

# Ethics in Information Technology, Second Edition

## *Chapter 5* *Freedom of Expression*

# Objectives

- What is the legal basis for the protection of freedom of speech in the United States, and what types of speech are not protected under the law?
- In what ways does the Internet present new challenges in the area of freedom of expression?
- What key free-speech issues relate to the use of information technology?

# First Amendment Rights

- Right to freedom of expression
  - *“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”*
- Definition of free speech also includes
  - Nonverbal, visual, and symbolic forms of expression
    - E.g., burning flags, dance movements, hand gestures.
  - Right to speak anonymously

# First Amendment Rights (continued)

- Not protected by the First Amendment
  - Obscene speech
  - Defamation
  - Incitement of panic
  - Incitement to crime
  - “Fighting words”
  - Seditious

# Obscene Speech

- *Miller v. California 1973*. Mass mailing campaign to advertise the sale of adult materials.
- Speech is considered obscene when
  - Average person, applying contemporary community standards, finds the work appeals to the prurient interest
  - Work depicts or describes sexual conduct in an offensive way
  - Lacks serious literary, artistic, political, or scientific value

# Defamation

- Publication of a statement of alleged fact that is
  - False
  - Harms another person
    - Harm is often of a financial nature (reduces one's ability to earn a living, work in a profession, run for an elected office, etc)
- Slander: Oral defamatory statement
- Libel: Written defamatory statement
- Truth is an absolute defense against a charge of defamation.

# Freedom of Expression: Key Issues

- Controlling access to information on the Internet
- Anonymity
- Defamation
- Hate speech
- Pornography

# Controlling Access to Information on the Internet

- Freedom of speech on the Internet is complicated by children's access
- Communications Decency Act (CDA)
  - First attempt to regulate pornographic materials on the Internet.

*“knowingly (A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or (B) uses any interactive computer service to display in a manner available to a person under 18 years of age, adult materials.”*
  - operators of Internet services are not to be construed as publishers (and thus not legally liable for the words of third parties who use their services).

# Controlling Access to Information on the Internet

- Communications Decency Act (CDA)
  - Broad language and vague definition of indecency
  - Found unconstitutional in 1997
    - “Reno v. American Civil Liberties Union, stating that the indecency provisions were an unconstitutional abridgement of the First Amendment right to free speech because they did not permit parents to decide for themselves what material was acceptable for their children, extended to non-commercial speech, and did not define "patently offensive," a term with no prior legal meaning. ”*

# Controlling Access to Information on the Internet (continued)

- Child Online Protection Act (COPA)
  - Direct act to the overturn of CDA, narrowing the range of materials to be covered.
    - Applies only to communication for **commercial purposes**.
    - Only affect provides based within US.
  - Imposes penalties for exposing minors to **harmful material** on the Web
  - Found unconstitutional in 2004

# Controlling Access to Information on the Internet (continued)

- Children's Internet Protection Act (CIPA)
  - Upheld in 2003.
  - CIPA requires schools and libraries using discounts to operate *"a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are obscene, child pornography, or harmful to minors..."*
  - Internet filters
    - Software installed with a Web browser
    - Blocks access to certain Web sites that contain inappropriate or offensive material

# Controlling Access to Information on the Internet (continued)

- URL filtering
  - Blocks URLs or domain names
- Keyword filtering
  - Blocks key words or phrases
- Dynamic content filtering
  - Web site's content is evaluated immediately before being displayed
  - Uses
    - Object analysis
    - Image recognition

# Controlling Access to Information on the Internet (continued)

- ICRA rating system
  - Questionnaire for Web authors
  - Generates a content label
    - Uses Platform for Internet Content Selection (PICS) standard
  - Users can configure browsers to read the label to block content
  - Relies on Web authors to rate their site
  - Complement to other filtering techniques

# Controlling Access to Information on the Internet (continued)

- ISP blocking
  - Blocking is performed on the ISP server
  - ClearSail/Family.NET prevents access to certain Web sites

# Legal Overview: Children's Internet Protection Act (CIPA) (continued)

- CIPA does not require the tracking of Internet use by minors or adults
- Difficulty implementing CIPA in libraries because their services are open to people of all ages
  - Including adults with First Amendment rights

# Anonymity

- Principle of anonymous expression
  - People can state opinions without revealing their identity
  - In the wrong hands, it can be a tool to commit illegal or unethical activities
- Anonymous remailer service
  - Computer program that strips the originating address from the e-mail message
  - Forwards the message to the intended recipient
  - Ensures no header information

# Anonymity (continued)

- John Doe lawsuit
  - Identity of the defendant is temporarily unknown
  - Common in Internet libel cases
  - Defendant communicates using a pseudonym or anonymously
  - ISPs subpoenaed to provide the identity
  - By filing a lawsuit, the company gains immediate subpoena power

# National Security Letters

- Requires financial institutions to turn over the electronic records of
  - Suspected terrorists
  - Spies
- USA Patriot Act allows the FBI to use NSLs to obtain records from banks and other financial institutions if they are sought for an intelligence or terrorism investigation

# National Security Letters (continued)

- USA Patriot Act includes a gag provision
  - Firm cannot inform customers of the investigation
- **Intelligence Authorization Act** for Fiscal Year 2004
  - Expanded the scope of discovery beyond financial institutions
    - Now includes ISPs

# Defamation and Hate Speech

- Speech that is merely annoying, critical, demeaning or offensive is protected, but not threats and intimidation against specific citizens.
- Actions that can be prosecuted include
  - Sending threatening private messages over the Internet to a person
  - Displaying public messages on a Web site describing intent to commit acts of hate-motivated violence
  - Libel directed at a particular person

# Defamation and Hate Speech (continued)

- Anonymous communication over the Internet makes it difficult to identify those behind defamation or hate speech.
- Some ISPs voluntarily agree to prohibit subscribers from sending hate messages
  - Prohibitions are included in the service contract.
  - Does not violate subscribers' First Amendment rights
  - ISPs must monitor the use of their service
  - Take action when terms are violated

# Pornography

- The Internet has been a boon to the pornography industry
  - More than 60,000 Web sex sites are accessible
  - The sites generate at least \$1 billion a year in revenue
- CAN-SPAM Act
  - Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003.
  - Deterrent in fighting the dissemination of pornography

# Pornography

- CAN-SPAM Act
  - Nicknamed “Yes, You Can Spam” act.
  - Does not require e-mailers to get permission before they send marketing messages.
  - Override state (stronger) anti-spam protections.
  - Prohibit individuals who receive spam from suing spammers.

# Summary

- First Amendment protects the right to
  - Freedom of expression
- Key issues:
  - Controlling access to Internet information
  - Anonymous communication
  - National Security Letter (NSL)
  - Spread of defamation and hate speech
  - Access to pornography