

Module CS5052NI

Professional Issues, Ethics and Computer Law

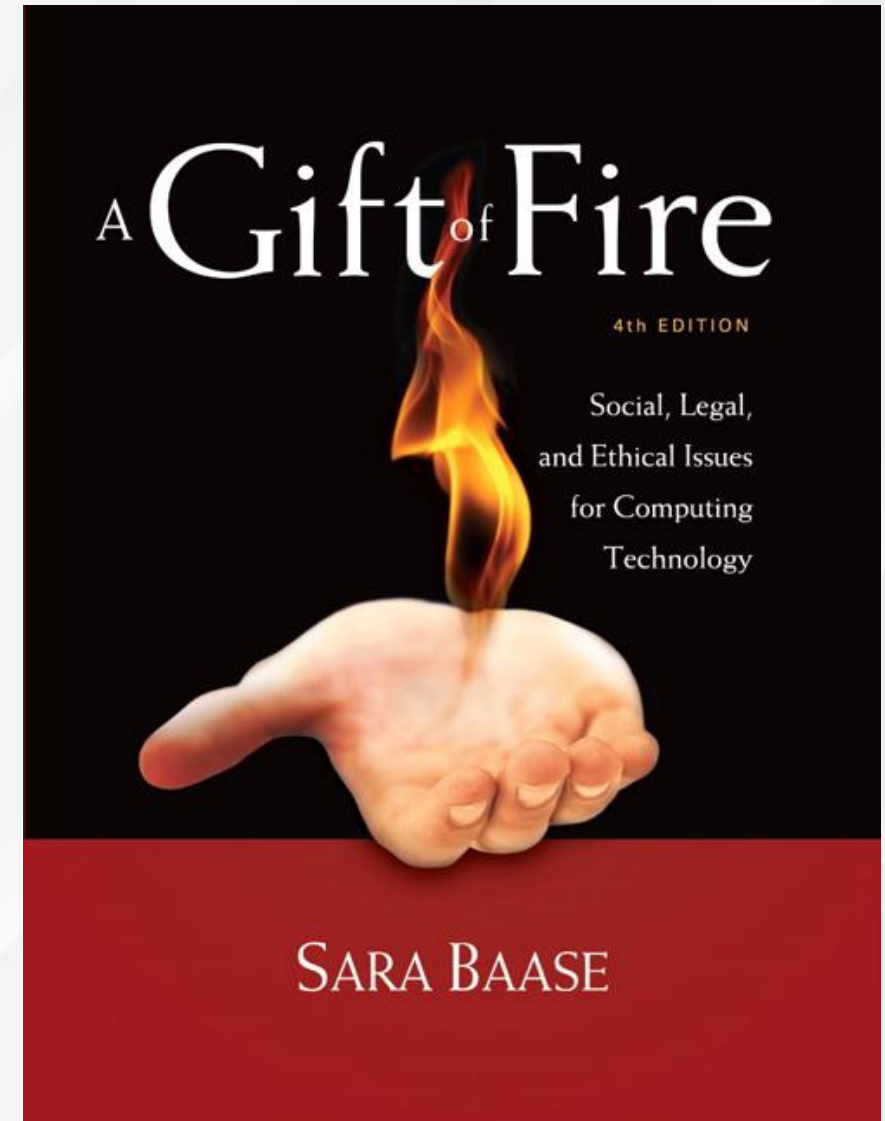
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A Gift of Fire

Fifth edition

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Chapter 3: Freedom of Speech



Agenda

- What we covered last week
 - Privacy
- What we will cover this week
 - Communication Paradigms
 - Controlling Offensive Speech
 - The Global Net: Censorship and Political Freedom



Historical Account

- Concept of freedom of speech can be found in early human rights documents.
- Throughout the course of history great people like Aristotle, Galileo, Hazrat Imam Abu Hanifa etc. have laid their lives for **Freedom of Speech**
- The ancient Greek word “**parrhesia**” means “free speech,” or “to speak candidly.” The term first appeared in Greek literature around the **end of the fifth century B.C.**



Global Recognition

- Free speech is a globally recognized human right and is protected and recognized by the **article 19 of the Universal Declaration of Human Rights**.
- **Universal Declaration of Human Rights** states that
 - "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 and regardless of frontiers."



