



ISSUES IN (CYBERSPACE)

COMMUNICATION,
TECHNOLOGY, LAW,
AND SOCIETY
— ON THE —
INTERNET FRONTIER

JAN SAMORISKI



Issues in Cyberspace

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PREFACE

As a youngster I used to take things apart, usually things that were technical and expensive. They rarely got put back together as they originally were and if they did, they almost never worked again. But knowing what was inside and how the parts worked was always more interesting than simply looking at the thing and wondering how it did what it was supposed to do.

Later, as a television producer and director, I spent a lot of time putting things together. Generally they were things that, by themselves and without context, made little sense. Amazingly, when the elements came together just right a mix of good writing, pictures, movement, and sound had the ability to capture almost anyone's attention and keep it. Without knowing what went into the process, or in this case the how and why of television, people would tune in and watch the evening news program I had pieced together. I often wondered if they would still watch if they *really* knew what was behind the program and found out that, as far as management was concerned, the program was just a vehicle for the commercials.

Conceptually it helps to use both approaches—taking things apart; putting things together—when thinking about cyberspace. Beneath the physical infrastructure that makes up the Internet there are a lot of people—computer programmers, engineers, politicians, lawmakers, corporate executives, marketers, educators, and pornographers, among others—tinkering with the technology of cyberspace. They are doing curious things with it: manufacturing hardware, building networks, writing software, making up rules and regulations, packaging the result, and selling it to everyone else. Without looking inside, many of us are integrating the technology into our lives.

This book is the result of taking some things apart and putting other things together in an effort to understand how and why they work. It is an attempt to explain and demystify cyberspace and the issues that are emerging within it. Cyberspace is a complex space, a Pandora's box of sorts. Inside this box are different interests competing to get a piece of the Internet pie. In the process, their actions are changing how people communicate on a global scale, a transformation that is producing all kinds of social, cultural, political, legal, and economic consequences. As more people and organizations are affected, the box gets more crowded and more effort goes into influencing what happens within it.

The gravity of what is at stake in the future of cyberspace became especially evident at an "America: On the Net" forum I attended, sponsored by the Internet Policy Institute (IPI) in September 2000 in Dearborn, Michigan. With a multimillion-dollar operating budget and a board of directors that reads like a Who's Who of the Internet industry, including executives from America Online, Microsoft, WorldCom, Network Solutions, Morgan Stanley Dean Witter, and others, the IPI developed "America: On the Net" to encourage the public to talk about Internet issues. There were also representatives from educational institutions on the board,

but the high-profile members stood out, at least to me. Presumably they were underwriting much of the organization's budget.

IPI describes itself as an independent, nonprofit, non-partisan research institute designed to provide information and analysis on issues affecting the global development of the Internet. Held in cities nationwide, the forums were described as an "unprecedented grassroots initiative" to find out what is on people's minds. About one hundred people attended the forum in Dearborn, which was also audio-Webcast over the Internet. Eventually, the results of the forums, surveys, papers, and research projects were scheduled for presentation during a national policy summit at which national leaders would be in attendance. The goal was to identify issues, determine public attitudes, and help create a policy framework for the Internet.

This is all good stuff. But why, I wondered, does it take an initiative like the IPI's to do it? And what was really inside this Pandora-like box? With much of the Internet's allure being created and manipulated to emphasize benefits and downplay drawbacks, there seems to be a tendency to accept the Internet at face value. The scrutiny and criticism that should accompany important policy debates are all too often overshadowed by slick efforts to glamorize the appeal of cyberspace. The veneer is attractive, but it's what's inside that counts.

We have reached a critical time in national—and international—politics that screams for public input and participation, yet the silence is deafening. What is happening in cyberspace has the potential to affect all of us and future generations in fundamental ways for years to come, including those that are central to how we perceive our environment and govern ourselves. If we are going to use the technology, we need to understand it: not only how it works but also the commercial forces and agendas that are driving its development. Forums and briefings can help. But what, I wondered, happened to the Internet's promise of participatory democracy and the opportunity for citizens to provide input into self-governance? More generally, what are the issues in cyberspace, how are they being addressed, and by whom? What is inside the box?

