

INFO 350

The Value of Speech

- Let's review the quiz

FREEDOM OF SPEECH



What are some examples of "controversial speech" online?




W

There are some types of speech that should be banned or blocked online

Yes

No

I am not
sure

NATIONAL

Charlottesville Jury Convicts 'Unite The Right' Protester Who Killed Woman

December 7, 2018 · 5:30 PM ET

VANESSA ROMO





Image: Shutterstock / Composition: Louise Matsakis

Neo-Nazi website the Daily Stormer has found itself in an increasingly heated battle with technology companies that it relies on to operate after it posted an article mocking [Heather Heyer](#), who was killed at the [white-nationalist](#) march in Charlottesville, Virginia on Saturday.

Both its domain provider, GoDaddy, and Zoho, the company which provides its email server, have dropped the hate website as a customer. Google also dropped the site as a customer. Notably, Cloudflare, a security firm which the Daily Stormer uses, continues to lend its services to the hate-speech website.

Sunday night, GoDaddy announced on Twitter that it would give the site "24 hours to move the domain to another provider, as they have violated our terms of service."

YouTube is still plagued with disturbing kids' videos

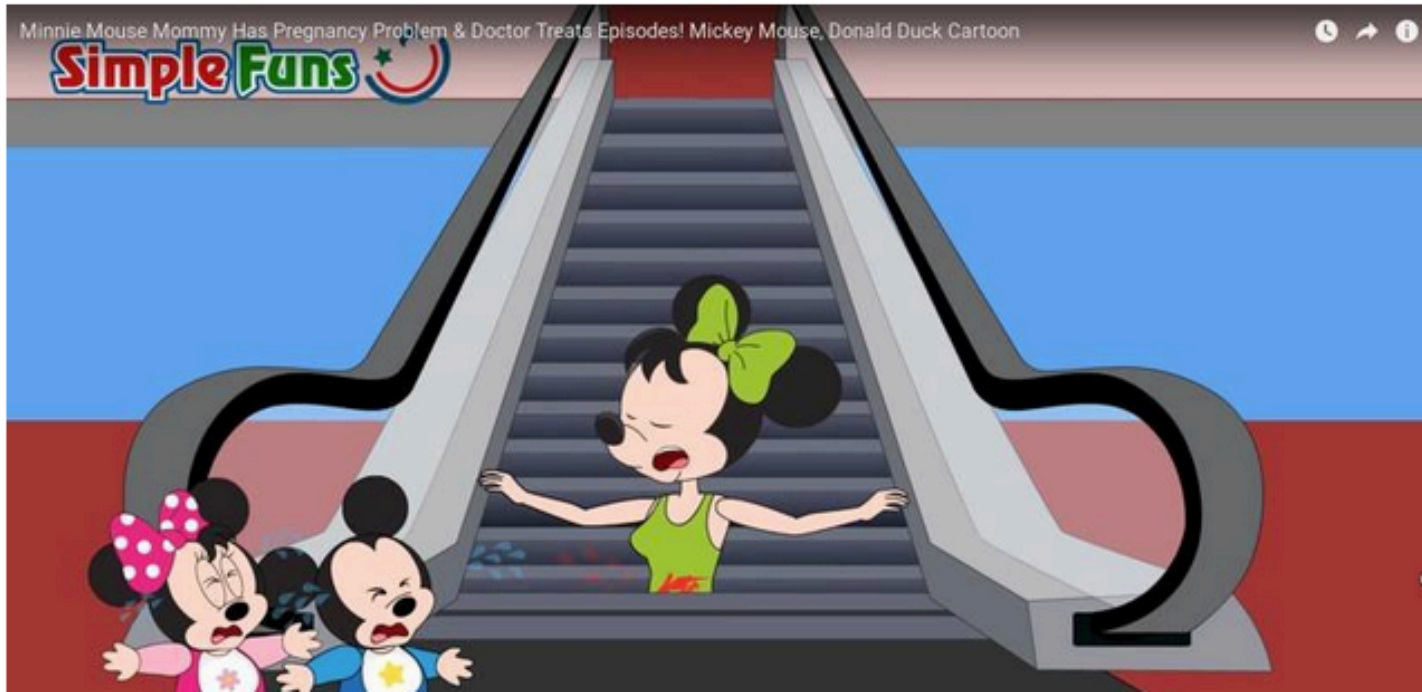
The company says it's working to fix the problem.



