

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
 - Important right for free people everywhere
 - Guaranteed by the First Amendment
- Definition of free speech includes
 - Nonverbal, visual, and symbolic forms of expression
 - 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”
 - Sedition

Obscene Speech

- Speech is considered obscene when
 - Average person 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
- Slander
 - Oral defamatory statement
- Libel
 - Written defamatory statement

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)
 - Aimed at protecting children from online pornography
 - Broad language and vague definition of indecency
 - Found unconstitutional in 1997

Controlling Access to Information on the Internet (continued)

- Child Online Protection Act (COPA)
 - Applies to communication for commercial purposes
 - Imposes penalties for exposing minors to harmful material on the Web
 - Found unconstitutional in 2004
- Internet filter
 - 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)

- Popular Internet filters
 - ContentProtect
 - CYBERSitter
 - NetNanny
 - CyberPatrol
 - HateFilter

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)

- Federally financed schools and libraries must block computer access to
 - Obscene material
 - Pornography
 - Anything considered harmful to minors
- Schools and libraries subject to CIPA do not receive Internet access discounts unless they certify that Internet safety measures are in place
 - Required to adopt a policy to monitor the online activities of minors

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

- CIPA does not require the tracking of Internet use by minors or adults
- Acceptable use policy agreement is an essential element of a successful program in schools
 - Signed by
 - Students
 - Parents
 - Employees

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

- 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

- 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)

- Some ISPs voluntarily agree to prohibit subscribers from sending hate messages
 - 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
 - Deterrent in fighting the dissemination of pornography

Pornography (continued)

- Reasonable steps to stop access in the workplace
 - Establishing a computer usage policy
 - Prohibiting access to pornography sites
 - Identifying those who violate the policy
 - Taking action against those users
- Numerous federal laws address child pornography
 - Federal offense

Manager's Checklist for Handling Freedom of Expression in the Workplace

TABLE 5-1 Manager's checklist for handling freedom of expression in the workplace

Questions	Yes	No
Do you have a written data privacy policy that is followed?	—	—
Does your corporate IT usage policy discuss the need to conserve corporate network capacity, avoid legal liability, and improve worker productivity by limiting the nonbusiness use of information resources?	—	—
Have means been implemented to limit employee access to nonbusiness Web sites (for example, Internet filters, firewall configurations, or use of an ISP that blocks access to such sites)?	—	—
Does your corporate IT usage policy discuss the inappropriate use of anonymous remailers?	—	—
Has your corporate firewall been set to detect the use of anonymous remailers?	—	—
Has your company (in cooperation with legal counsel) formed a policy on the use of John Doe lawsuits to identify the authors of libelous, anonymous e-mail?	—	—
Does your corporate IT usage policy make it clear that defamation and hate speech have no place in the business setting?	—	—
Does your corporate IT usage policy prohibit the viewing or sending of pornography?	—	—
Is employee e-mail regularly monitored for defamatory, hateful, and pornographic material?	—	—
Does your corporate IT usage policy tell employees what to do if they receive hate mail or pornography?	—	—

Summary

- First Amendment protects the right to
 - Freedom of religion
 - 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