



A Study on Internet – Freedom of Expression Vs Content Regulation

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ABSTRACT

The Internet has truly become a worldwide phenomenon in recent years, with more and more countries coming online every day. The wide variety of material available on the Internet presents a problem for legislators all over the world, and as a result a broad range of free speech policies have been adopted by governments. The paper starts give answer of internet is a media, internet is as a lifeworld and as a system and how blocking and filtering, as that is central to the free speech policies in many countries. On the other hand, the free flow of information has raised the call for content regulation, not least to restrict minors' access to potentially harmful information. The legal attempts to regulate content and to new self regulatory schemes implemented by private parties. The attempts to regulate content raise the question of how to define Internet in terms of "public sphere" and accordingly protect online rights of expression. Finally, trends on how free speech policies can change over time due to economic factors are outlined.

Keywords : System, lifeworld, Internet security, internet regulation, CDA(Communication Decency Act), COPA (Child Online Protection Act), CHIPA(Children's Internet Protection Act), B46, PICS(Platform for Internet Content Selection).

2. INTRODUCTION

In 1998 report to the U.N. Commission on Human Rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression against government regulation of Internet access and content.

In 1999 a association of executives from the media and information technology industries established "The Global Business Dialogue".

In December 2000, the United States Congress passed the CHIPA, which requires schools and libraries to install 'technology protection measures' to shield minors from adult content.

The American organization Peacefire.org has made an assessment of five blocking programs: Cyber Patrol, Surf Watch, Bess, AOL(American Online)Parental Controls, and Safe Server to examine how many sites each program blocked as "pornography", and of those sites, how many were actually pornographic.

In January 2001, a Danish public library announced that it had made filtering mandatory on its public computers, in order to block access to pornography and oilier indecent material for both adults and minors.

In the US the call for state intervention has so far led to the US CDA in 1996, the COPA in 1998, and the CHIPA in 2000.

3. AIM OF PAPER

The paper will try to give an answer to these questions, thereby making a contribution to the political and legal zone of ambiguity, which currently characterizes the protection of online freedom of expression. In doing so, the paper will explore:

- How the communicative sphere of Internet can be understood in terms of public versus private sphere.
- How the characteristic features of Internet differ from other media types.
- Which level of protection the right to freedom of expres-

sion provides for.

- The legal and political space so far defined for regulating online expressions and information retrieval, including self-regulatory tendencies.
- The need for further legal of political action.

The final part of the paper will discuss the level of protection that should be provided for online expressions, managed by private parties.

4. SYSTEM, LIFEWORLD AND INTERNET WHAT IS SYSTEM AND LIFEWORLD

The concepts of system and lifeworld are central in Habermas' analysis of modernity, where they represent two different forms of action spheres: a lifeworld with communicative actions oriented to reaching understanding and a system with instrumental/strategic actions oriented to success.

Lifeworld represents individuals' natural worldview and functions as the basis for their communicative actions. The lifeworld consists of three components: culture, society and personality,

The cultural aspect is referring to the cultural heritage and language. The society aspect is referring to the social norms and rules for how to behave in society and is, as such, helping to ensure that social integration can pass relatively unproblematic. The personal it aspect is referring to the individual capacities learned during the socialization process.

Lifeworld is symbolic in its nature, the system is material. The system represents society's economic-administrative apparatus, which is not reproduced through communicative action but through money and power. The system is a norm free social sphere, where subsystems (economic and political) are regulated by anonymous and language free medial. Since these media are not based on communicative actions they allow for much faster and more effective interactions.

INTERNET AS LEIFEWORLD

Internet (Cyberspace) as a new phenomenon appeared in Western Europe in the early 1990s. First in universities and research centers, then within society generally – Internet became the new target of democratic utopianism.

Using Habermas' terminology we would say that Internet in the early stage held promises for an empowered lifeworld, by providing conditions for a communicative sphere free from system interference.

If we look at Habermas' description of public opinion, Drawing on C.W. Mills, Habermas characterizes the formation of public opinion by: (1) virtually as many people express opinions as receive them. (2) Public communications are so organized that there is a chance immediately and effectively to reply to any opinion expressed in public. Opinions formed by such discussion (3) readily find an outlet in effective action, even against if necessary the prevailing system of authority, and (4) authoritative institutions do not penetrate the public, which is thus more or less autonomous in its operation.