Mallory Locklear, @mallorylocklear
03.23.18 in [AV](#)

Comments

1122
Shares



- *Wired* came across videos showing animated characters attempting suicide, setting each other on fire, gouging their eyes out and being violently maimed by an escalator. In many cases, these videos featured knock-off depictions of beloved cartoon characters, such as Minnie Mouse and Peppa Pig. And these videos didn't even have to be sought out. *Wired* found some of them just by following the recommended videos in YouTube's suggested video bar.

The school bully has moved online and is following children home

Teachers and parents struggle to recognise the problem or to solve it



DISCUSSION QUESTION (IN-LECTURE 4/25)

- Most of the types of content in the preceding slides would be banned or rarely seen on broadcast television.
- This is because television and radio stations are subject to regulations for their content (indecentcy, other content restrictions)

Internet platforms, under §230 of the CDA, are generally not subject to content restrictions. They “self-govern”

If Americans appear to accept subjecting one type of major media to regulated speech, why not subject internet platforms to the same?

Would it be better to treat TV and radio like 4Chan and Reddit instead?

RATIONALES FOR FREE SPEECH

- **Greenawalt** offers the most common rationales in defense of a right to free speech and explains them fairly well.
- They are:
 - The Free Market of Ideas (aka “truth discovery”)
 - Check on Power (defeating government secrecy)
 - Autonomy / Rationality
 - Personal Development / Dignity & Respect
 - Liberal Democracy / Consent of the Governed
 - Promotion of Tolerance

CONSEQUENTIALISM V. NON-CONSEQUENTIALISM

Consequentialism is...

- Concerned with *consequences*.
- Goodness of consequences.
 - Utilitarianism – do/allow what produces the greatest net “utility.”

Non-consequentialism is focused on other things:

- Kantianism (aka deontology) – focused on what is doing what is *right*
- Social contract theory – we tacitly *agree* to a set of conditions that obligates us and others.

RATIONALES FOR FREE SPEECH

Consequentialist Justifications

RATIONALES FOR FREE SPEECH – TRUTH DISCOVERY

Truth Discovery:

- Suppression of speech may limit the flow of true or partly true ideas
- Marketplace of ideas argument: Mill argued that, if voice is given to a wide variety of views over the long run, true views are more likely to emerge than if the government suppresses what it deems false.
 - A wide variety of views expressed over the long run will allow the truth to come to light.

MARKETPLACE OF IDEAS

- Court has invoked the marketplace concept as a theory of free expression
- The first reference to the marketplace of ideas was by Justice Oliver Wendell Holmes Jr. in *Abrams v. United States* (1919).
 - Dissenting from a majority ruling that upheld the prosecution of an anarchist for his anti-war views under the Espionage Act of 1917, Holmes stated: “But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by **free trade in ideas** — that the best test of truth is the power of the thought to get itself accepted **in the competition of the market**, and that truth is the only ground upon which their wishes safely can be carried out.”
- Since this first appeal to the marketplace of ideas as a theory of free expression, it has been invoked hundreds if not thousands of times by the Supreme Court and federal judges to oppose censorship and to encourage freedom of thought and expression, **including decisions that struck down key provisions of the Communications Decency Act.**

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Problems for Truth Discovery

- "true or not, some ideas are too destructive of a social order to be tolerated." [basically, the ANTIFA argument].
- "contained optimism that people have some ability *over time* to sort out true ideas from false ones..."

