

POLICING THE INTERNET: *JAKE BAKER* AND BEYOND

March 9, 1995

QUESTION TWO: ANONYMITY, ACCOUNTABILITY, AND THE 'NET

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PROFESSOR LOWENSTEIN: Another question over here.

AUDIENCE PARTICIPANT:

My question is directed primarily to Professor MacKinnon, but I guess I'd be interested in other member of the panel commenting as well.

One can argue that the primary reason that Jake Baker is in jail is he made the mistake of using his own name, indeed. A fair majority of the material out there is sent anonymously, and the current state of the technology is such that there's virtually no way to guarantee who sent the message -- sending it anonymous or various anonymous revealed is commonly done.

If that indeed is the case, indeed there is no way to really determine who sent this, and indeed you believe that nevertheless this material is pornographic and causes harm, what is your proposed remedy for the vast majority of this where there is no way to determine who actually sent it? Indeed, as the Exon bill was mentioned, is the only solution in that case to penalize the carriers of the material? And, indeed, what are the implications of that?

PROFESSOR MACKINNON:

Like everyone else, I'm in the process of both learning about the technology and thinking through the very specific questions that it raises as well as trying to connect that with everything else that we already know about these issues.

Mr. Steinhardt has no way of knowing how many real women are in the pornography out there that is already there. I know a lot of real women who are in pornography. It includes, in words only pornography, and in visual pornography.

So there is no way of saying, to your point, how many -- you know, if this is an unusual case or not. There are a great many ways in which it is not unusual. That is one about which I know a great many other examples and it's hard to know how many, you know, Lisa's and Jenny's and Mary's that are in these materials aren't real women.

You know when you see your real name in it, even if it's only your first name, you might be forgiven for thinking that it has something to do, at least, with a woman, and maybe you.

Now, the matter of anonymity. I'm attracted to what Mr. Charney described as the confidentiality solution, but I don't want to give this out as a position. I think it's hard to figure this out, but my own disposition is that absolute anonymity, while there are important circumstances for it, just as an example, people who have been sexually abused being able to talk with each other about that abuse.

It seems to me that creating a mechanism for speech, in which, by design, accountability is impossible is a real hazard. And at the same time I'm extremely bothered by the privacy issues that are raised by the fact that you can just get access right now, to what anybody's reading, if you want. You can just go up there, put in a name, and find out what they're reading on the Net. I think that's really very disturbing.

So I think that the confidentiality approach in which anyone who's on there, if it becomes necessary in some way, should be able to be, at some point down the line, found out or gotten to or identified, is an attractive solution that doesn't really necessarily solve anything because, you know, people will use false names, they will create false identification and so on. But that's always true, and so it's more a question of a basic design, and that's just how I see it.

I think I'm against anonymity, but I'm for a form of confidentiality that allows for privacy that should be available to people, while not insulating them, ultimately, for accountability for harm that they actually do through this medium just like any other.

PROFESSOR LOWENSTEIN: Let me just ask Danny Weitzner who wanted to add something to that question.

DANIEL WEITZNER:

I just want to say a few things about anonymity. I really do think as a fundamental issue that we all have to have the right to anonymous communications. There are circumstances in our political lives, in our personal lives, in all kinds of situations, where I really think it is critical that we be able to communicate anonymously, not just confidentially, because the people that have the power to move from something that is anonymous, so something that is confidential, to something that is, in fact, identifiable, may be the very people from whom we really need the protection of anonymity.

That being said, I think as a practical matter anonymity is some what of a red herring. I think the real disputes about anonymity now, are in some sense a function of the fact that life on line, if you will, is not very well formed. The moment that people start engaging in financial transactions on line, that the practicalities of maintaining anonymity will decline substantially. I think it should always be possible to communicate anonymously and completely privately. I think that that capability exists in the physical world and it should exist in cyber space.

But I think that my somewhat pessimistic view is that the IRS and the banking community are simply not going to sit by while perfectly anonymous financial transactions are allowed to occur.

(Laughter)

It's just not going to happen. People talk about concepts of digital cash, which I think are wonderful, but I think there will be real limitations. We might get to a point of confidentiality in that sort of financial transaction, but I can not ever imagine wide spread anonymous financial relationships.

I think that this is a direct implication for issues about pornography because my sense is that while the Jake Baker case is not a case that involved a commercial transaction, that involved the

sale of that material that the bulk of sexually explicit material today is in the commercial realm. To be in the commercial realm and be anonymous, I think is going to be very, very hard either for a buyer or a seller.

PROFESSOR LOWENSTEIN: Virginia Rezmierski, you had a comment about this anonymity question?

