

ITMM 485 / 585

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Legal and Ethical Issues in
Information Technology



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Ch7: Cybercrime and Technology-Facilitated Crime

P4: Cybercrime, Journalism and Free Press, and Law Enforcement



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Learning Objectives:

Upon completion of this lesson the students should be able to:

- Define “active defense hacking” or counter hacking, and discuss whether or not it might be morally permissible
- Explain how law enforcement may use biometric technology in identifying criminals and terrorists and discuss the ethical permissibility of these techniques
- Recall and describe the differences between cybercrime and cyber-related crime
- Explain why jurisdictional issues are problematic in prosecution of cybercrime
- Describe journalistic practices used by organizations such as WikiLeaks, and discuss whether these practices are defensible under a free press or are criminal

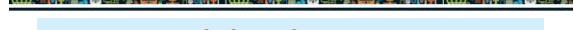
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Cybercrime and the Free Press: The WikiLeaks Controversy

- A relatively recent challenge for law enforcement in cyberspace, especially at the international level, has emerged in response to controversial “journalistic” practices involving some new online media outlets and organizations.
- Do these practices explicitly violate existing laws, in which case they would clearly qualify as criminal?
- Or, should they be viewed as journalistic activities that are protected by a free press?
- This question lies at the heart of the WikiLeaks controversy.

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Module Objectives:

Upon completion of this lesson the students should be able to:

- Describe journalistic practices used by organizations such as WikiLeaks, and discuss whether these practices are defensible under a free press or are criminal

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WikiLeaks (Continued)

- WikiLeaks was founded in 2006 (allegedly under the direction of Julian Assange, who has since become the “face of WikiLeaks”).
- WikiLeaks describes itself as a “not-for-profit media organization” and claims that its main objective is “to bring important news and information to the public” by publishing original source material so that readers “can see evidence of the truth” (<http://wikileaks.org>).
- WikiLeaks states that it accepts (but does not solicit) sources of information that are anonymous.

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WikiLeaks (Continued)

- WikiLeaks states that unlike the other outlets, it provides a "high security anonymous drop box."
- It also states that when it receives new information, the organization's journalists analyze and verify the material, before writing a "news piece about it describing its significance to society."
- The organization then publishes "both the news story and the original material" so that readers can analyze the story "in the context of the original source material themselves" (<http://wikileaks.org/About.html>).

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WikiLeaks (Continued)

- We analyze the WikiLeaks controversy in terms of three key questions:

 1. Can WikiLeaks' practices be justified on ethical grounds (even if they may be criminal)?
 2. Do WikiLeaks' practices clearly violate existing laws (and thus rise to the level of a crime)?
 3. Should WikiLeaks' practices be interpreted as a new form of journalism (and thus be protected under the provisions of a free press)?

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Are WikiLeaks' Practices Ethical? (Continued)

- Floridi (2013) also identifies two key problems with trying to defend WikiLeaks' (whistleblowing) activities on ethical grounds, noting that this organization's:

 - 1) motivation was based on resentment (and the intent to cause harm to its target),
 - 2) activities put some innocent people at risk.

- Floridi further argues that WikiLeaks' activities cannot be ethically justified on either consequentialist or deontological grounds (see Chapter 2).

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WikiLeaks (Continued)

- By 2010, WikiLeaks had released thousands of controversial documents, in redacted form, which included the following three items:
 - 1) a video of a U.S. helicopter attack in which the crew members allegedly fired on and killed innocent civilians, in addition to enemy soldiers;
 - 2) two large scale documents involving the Iraq and Afghanistan Wars;
 - 3) several U.S. State Department diplomatic cables.

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Are WikiLeaks' Practices Ethical?

- WikiLeaks claims that it complies with "ethical principles" ([see http://wikileaks.org/About.html](http://wikileaks.org/About.html))
- But Weintraub (2010) raises two kinds of concerns that challenge WikiLeaks' claim regarding that organization's compliance with ethical principles, when he notes both that the leaks involved were:
 - i. "vast and indiscriminate";
 - ii. intended more to "embarrass" rather than to "fix."

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Are WikiLeaks' Practices Criminal?

- Even if WikiLeaks' activities are unethical, we can ask whether they cross the threshold of criminal behavior and whether they rise to the level of a cybercrime?
- If so, what specific criminal statutes do they violate?
- Some U.S. government officials argue that Julian Assange (as the generally recognized leader of WikiLeaks) should be prosecuted under the U.S. Espionage Act.
- Others argue that WikiLeaks should be placed on the list of terrorist organizations that includes Al Qaeda.

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Are WikiLeaks' Practices Criminal (continued)?

- Despite widespread international support for prosecuting Assange (as WikiLeaks' leader), some countries see the matter differently.
- For example, law enforcement authorities in Australia, where Assange is a citizen (but does not currently reside), are not convinced that he has violated any Australian laws.
- Also, some legal analysts, and some U.S. legal scholars (such as Harvard law professor Yochai Benkler), do not believe that WikiLeaks' activities qualify as criminal under American Law.

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WikiLeaks and the Free Press

- Benkler believes that WikiLeaks' activities were "fundamentally a moment of journalistic exposure."
- He also believes that the public and political response was overstated, overheated, and irresponsible.
- If Benkler is correct, then it would seem that the journalistic protections consonant with a free press should also apply to WikiLeaks.

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WikiLeaks and the Free Press...

- Weinke (2010) would disagree with Benkler's view.
- Weinke argues that if WikiLeaks' motivation had been simply "to disseminate factual information, there would have been little distinction between an attempt to prosecute Assange or other WikiLeaks organizers and "more established media outlets" such as the *New York Times* and its journalists.

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WikiLeaks and the Free Press...

- Weinke's critics would likely point out that it was precisely the status of so-called "factual information" previously reported in the media that was being challenged in some of the leaked documents and reports.
- Critics might further point out that exposing (and correcting) false information previously reported in the press is an important part of "responsible journalism."

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WikiLeaks and the Free Press...

- Can the WikiLeaks organization qualify as a traditional journalistic organization, in which case it would also qualify for the legal protections that apply to traditional journalists and their organizations?
- Benkler argues that WikiLeaks can best be understood as participating in a new kind of "joint venture" with "other traditional news organizations."

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WikiLeaks and the Free Press...

- Benkler believes that WikiLeaks has helped to form a new mode of journalism (or what he calls a new "journalistic enterprise") – i.e., one that cannot be adequately understood simply as a "traditional media organization."
- But we can still ask whether this "new" kind of media organization deserves the same legal protections that have been accorded to traditional media outlets and their journalists.

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What happened with WikiLeaks?

- A bi-partisan group of members of Congress urged the Biden administration to drop the charges against Assange under the Espionage Act
- They were ultimately successful



How Situation Was Resolved in June 2024:

- Assange agreed to plead guilty to a single felony count under the Espionage Act for conspiring to obtain and disclose classified U.S. national defense documents.
- The U.S. Justice Department dropped the remaining 17 charges against him and officially withdrew its extradition request.
- Time Served: A federal judge sentenced Assange to 62 months in prison. Because he had already spent that exact amount of time fighting extradition in the UK's high-security Belmarsh prison, his sentence was considered "time served."

"I am not free today because the system worked. I am free today after years of incarceration because I pled guilty to journalism," ... Assange