This is due to the characteristics of mass media such as (1) far fewer people express opinions than receive them, thus the community of publics become an abstract collection of individuals who receive impressions from the mass media. (2) The communications that prevail are so organized that it is difficult or impossible for that individual to answer back immediately or with any effect. (3) The realization of opinion in action is controlled by authorities who organize and control the channels of such action, and (4) the mass has no autonomy from institutions: on the contrary, agents of authorized institutions penetrate this mass, reducing any autonomy it may have in the formation of opinion h discussion.

INTERNET AS SYSTEM

The private sector has realized the potential in the new information market and the increasingly commercial focus is changing some of the initial "rules" of cyberspace, for instance the initial separation between access and content providers and the vision of a free public sphere with unlimited access to information.

Using internet to give a few illustrations:

- From openness to security.
- Commercialization - new actors and gatekeepers.
- Barriers to information freedom – search engines.
- New self-regulatory schemes.
- Towards Internet regulation.

5. INTERNET AS A NEW COMMUNICATIVE SPHERE FUNCTIONAL CHARACTERISTICS OF INTERNET

Internet; it is *network*. Internet is a global network of computer hosts, telecommunication paths and gateways linking those hosts. The result is a decentralized, global medium of communication. Cyberspace – that links people, institutions, corporations and governments around the world.

Internet is open in the sense that no single entity; academic, corporate, governmental or nonprofit administers it. There is no centralized storage location, control point.

The most common functions can be grouped into six categories.

- One-to-one communication (e-mail or chat)
- One-to-many communication (listserv of chat)
- Many-to-many communication (newsgroups of chat)
- Real time remote computer utilization (telnet)
- Information retrieval (ftp. gopher and world wide web)
- Publishing information (WWW)

INTERNET AS PUBLIC SPHERE

Internet is use by any person in world. Internet is open and public in the sense that everyone in principle can access WWW or newsgroups, but it also provides for more closed

and private communication, via e-mail of chat rooms dedicated to particular topic. World Wide Web is a public sphere, in principle accessible or everyone like a public park or building, but it is also a commercial sphere managed by private entities.

STATE PROTECTION

Internet (Cyberspace) is protecting by **State Protection through media regulation Individuals.**

6. FREEDOM OF EXPRESSION

Freedom of expression provided for by article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and outlines some of the political statements made in relation to Internet and freedom of expression.

The right to freedom of expression is provided for in the Universal Declaration on Human Rights Article 19, the International Covenant on Civil and Political right Article 19, the American Convention on Human Rights Article 13, The African Charter on Human and Peoples Rights Article 9, and the European Convention for the Protection of Human Rights and fundamental Freedoms Article 10.

FREEDOMS PROTECTED

The freedoms protected in article 10, paragraph one are:

- Freedom to hold opinions.
- Freedom to impart information and ideas.
- Freedom to receive information.
- Freedom of the press. .
- Freedom of radio and TV broadcasting.

ADMISSIBLE RESTRICTIONS

The restrictions, which are admissible in to three categories:

- Protection of the public interest (national security, territorial integrity, public safety, crime, protection of health).
- Protection of other individual rights (protection of the reputation, prevention of the disclosure of information received in confidence).
- Necessity of maintaining the authority and impartiality of the judiciary.

When assessing a restriction on freedom of expression. The Court applies a three-part test.

- (1) The restriction must be prescribed by law and meet the corresponding criteria of precision and accessibility:- There must be an enacted law or regulation which the official is applying.
- (2) It must have a legitimate aim: - legitimate aims provided in Article 19(3) of the International Covenant on Civil and Political Rights is exclusive and governments may not add to these. It includes only the following legitimate aims: respect for the rights, reputations of others, protection of national security, public order, and public health.
- (3) It must be "necessary in a democratic society":- The final part of the test holds that even if a restriction is in accordance with an acceptably clear law and if it is in the service of a legitimate aim, it will still breach the right to freedom of expression unless it is truly necessary for the protection of that legitimate aim.

