

A Place of Freedom?

Jason A. Wood

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Abstract

The Internet is quickly becoming one of the most used communication mediums. The government is trying to grapple with this new medium with old laws—some apply other do not. This paper will focus on the government’s role in freedom of speech issues in an online environment.

At Issue

Thomas Jefferson, in a letter to John Adams, wrote, “bigotry is the disease of ignorance, of morbid minds; enthusiasm of the free and buoyant. Education and free discussion are the antidotes of both.[1]” Few other other mediums provide the opportunity for open discussion and education on virtually any topic than the World Wide Web. With freedom comes conflict as each person has different goals and objectives. History has shown that most conflicts are resolved by limiting

freedoms. Unfortunately those limitations are not in everyones best interest, often empowering the elite. Paradoxically, conflicts can also be resolved by expanding freedoms, as Thomas Jefferson points out. The Internet has a potential unlike other mediums to allow for open discussion of issues and the obtainment of solutions to those issues. That potential, nevertheless, is under fire by those who wish to censor the medium.

There is a natural tendency for individuals and groups to shield the world from points that are in opposition to their own. The contradiction is that those who try so hard to silence the voices opposing them wish to, at the same time, maintain their freedom to speak for their own causes. In “Fahrenheit 451.2: Is Cyberspace Burning?” the ACLU states,

Today, all that we have achieved may now be lost, if not in the bright flames of censorship then in the dense smoke the many rating and blocking schemes promoted by some of the very people who have fought for freedom. And in the end, we may find that the censors have indeed succeeded in “burning down the house to roast the pig.”[2]

The role of government in providing filtering tools to keep people, especially kids, from viewing harmful content online illustraites this point. Parents, indeed, should have the ability to know that their children are safe from filth on the Internet. Today, however, even the best filtering tools are unable to do just that. The issue is that the tools may also block students from obtaining valuable information. This issue recently came up in the courts in “Kathleen R. vs. City of Livermore.” In that case, the plaintiff said her 12- year-old son had downloaded explicit pictures at the local library and felt that it was the library’s responsibility to keep her son from accessing to such material. The judge ruled that although filtering software would keep the plaintiff’s son from viewing obscene behavior it would also block information that should not be filtered such as news from

the San Francisco Chronicle and the Maryland affiliate of the American Association of University Women[3].

In the aforementioned case, the Honorable George C. Hernandez, Jr. ruled in favor of first amendment right to free speech. The feelings of this judge, however, are certainly not those of the plaintiff and many others. Those who wish to have freedom of speech and expression reduced on the Internet will and do not stop at the courts.

The new battle front is the information providers and the infrastructure. This front is becoming all too clear in battles such as Napster and DeCSS. In the Napster case the battle was not against the individuals who willingly shared and exchanged copyright material, but against the infrastructure that made it possible, the Napster software. Similarly, the DeCSS battles are mostly against those who distributed the code that can be used to decrypt DVDs rather than those who wrote it[7]. Consequently, small time Internet infrastructure providers are slowly dying out and many have learned to fear the use of their services for free expression in opposition to those who wish to stop it[4]. Ultimately, those who control the access to information will be able to pick and choose what is available to viewers. That puts a lot of power into the hands of a relative minority. Such a shift may allow the elite to usurp control over the voices of dissent against them. Furthermore, those controlling information will also be able to identify the dissenters. If put in the wrong hands such power could destroy the fundamental freedoms we enjoy, making the Internet a place of manipulation and control[5].

The Role of Government

Currently, the government itself is divided with respect to the use of software tools for online content control and Internet communications monitoring. One of the most intrusive of such tools is the Carnivore Diagnostic Tool, a system that the FBI wishes to place at every gateway point to the

Internet in order to reduce criminal activity[6]. The project, which monitors Internet communications, limits privacy but at the same time could stop criminal activity. The power of the system to limit criminal activity bolsters our freedom from the harmful effects such activities cause, but the intrusiveness of the project limits our freedom of privacy. Civil liberties and privacy groups are upset at the freedoms that are lost by such systems, while those who are against criminal activity laud the protective power it provides[9]. Systems like Carnivore should be regulated in such a way that all freedoms are equally respected.

Another problem is the government is not the only entity that has the ability to block access to content or to intrude on the privacy and anonymity of the speakers. Be that as it may, the government has the responsibility to protect the expression of even the smallest voice, the individual, because that is what our country was founded on and relies on for its existence.

What a stupendous, what an incomprehensible machine is man! Who can endure toil, famine, stripes, imprisonment & death itself in vindication of his own liberty, and the next moment...inflict on his fellow men a bondage, one hour of which is fraught with more miser than ages of that which he rose in rebellion to oppose. (Thomas Jefferson to Jean Nicholas Demeunier)[1]

Thomas Jefferson paints a drab picture, but one that has been long illustrated in this nation. Although many would argue the issue in his time, slavery, more perverse, the freedoms presently in jeopardy are just as fundamental—the ability to think and express thoughts and ideas without the menace of a minority that controls access to the Internet.

Suggested Approach

Our appeal, therefore, should be for governments, the US government in particular, to protect intellectual property rights of the corporations, trade organizations, religious organizations, and

mass-media providers while keeping them from restricting the freedoms of each individual on the Internet. For the very existence of this nation as it now stands is reliant on the freedom of speech and association.

Our Liberty depends on the freedom of the press, and that cannot be limited without being lost. (Thomas Jefferson to Dr. James Currie, Jan 28, 1786)[1]

The task set forth above is a lofty one. Lobbies on the behalf of large multinational corporations are buzzing around in Washington, D.C. trying to shape the opinions of those in power with respect to the Internet. With technologies like P3P these corporations are now trying to convince the government that they can self-regulate themselves. There needs to be a checks and balances system between the government, organizations, and citizens. Citizens who perform illegal activities using the Internet should not go unpunished, organizations who limit the freedoms of people should also be stopped, and lastly the government needs to be held responsible for the respect and privacy of citizens and organizations alike.

This three part regulation scheme is in use for many other government functions such as the Environmental Protection Agency. The government receives feedback from corporations, environmental groups as well as government scientists and staff. A proposal from an environmental group like Greenpeace goes to the government, which then studies it for accuracy and need. If it is approved it is then published for public review. After a final review the regulation is passed into law[8].

Although not perfect, this system used by the EPA works reasonably well and is respected by all parties much more than regulations that only represent one point of view or see limited publicity until passed into law. A similar system could work for regulation of maintaining freedoms on the Internet. Citizens could propose regulations that would keep organizations and government from violating their freedoms. Those proposals could then be investigated by the government

and, if the problem is a legitimate one, a regulation against such activity is published for public review. Corporations, individuals, and civil liberties organizations could then make comments on the proposed regulation to be considered for a final decision.

Such a system would help to preserve the rights of individuals and organizations while still allowing for a sovereign government. Expecting government, citizens, or organizations to self-regulate is a mistake. Each and every one is in some way looking out for their own interests. By making the decisions more democratic, the rights of each are more likely to be preserved and appreciated.

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