The Author's Approach

This book is designed to be comprehensive by including much of the background material that readers will need in order to begin to understand the issues in cyberspace. As introduced in Chapter 1, in part the focus is on law because it is playing an increasingly larger role in how the issues in cyberspace are being addressed and resolved. In some ways, this may reflect the litigious nature of modern society. Discussing cyberspace is now almost impossible without an awareness of how law and regulation is shaping the Internet frontier. Examining how the law is applied to cyberspace is a way of understanding the complex process through which those who produce and practice it conduct themselves and make laws for the rest of us to follow. In short, citizens will never be able to fully understand the regulation of cyberspace unless they can understand the principles

and language behind it. Chapter 2 frames the issues from a communications perspective, beginning with an explanation of Internet technology and the social implications inherent in communication technologies. The law and policy environment is further introduced in Chapter 3, followed by a discussion of the structure of the media industry and monopoly in Chapter 4. These first four chapters create a basic foundation that is integrated into subsequent chapters as specific issues are explored.

The premise underlying this approach is that cyberspace is not the province of any one discipline. Cyberspace is ubiquitous and now as much a part of the arts and education as it is of the social sciences and engineering. People who once ignored the issues that the Internet presents now can no longer afford to do so.

Each chapter begins with a brief overview of the issue. The issue is then placed in historical perspective to give the reader a sense of how it evolved and has been addressed in the past. Any relevant theory is then introduced.

Next, developments in media technology are evaluated that have affected the issue and its context. Often there are themes that carry through each chapter. One prominent theme is the inability of the law to keep up with technology. Another is the double-edged nature of all issues and innovations in cyberspace. For each benefit there is often a drawback with some significant side effects. This is common in most technological innovations, especially those that are focused on consumers.

After the historical, technical, social, and theoretical aspects are discussed, each chapter presents cases and examples of how the issue or problem has presented itself in society. This section includes summaries of legal disputes, legislation, administrative initiatives, agency action, and other efforts to address the issue. Because some of this material involves considerable detail, to help readers along summaries are provided at key points as well as at the end of each chapter.

Brief vignettes, examples, or profiles are provided throughout the book to help make the issues more relevant or interesting to the reader. In most instances, the boxed or offset material provides an additional historical, social, or cultural dimension to the discussion. Timelines, screen shots, and other illustrations further help explain the material. Ethical discussions incorporated into the text raise questions about a number of troubling practices that have emerged in the online world.

This book has an accompanying Web site: <http://www.ablongman.com/samoriski>. A Web site is a tremendous asset for a book of this nature because the Internet is the classroom for the issues in cyberspace. Cyberspace changes everyday. By the time this book is published, developments in technology and the law will have updated most of the issues it covers. On the Web site readers will be able to click on any chapter to find the latest information on an issue, with links to the most recent court decisions and other materials that have had an impact on it. The Web site is arranged by chapter and topic and will be updated regularly. An area will also be provided for reader feedback and suggested links.

Issues in Cyberspace is a starting point for exploring what promises to be a lively and continuing debate about the Internet and technologies that will follow. In the

law, as in many other areas, there are few answers, only arguments. In the spirit of deliberative democracy, readers are encouraged to become engaged in the process of deciding which arguments should ultimately prevail.

My greatest wish is for this book to be useful in some way to all those who pick it up, whether they be students, parents, teachers, consumers, professionals, or people who just want to know more about the issues in cyberspace. The book is written to appeal across a wide range of disciplines. For classroom use, the twelve chapters can be arranged and covered in a semester or quarter with time left for research paper presentations at the end of the course. Most of the chapters can be divided into reading assignments for a particular class day. The text can also be used as a reference source for specific issues. Some of the material, especially the legal material, contained within requires effort to understand. I am confident, however, that those who persevere will be well rewarded with a better understanding of cyberspace and its growing importance in modern society.

I hope readers will use the information contained in this book as a tool for taking the "box" that is cyberspace apart. Once readers do so and have a chance to look inside, it may never appear the same. Nor is it likely that the pieces will fit back together quite the way they did in the first place. But at least readers will have a better idea of what is inside the box and perhaps some ideas about how to improve on it.