Communication Standards

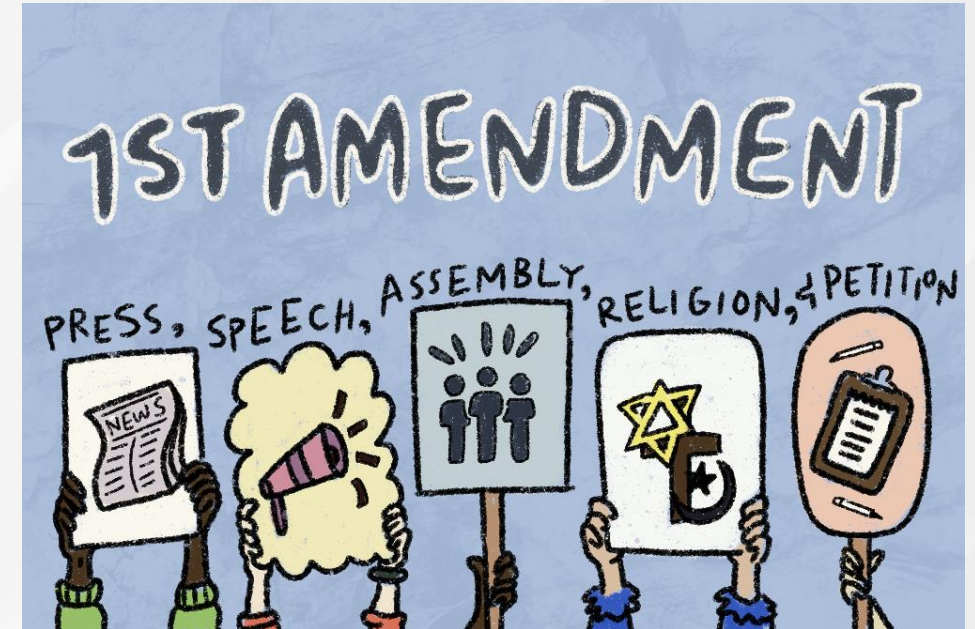
- The three categories of communication related to the First Amendment protections:
 - Print Media (Newspapers, Magazines, Books)
 - Strongest First Amendment protection
 - Broadcast Media (Television, Radio)
 - Less First Amendment protection than print media
 - Common Carriers (Telephones, Postal System)
 - Content not controlled and the carrier is not responsible for content.



Communication Paradigms

The First Amendment

- Protects Citizens From Government
 - Prohibits restriction of speech, press, peaceful assembly, and religion.
- Subsequent Interpretations Address:
 - Offensive and/or controversial speech and ideas,
 - Spoken and written words,
 - Pictures, art, and other forms of expression and opinion
 - Commercial speech (e.g. advertising).



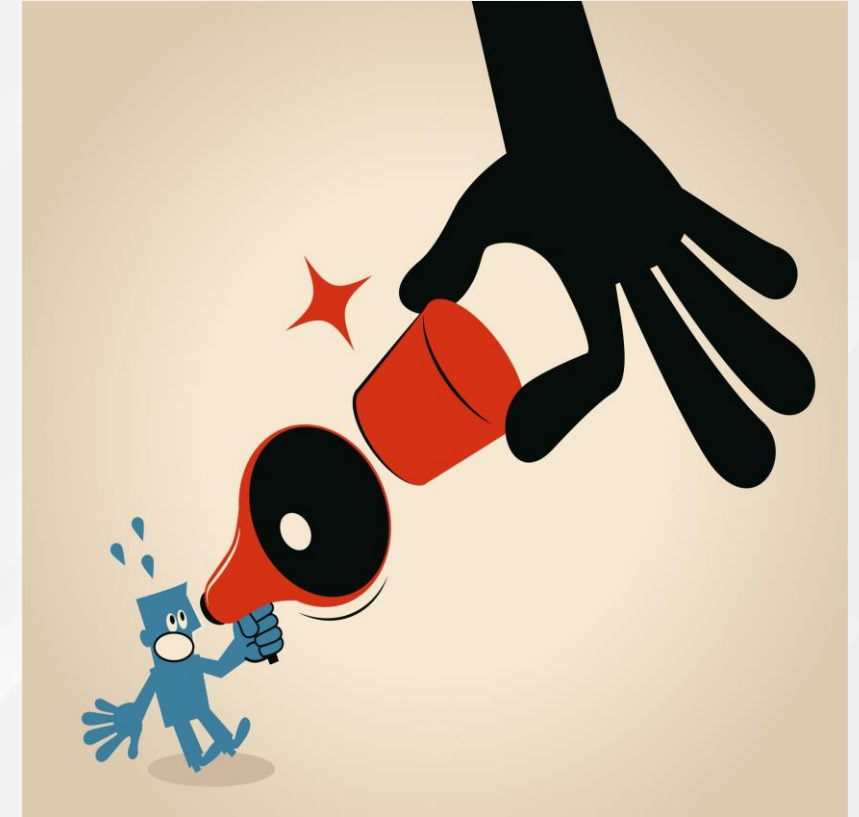
Communication Paradigms: Telecommunication Act of 1996

