious literary, artistic, social political or scientific value.

Under these conditions, the depiction of child pornography is a clear example of obscene speech, and is illegal under US federal law.



A second class of 'obscene' speech, often called indecent speech, is that which is permissible for adults, but to which children under the age of seventeen should not be exposed. Indecent speech is considered speech that is harmful to minors. Sale of such speech to anyone under the age of seventeen is illegal. In the landmark case of *Ginsberg v New York*, 'harmful to minors' was defined as follows:

'That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:

- Predominantly appeals to prurient, shameful, or morbid interests of minors, *and*
- Is patently offensive to prevailing standards in the adult community as a whole with what is suitable for minors, *and*
- Is utterly without redeeming social importance for minors.'

Although state legislatures and local communities have applied these standards of 'obscenity' and 'indecenty' differently, these criteria have served as a general guide to what speech should be 'off limits' to everyone, and what should be 'off limits' to children under the age of seventeen.

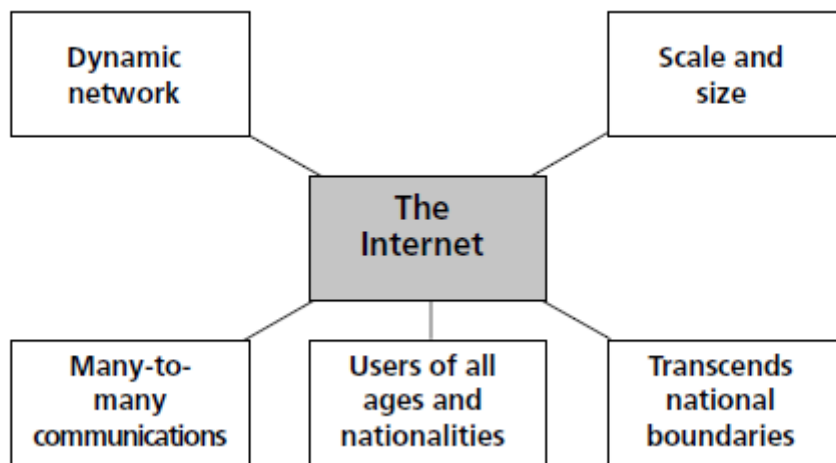
## Free Speech and the Internet

The Internet has raised a whole range of new questions and issues regarding appropriate content and appropriate regulation of that content in different contexts. Among the most problematic forms of speech on the Internet have been pornography, hate speech and forms of expression connected with terrorism or political dissent. However, many of the challenges posed by the Internet are the result of the characteristics of the Internet itself. Quinn (2004) suggests that there are five such characteristics (see Figure 5.2) which have made censorship more difficult:

- **Many-to-many communications:** unlike traditional one-to-many broadcast media, the Internet supports many-to-many communications. Whereas it is relatively easy for a government to shut down a newspaper or a radio station, it is very difficult for a government to prevent an idea from being published on the Internet, where millions of people have the ability to post web pages
- **Dynamic:** the Internet is dynamic: millions of new computers are being connected to the Internet each year
- **Scale and size of the Internet:** the Internet is huge. There is no way for a team of human censors to keep track of everything that is posted on the Web. While automated tools are available, they are fallible. Hence any attempt to control access to material stored on the Internet cannot be 100% effective
- **Global:** the Internet is global. National governments have limited authority to restrict activities happening outside their borders



· **Users – adults and children:** it is hard to distinguish between children and adults on the Internet, and it is difficult for ‘adult’ websites to verify the age of someone attempting to enter their site. In the early days of the Web, young children were not likely to come upon pornography by accident. Search engines and web browsers changed this. Pornography now arrives in e-mail, and porn sites turn up in lists found by search engines for many innocent topics.



**Figure 5.2:** Quinn [2004] suggests five facets of the Internet that make it difficult to effectively introduce censorship. This is not an exhaustive list and you may wish to spend a little time considering other aspects of the Internet that impact on the ability of governments to impose censorship.

◀ Preliminary Activity for Week 9

Jump to...



Analysis, Application, and Exploration for Week 9 ▶

## Navigation

Home

 Dashboard

Site pages

My courses

Capstone Project 1

Network Attacks: Detection, Analysis & Counter...

Ojt/Practicum 1

Social And Professional Issues

Participants

General

06 - Preliminary Examination


08 Intellectual Property Rights (Cont.)


09 Regulating Internet Content



 Preliminary Activity for Week 9

 **Lesson Proper for Week 9**

 Analysis, Application, and Exploration for Week 9

 Generalization for Week 9

 Evaluation for Week 9

 Assignment for Week 9

System Integration And Architecture 2

Courses

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## Activities

 Assignments

 Forums

 Quizzes

 Resources