RATIONALES FOR FREE SPEECH - DETERRENCE

Exposure and Deterrence of Abuses of Authority

- Free expression (particularly a free press) is a check on power. Makes it possible to hold authority to account, deterring bad behavior.
- "What people do is partly dependent on what they think will become known"

Problems for Exposure and Deterrence argument

- Assumes that discovery of malfeasance is relatively straightforward.
- Contemporary debates about "fake news" suggest that the truth can be muddled.
- Shrewd actors (including politicians) learn to "game the system" and modulate their behavior to remain just below the threshold of detection.
- Example: Companies hiding unethical moves in complex corporate structures (see 2008 financial crisis and Enron scandals).

RATIONALES FOR FREE SPEECH - AUTONOMY

Autonomy: Independence of Judgement and Considerate Decision:

- "By affording people an opportunity to hear and digest competing positions and to explore options in conversation with other, freedom of discussion thought to promote independent judgement and considerate decision."

Problems for Autonomy/Independent Judgement Argument:

- Presumes that people are in fact autonomous and rational. [Or not so easily manipulated, relative to the speaker, such as with advertising, alternative truth, etc.]
- Presumes that speech implies understanding, or critical reflection.
- Presumes people are *more* autonomous with free speech: "it is possible that a certain kind of freedom lulls people into a passive acceptance of things as they are, whereas strict suppression forces them to focus on their values."

RATIONALES FOR FREE SPEECH – DEVELOPMENT & DIGNITY

Emotional outlet, personal development, and sense of dignity

- "indispensable outlet for emotion and a vital aspect of the development of one's personality and ideas."
- Being heard by others generates self-respect
- Speech alone is not sufficient. Other features of society must be promoted to achieve this good.

RATIONALES FOR FREE SPEECH - DEMOCRACY

Liberal Democracy:

- "liberal democracy rests ultimately on the choices of its citizens...a better informed citizenry will yield a better government and better political decisions."
- Provides an outlet for frustrations about undesired political events [goodness of complaining]

Problems for Democracy-promoting Argument:

- Similar to autonomy and independent judgement argument...Assumes free speech implies being "better informed."

RATIONALES FOR FREE SPEECH - TOLERANCE

Promotes Tolerance:

- Hearing the speech of "detested groups" promotes toleration

Problems for Toleration Argument:

- Does horrible speech really make us more tolerant of the speaker?
- Toleration can be accomplished in other ways.

RATIONALES FOR FREE SPEECH – AUTONOMY (NON-CONSEQ)

Non-consequentialist Justifications:

Autonomy and rationality:

- Government should treat its citizens with respect as autonomous rational agents.

Problem for Autonomy and Rationality argument:

- Citizens may not act rationally and government has a duty of care - to protect us from irrationality
- Social contract applies here: what would citizens have agreed to in a social contract? They would likely agree to be treated as rational, autonomous agents AND to be protected from irrational inclinations.

RATIONALES FOR FREE SPEECH - DIGNITY

Non-Consequentialist Justifications

Dignity and Equality:

- Closely related to the former. Government ought to treat citizens with the basic human respect by not preventing them from speaking and listening.
- This is an essentially Kantian notion – humans are essentially deserving of dignity and respect, as we would respect ourselves.

RATIONALES FOR FREE SPEECH

Greenawalt's Conclusion:

- All things considered...
- Speech rights have special value. A government should be hesitant to punish verbal or written expression even when it has made a judgment that the expression is potentially harmful.
- Also: free speech follows from a minimal principle of liberty - the government should do as little as possible to constrain the actions of the people.

DISCUSS

- Do Greenawalt's descriptions of the value of free speech apply to today's opportunities and venues for speech?
- How are the justifications still applicable? How are they not?
- Can you think of any specific examples that either confirm or reject any of Greenawalt's views?
- One: Think about this and post a few lines about your thoughts in the Discussion prompt
- Two: Connect with a partner and trade thoughts on this – look for areas of agreement/disagreement
- Four: Pair up with another group and continue the discussion.