- No provider or user of interactive computer services shall be treated as a publisher of any information provided by another information- content provider.
- The goal of this new law is to let anyone enter any communications business. And free up the market in the communications industry.
- Has the potential to change the way we work, live and learn.
- Service providers remain at risk in many countries.
- For example, the head of eBay in India was arrested because someone sold pornographic videos on eBay's Indian site even though the video itself did not appear on the site and the seller violated company policy by selling them.
- **The Communications Decency Act of 1996** was an attempt to regulate pornographic material on the Internet.

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



History

- Government of Nepal Act, 1948
- Interim Government of Nepal Act, 1951
- Constitution of the Kingdom of Nepal, 1959
- Constitution of the Kingdom of Nepal, 1990
- Interim Constitution of Nepal, 2007
- Constitution of Nepal, 2015
- Guaranteed right to freedom of thoughts and expression, Cultural and Educational rights and Right to hold any occupation.



Constitution of Nepal

- **State of Nepal:** Nepal is an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented, federal democratic republican state.
- **Right to live with dignity:** Every person shall have the right to live with dignity. No law shall be made providing for the death penalty to anyone.
- **Right to freedom:** No person shall be deprived of his or her personal liberty except in accordance with law. Every citizen shall have the following freedoms:
 - Freedom of **opinion and expression**, Freedom to **assemble peacefully and without arms** Freedom to **form political parties**
 - Freedom to **form unions and associations** Freedom to **practice any profession**, carry any occupation, and establish and operate any industry, trade and business in any part of Nepal. Provided that they follow reasonable restrictions on any actions that undermine sovereignty, nationality and independence.

Right to equality:

- All citizens shall be **equal before law**. No person shall be denied the equal protection of law.
- **No discrimination shall be made** in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds.
- The State shall **not discriminate citizens** on grounds of origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology or on similar other grounds.

Understanding Freedom of Speech

Regulating Communications Media:

- The right to speak without **censorship** or **restraint by the government**.
- Freedom of expression includes any act of seeking, receiving and impairing information of ideas regardless of the medium used.
- **No publication and broadcasting** or dissemination or printing of any news item, editorial, feature article or other reading, audio and audio-visual material **through any means whatsoever** including electronic publication, broadcasting and printing **shall be censored**.
 - Provided that they **impose reasonable restrictions** on and follow the law.

Regulating Communication Media

- It is by now almost a true to say that the Internet lets us all be publishers. We do not need expensive printing presses or complex distribution systems. We need only a computer or a cellphone. Any business, organization, or individual can set up a website.
- We can “publish” whatever we wish; it is available for anyone who chooses to read it
- Likewise, it has also provided the Right to Press and Publication stating that no reading materials shall be censored.
- Generally, the guarantees also imply to the advertising that helps in development of independent media.
- **Advertising** has been **recognized as the basic source of revenue** even during the **Panchyat Regime** but was biased to allies of government supporting press.

Example: Censorship

- The Tobacco Product (Control and Regulation) Act, 2010 : the primary law governing tobacco control in Nepal and regulates, among other things, smoking in public places, workplaces and public transport; tobacco advertising, promotion and sponsorship; and tobacco packaging and labeling.



Censorship types in Nepal

- **Press:** According to the Article 115 of the 1990 Constitution, any form of censorship was outlawed, and a free press was strongly guaranteed with announcement of parliamentary
- Example: in May 2012, he publicly threatened journalists as he felt they did not effectively report ethnic issues.
- NEFIN supporters attacked several journalists and vandalized journalists' property.
- Nepali media **increased coverage of abuses of power and corruption** and demanded accountability and thereby helped the fledgling democracy make great strides.