Acknowledgments

I have benefited immensely from the work of others who have studied and written about new communication technologies, society, law, and policy. Their work can be found in the footnotes and references, which I encourage readers to follow up on if a particular area interests them. I have had the advantage of reading what these Internet research "pioneers" have written about this area and it has influenced how I look at cyberspace.

All projects start with inspiration. I owe much of the inspiration for taking the plunge into graduate school after thirteen years as a television producer and director to my colleagues at Radford University and to my parents, Hank and Julie. Among my colleagues at Radford, Richard Worringham and Ray Penn were instrumental in encouraging me to seek out the challenge of a Ph.D. program. Once at Bowling Green State University, where I undertook my doctoral studies, I had the good fortune to study under two communications legal scholars, Denise Trauth and John Huffman. Denise and John taught me the importance of law and policy in the area of telecommunications and how to do legal research. We also collaborated on a number of papers, some of which form the basis for the chapters on indecency, privacy, encryption, and libel. Bits and pieces of Chapters 5, 6, 7, and 10 are rewritten from manuscripts that I have previously had published in the *Journal of Broadcasting & Electronic Media* and *Communication Law and Policy*. They are used with the permission of the Broadcast Education Association and Lawrence Erlbaum Associates, Inc., respectively.

Several reviewers including David Donnelly at the University of Houston, Kevin Kawamoto at the University of Washington, and Kathleen Wickham at the University of Mississippi provided feedback on the chapters. I am thankful for their valuable comments. I was able to persuade others who have expertise in areas that I do not to provide feedback on parts of the manuscript. My thanks to Mary Kay Doderio for her comments and encouragement on the original manuscript proposal. Maureen O'Boyle and Eric Reasons provided helpful comments on the chapters about education and copyright. Darlene Rollins created much of the original artwork used throughout the book. I am always amazed at what a good illustrator can do with a vague idea. Special thanks to Karon Bowers, the staff at Allyn & Bacon, Molly Taylor, Susan McNally, and Julia Collins, for guiding me through the manuscript and publication process. While those mentioned above and many others contributed in some way to this project, I alone accept responsibility for the result.

Finally, projects such as this take an enormous amount of time away from other activities, the most important of which is the time spent with loved ones. My wife, Kathleen, and my two young daughters, Kara and Ellen, deserve medals for putting up with the long hours I spent downstairs in "daddy's office on the 'puter." I dedicate this book to them.

Yes, it's done. We can now all go outside and play.

Jan Samoriski, Ph.D.
December 14, 2000
Belleville, Michigan

CONTENTS

Preface xi

1 Communication, Society, Regulation and the Internet Frontier 1

The Internet as a New Frontier	2
Fads, Hype, and the Internet Express	2
The Internet and the Communications Industry	4
Approaching the Issues in Cyberspace	5
Cyberspace and the Politics of Control	6
The Power of Internet Surveillance	8
Government Regulation of Expression	9
Private Interests and the Regulation of Expression	10
The Bias of Technology	10
The Regulation of Cyberspace	12
Government by Litigation	14
Law, the Courts, and Issues in Cyberspace	15
Society, Activism, Communications Theory, and the Law	16
Notes	17

2 New Media Technology, Society, and the Rise of the Internet 18

Patterns from the Past: Society Enters the Internet Age	20
The Evolution of the Internet	22
External Forces and the Shaping of the Internet	27
Computer Code, Technology, and Society	27
The Impact of Internet Technology on Society	30
Characteristics of Computers and Internet Adopters	32
Internet Technology and the Digital Divide	33
Patterns of Use	36

Technological Forecasting and the Internet 37

The Accuracy of Forecasts 38

Internet Technology, Community, and Society 40

Democratic Society, Technology, and the Public 41

The Virtual Public 42

Anonymity and Online Society 44

Summary 46**Notes 47****3 Law, Policy, and the First Amendment in Cyberspace 49****The First Amendment and Free Expression in Cyberspace 51**

First Amendment Principles 52

Perspectives on the First Amendment 53

Government and Private Threats to Free Speech 54

The First Amendment and Categories of Speech 55

A Model for First Amendment Interpretation 56

The Internet and Commercial Speech 59

Principles of Communications Law and Policy 61

The U.S. Supreme Court 63

Reading a Legal Opinion 64

The Regulation of the Communications Industry 67

Regulatory Politics in Transition 68

Regulation and the Internet 71**Governing the Internet 73****Summary 75****Notes 76****4 Media, Monopoly, and the Internet 78****Monopoly in a Historical Perspective 79****The Regulation of Monopolies 81****Media, Power, and Society 85**