7. STATE REGULAROTY CASES

The US CDA, which passed as part of the Telecommunications Act in 1996. The CDA sought to impose criminal penalties on anyone who used Internet to communicate material that, under contemporary community standards, would be deemed patently offensive to minors under 18 of age. The CDA provided two affirmative defenses to prosecution: 1) use of credit card or other age verification system and 2) any good faith effort to restrict access by minors.

The COPA was enacted in Congress in October 1998, as an attempt to cure the constitutional defects of CDA. COPA

sought to impose criminal penalties against any commercial website that made material that is deemed "harmful to minors" available on the World Wide Web to anyone under 17 years of age.

8. INTERNET AS MEDIA

The main case dealing with Internet's feature as a medium has been the District and Supreme Court's judgment on CDA. The diversity of Internet functionality and content was stressed in both the CDA judgments. The Supreme Court speaks of the dynamic multifaceted category of communication, which includes traditional print and news services, but also audio, video and still images, as well as interactive real time dialogue. The District Court speaks of Internet content being as diverse as human thought.

Courts agree that the diversity is possible because Internet provides an easy and inexpensive way for a speaker to reach a large audience.

9. RESTRICTION OR BLOCKING THE RIGHT TO RECEIVE INFORMATION

The latest initiative from the American Congress aiming at protecting children on Internet is the CHIPA targeted at all schools and public libraries that accept federal money. The law mandates that Internet-connected computers be equipped with software that block or filter out material deemed "obscene" or "harmful to minors".

CHIPA was attached to the federal budget bill and passed in Congress December 2000. In March 2001, the American Civil Liberties Union⁷ and the American Library Association, along with several individual users, libraries and public agencies, filed lawsuits in federal court calling the law unconstitutional.

In December 2000 the Danish Parliament considered a proposal, B46, to mandate the use of filtering technology on all public computers in order to protect children.

The proposed legislation in CDA, COPA, and CHIPA can all be categorized as state attempts to regulate the communicative sphere of Internet. Whereas CDA is directed at all communications taking place on Internet, thus encompassing both system and lifeworld, COPA is restricted to communication in the commercial sphere of Internet. CDA and COPA both seek to restrict individuals' rights to express opinions, whereas CHIPA and B46 aim at restriction individuals' right to receive information.

In private blocking solutions, companies compete to gather lists of sites that contain possibly harmful material, and these sites are blocked from being accessed. The degree of granularity differs with different companies; some provide broad categories such as speech that is sexually explicit, violent,

etc.

10. FILTERS THE RIGHT TO RECEIVE INFORMATION

Access restrictions through filter software are essentially different from state attempts to restrict online expressions through legislation such as CDA or COPA. Whereas CDA and COPA aim at restricting the speaker in "speaking indecent language" when minors are listening, filters aim at restricting the minor from listening to a major part of the conversations going on in cyberspace. Filters are commercial products and the inherent norms can expand as broadly as the consumer wants or go as far upstream as the demand for access restriction goes.

In an effort to provide a method to filter content by allowing the user to fully control what is filtered, a system of labeling called PICS has been developed. PICS is basically a general purpose language that enables separate labeling and filtering of content. In this way, there can be competition in the labeling as well as the filtering market. By separating the two, you ensure that rating systems will develop independently of filtering mechanisms. This gives neutrality in the sense that different individuals or groups can tailor the filtering that they require. It is this competition and specificity that makes the PICS system different from the crude blocking software that exists today.

11. CONCLUSION

Customer contracts and/or access criteria, chat policies, or filtering systems can be effective regulators. However, with the right to freedom of expression, which is by its very nature a protection of minorities or dissenters to voice their opinion, privately defined set of norms to regulate online communication is a problematic path. Since freedom of expression is meant to protect especially those communications that shock, offend or disturb thus the legitimate right of lifeworld to oppose system.

The time when Internet was merely an alternative communicative channel has passed. Cyberspace today is an important part of living as a private and public individual in the modern world. It is a way of speaking and listening; an essential part of being human accordingly, access to communicate in cyberspace should be positively provided for by states, as a natural part of democratic development and compliance with human rights.

Neither the protection of freedom of expression nor human dignity can be left to private parties to regulate. The current tendency with service providers' self-regulation and commercial interests setting the scene are endangering citizens' fundamental rights. Internet is both a system and a public lifeworld and law, not arbitrary action by private partners, must protect the latter.

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