Censorship types in Nepal

- **Internet:** The government controls the Internet in Nepal. Self censorship can be forced on internet content by intimidation as happened in the case of a satirical folk song [Lutna Sake Lut](#)
- **Nepal Communist Party, especially, Youth Federation Nepal,** released a strong statement against the song, discouraging the public from listening to Sharma.



Censorship types in Nepal

- **Film:** The Film Censor Board was established in 1951 to work as a machinery of state control.
- **Political Censorship:** Any forms of publications that contain political thoughts or opinions are censored by the government.
- **Religious Censorship:** Nepal had an official religion as Hinduism until the government declared democracy of state in 2006. Nevertheless, the government controls the religious expression or defamation, especially when it publicly dissents Hinduism or does not comply rules of it.

Chhakka Panja 4's TikTok leak: Unpreparedness of makers and regulators is exposed.

- On March 3, two Nepali most awaited films **Chhakka Panja 4** and **Chhadke 2.0**—two hyped projects of the Nepali film industry—were released. As soon as the films were released nationwide, around 15-minute long clips of both films—including some milestones of the plots—started spreading all over social media, especially on TikTok and YouTube.
- Saying this breached the copyrights, the digital rights holder of Chhakka Panja 4, OSR Digital, even filed a complaint **with Nepal Police Cyber Bureau**, to prevent the spread of clips. But if you scroll TikTok even today, you can frequently see the various clips from Chhakka Panja 4 and Chhadke 2.0.
- Stakeholders say legal reforms—including the implementation of existing laws and the introduction of new ones—are a must to control such incidents in the future.



Chhakka Panja 4's TikTok leak: Unpreparedness of makers and regulators is exposed.

- As per Nepali laws, the pirates would be punished under the **Copyright Act**; if the crime is committed on digital platforms, **the Electronic Transactions Act** also applies.
 - **Under the Copyright Act**, the offender shall be punished with a **fine of Rs 10,000 to Rs 100,000 or six months imprisonment or both as per the nature of the infringement.**
 - Similarly, under the **Electronic Transactions Act**, the offender shall be liable to the **punishment of imprisonment not exceeding three years or with a fine not exceeding Rs 2,00,000 or both.**
- But, the implementation of copyright-related laws is miserable. According to the District Police Range of Kathmandu, in the **past eight months since the beginning of the current fiscal year**, **only one complaint related to copyright violation has been registered.**
- In the previous fiscal year 2021/22, there were **two complaints registered.** In the fiscal year 2020/21, **there was only one case.**

Example:

- In 2012, paintings of Hindu gods and goddesses Manish Harijan depicted in superhero costumes and innocuously displayed in the Siddhartha Art Gallery were considered as offensive to Hinduism, and the police shut down the gallery.
- A case was also filed at the District Administration Office by one Sindhu Pathak accusing Harijan of vulgarity



// kindly go to 'IN

March 29, 2022

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Example:

- Artists and other members of the public held a **protest** in front of the District Administration Office, which led to talks between the chief district officer, the artist and the gallery owner, **and the gallery was reopened.**
- An artist has the right to put forth his personal views. Besides the fact that this is a gross violation of the freedom of expression,



Manish Harijan, The Kali - Odalisque, 2016, © Manish Harijan, Collection Prithivi Bahadur Pande

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Threat to press freedom

- **Bills introduced by** Nepal Communist party (NCP)
- Jail terms of up to five years could be imposed on people in [Nepal](#) who post “offensive” comment on social media sites, including Facebook and Instagram in the latest move by the government to crack down on dissent.
- The [information technology bill](#), introduced at the end of December 2019, imposes fines of up to **1.5m rupees (about \$13,000)** for anyone posting content deemed to promote hate crime or ridicule. It would apply to all social networking sites.
- “Special service bill” that would allow the National Investigation Department to collect information without a warrant or court order.

Controlling Offensive Speech

Speech Might Include:

- Political or religious speech.
- Pornography.
- Sexual or racial slurs.
- Nazi materials.
- Libelous statements.
- Abortion information.
- Alcohol ads.