VIRGINIA REZMIERSKI:

I agree that we're in an environment where this kind of decision about whether anonymity should be allowed is a difficult one. Where you're working in a community that has to have accountability at some level for basic trust to be formed between individuals and for transactions to go on, it would argue from my way of thinking against anonymity.

And I would even say that there are arguments beyond that that would argue against anonymity as a technological capability, and that is that if we, in fact, are working towards being a community of reasoned discourse, where we're able to speak up and be accountable for our thoughts and be willing to stand toe to toe with people who have different thoughts in order to work these out.

We don't want, in my view, to encourage the use of anonymity, but instead a higher level of discourse, which is being accountable for what you're saying and what you're thinking, and being able to reason that out with other people.

Now that's in a world of equality, and I realize that we don't have that in all spheres but I'm arguing that we need to be trying to build, at least a university, towards that goal, rather than encouraging the ability to do acts without accountability.

So I still am leaning on the side of not having anonymity. And I think there's a reason for it.

PROFESSOR LOWENSTEIN:

Before I let you go, Virginia Rezmierski, there's another part, I think, to the questioner's question, which was: should there be greater burdens on the carrier? Now you are here representing a very big carrier, and what do you think about that?

Should there be, with all this accountability, should there be more accountability on the part of an entity like the University?

VIRGINIA REZMIERSKI:

Now I have to speak from my own personal view on this. There isn't a University position on this. I have written that the minute we start to move over towards the carrier having responsibility for what's going across the Net, we do two things, we move towards disempowering the individuals to take responsibility for their acts, and as you can tell, I come at this from a desire to empower, and to maintain empowerment of individuals. And so that would be against that argument. And secondly, the minute the carrier has to carry that responsibility they have no alternative but to move towards monitoring. And when you move towards monitoring, you are, in my view, on a very fast slope towards the destruction of liberties.

(Applause)

PROFESSOR LOWENSTEIN: Scott Charney.

SCOTT CHARNEY:

There's one more thing you have to think about in this anonymity debate, which is indicative of how complex these issues are, every time we talk about anonymity, we talk about the right of privacy of the sender, however, a fundamental precept of privacy is the right to be left alone.

We have been dealing with many cases where people generate 8,000,000 E-mail messages per minute and so flood someone's mail box, that they are forced off the Net. So the question is, what happened to their right of privacy.

PROFESSOR LOWENSTEIN: Did you have something you wanted to say, Barry?

BARRY STEINHARDT:

Yes. I wanted to say something about the carrier issue. You know, as a practical matter it isn't possible for carriers, conduits like the University of Michigan, to monitor the content of what goes over their network. I mean think about it for a moment. There are millions of postings to the Internet, it's simply not possible for the University of Michigan or America On Line, or even in most small bulletin board providers to monitor the content.

The consequence of making carrier liable is that you're going to force those carrier to greatly restrict the access to the kinds of sources of information that they are willing to carry. So, for example, we've had lots of cases of universities concerned about their liability across the country, the most prominent of which was Carnegie-Mellon, which cut off access to the alt.sex groups, news groups.

Well, whether or not you have the same view as Professor MacKinnon about the question of sexual explicit speech and pornography, never the less, the alt.sex groups for example, include alt.safe.sex, which is a discussion about safe sexual practices.

It's that kind of very broad brush that's going to have to be used to restrict speech, if you're going to start making the University of Michigan and other Internet and interactive media providers liable because there simply not going to be able to monitor. The only alternative they will have is to cut off access to anything that appears to be dangerous.

PROFESSOR LOWENSTEIN: Catharine MacKinnon, you have a comment?

PROFESSOR MACKINNON:

Yes. I would just like to take this moment, at the repeated invocation of my views on pornography to correct the misrepresentation of them. It's interesting that one can have a discussion about cyber space without people lying about other people's views. However, when one talks about pornography, it does seem unavoidable.

My position is not that speech which puts women in positions of display should be criminally prosecuted. My position is, first of all, that there should be civil remedies, resonating in sex equality when harm through pornography can be proven. That's civil as opposed to criminal, that's one misrepresentation of my view, a significant one.

And the other is that I use a definition of pornography that is sexually explicit materials that subordinate women through pictures or words that, also, the word that was missed here was also, include a list of one or more of the following. On which list, after you have either, coercion, force, assault, defamation, or trafficking in subordination, you must then, in addition, as one option, have women presented in postures of submission, servility, or display.

Now you will note that that's very different from what my position was represented as being. While that seems not to be able to be clear in this country, it is very clear in Bosnia, particularly among my clients who have been raped and pornography of their rapes, who have retained me to attempt to do something about it internationally.