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
- Example: **The Chinese government restricts reporting of emergencies (such as major accidents or disasters) and how the government handles them.**
- The French government approved a law **banning anyone except professional journalists from recording or distributing video of acts of violence.**

What was already illegal?

- **Obscenity:** The First Amendment does not protect **obscurity** (offensiveness) .
 - Material is considered obscene if all three parts are met:
 - 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**



Freedom of speech principles

- 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 obstructive means.

Communications Decency Act of 1996 (CDA)

- States that: “the Internet deserves the highest protection from government intrusion.”
- 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
- It was too vague and broad, and it did not use the restraining means of accomplishing the goal of protecting children.

Child Online Protection Act of 1998 (COPA)

- More restricted 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 would threaten art, news, and health sites.
- After more than 10 years of lawsuits and appeals, COPA died in 2009.
- It would restrict the entire country to the standards of the most conservative community as Web is accessible everywhere.
- It would have a chilling effect as COPA would **restrict access to a substantial amount of online speech** that is legal for adults and would have an unconstitutional frightening effect on free speech.

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

Video Games

- A California law banned sale or rental of violent video games to minors in 2011 and ruled it violated the First Amendment.
- The interactivity of video games has a more powerful impact on children than passively watching television or reading a violent story.
- The California Supreme Court ruled that “disgust is not a valid basis for restricting expression.” The impact of video games on children’s feelings found to be small and differed little from other media.

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?

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.

Controlling offensive Speech

Child Pornography

- Includes pictures or videos of actual minors (children under 18) engaged in sexually obvious demeanor.
- Production is illegal primarily because of abuse of the actual children, not because of the impact of the content on a viewer.
- Laws against creating, possessing, or distributing child pornography predate the Internet. They cover a broad range of images, many of which would not meet the definition of illegally obscene material if the person depicted were an adult.

Controlling offensive 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
- **Legislatures in a few states have made it a misdemeanor, rather than a felony, if a younger person sends an illegal photo to another young person of similar age.**
- Some have reduced or eliminated penalties if photos were distributed (among minors) with the consent of the person in the picture.

Controlling offensive Speech

- The term *spam*, was adopted in the 1990s to mean unsolicited bulk email. It now applies to text messages, tweets, and phone calls as well.
- Spam developed because email is extremely cheap compared to printed direct-mail advertising.
 - What's the problem?
 - Mostly commercial advertisement
 - Angers people because of content and the way it's sent
 - Spam filters do not violate free speech (free speech does not require anyone to listen)

Spam

- Anti-spam Laws
 - Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act)
 - CAN-SPAM act covers labeling of advertising messages (for easier filtering), opt-out provisions, and methods of generating emailing lists.
 - Targets commercial spam
 - Criticized for not banning all spam, legitimized commercial spam

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.
- 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

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
- Example: In 2006, Google disappointed many free speech and human rights advocates by introducing a **Chinese version google.cn**, that would comply with Chinese law. Its search results did not show sites with banned content.

Selling Surveillance Tools

- Companies in Western democracies sell them the sophisticated tools to do the governing bodies.
- The companies say the tools are for criminal investigations.
- Repressive governments intercept citizens' communications and filter Internet content.

Shutting down communications in free countries

- Public safety
- In England the **Bay Area Rapid Transit system (BART)** in the San Francisco Bay Area shut off wireless service at some of its subway stations to “use mobile devices to coordinate, disruptive activities and communicate about the location and number of BART Police.”
- Did it threaten freedom of speech, or was it a legitimate safety decision?

Censorship of YouTube

- Countries where access to YouTube has been blocked
- China, Afghanistan, Armenia, Bangladesh, Brazil, Finland, Germany, Indonesia, Iran, Libya, Malaysia, Morocco, North Korea, Pakistan and many more.
- Violations of national laws, including:
 - Copyright and intellectual property protection laws;
 - Violations of hate speech, ethics, or morality-based laws; and
 - National security legislation.

The Global Net: Censorship and Political Freedom

- State authorities have jailed more users for their online writings, while criminal and terrorist groups have made public examples of those who dared to expose their activities online.
- This was especially evident in the Middle East, where the public flogging of liberal bloggers, life sentences for online critics, and beheadings of internet-based journalists provided a powerful deterrent to the sort of digital organizing that contributed to the Arab Spring.



Jamal Khashoggi death in Saudi Arabia.

Any questions?



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