Media Ownership and Conflict of Interest 86

The Media and the Public 87

The Promise of the Internet 87

Dashed Hopes and Digital Despair 89

From Newsprint to Computer Bits and Bytes 90**Synergies, Mergers, and the Internet Age 91****The Evolving Cyber-Monopoly 93**

AOL Time Warner 93

The Walt Disney Company/ABC 95

Viacom/CBS 97

Summary 99**Notes 100****5 E-commerce, Spam, and the Perils of Commercialism 102****The Rise of E-commerce 103**

The Internet Gold Rush 104

New Problems for a New Marketplace 113

The Rise of Spam on the Internet 118

The Rise of Junk E-mail on the Internet 119

The Spam Controversy Takes Shape 119

Spam, the Law, and the First Amendment 120

Federal Court Rejects the "Right to Spam" 122

Spammers Get More Sophisticated 123

A Regulatory Response to Spam 124

Commercial Speech and the First Amendment 125

Solving the Spam Problem 125

The Commercialization of Internet Navigation 128

Public Spaces, Free Speech, and the Internet 129

Public Discourse and Entertainment in the Information Age 129

Communications Policy, Monopoly, and the Rise of the Net 131

Internet Navigation: Commercial Opportunity or Social Curse? 133**Summary 134****Notes 135****6 Privacy, Surveillance, and Anonymity in Cyberspace 139****A Privacy Backlash Takes Shape 140**

Privacy Practices Exposed 140

Surveillance from a Theoretical Perspective 142

Privacy, Electronic Mail, and the Web 144

- Legal Origins of the Right to Privacy 145
- Privacy and the Courts 146
- A Summary of Privacy Case Law 148
- Privacy Law Is Updated for the Electronic Age 149
- Internet Monitoring in the Workplace: The Emergence of Cyberslacking 152
- Intrusion and Ethical Questions 153
- The Search for Electronic Evidence 154

Tracking and Targeting: Marketing Necessity or Choice? 155

- Technology and Consumer Tracking: Surveillance Theory Applied 156
- The Electronic Trojan Horse 157
- The DoubleClick Case 157
- The Industry Response to Concerns About Privacy 158
- Privacy Policy and the Federal Trade Commission 159
- A War of Words 160

Anonymity and Citizen Reaction to the Loss of Privacy 161

- Privacy and the Private Sector 162
- Beyond Pessimism 163

Summary 163

Notes 164

7 Encryption and Hacking 167

The Evolution of Encryption Policy 168

- Cryptography and the Dawn of the Crypto Age 168
- The Government and Wiretapping 170
- The Constitution, the Government, and the "Clear and Present Danger" Test 173
- Cryptography and the Clinton Administration 174
- The Encryption Debate Intensifies 179
- Encryption, the First Amendment, and the Courts 179
- An Election Compromise 180
- Encryption Regulations Relaxed 181
- Another Court Ruling 181
- The Wiretapping Controversy Continues with Carnivore 182
- The End of Round One 185

Hacking, Cracking, and the Internet Age 186

- What Makes a Cracker Tick? 187
- The Internet's Vulnerability to Attack 188
- Computer Crime and the Federal Government 191
- Incentive to Cooperate 192
- The Wake-up Call Arrives 193
- Denial of Service Attacks 195
- To Catch a (Cyber) Thief 197
- Regulating Encryption and Enforcing the Law 200
- The Secrecy Factor

Notes 201**8 Copyright and Piracy 204****An International Twist to Copyright 205****Framing the Copyright Debate: Balancing Different Interests 207**

- A New Copyright Paradigm 208

Communications Technology and the Evolution of U.S. Copyright Law 209

- Home Video Recording Gets a Break 211
- Copyright Enters the Digital Age 212
- The White House Reacts to Industry Pressure 213
- U.S. Copyright Interests Acquire an International Flavor 213
- International Copyright Efforts Return Home 214

Outlaws on the Digital Frontier 215

- Copyright and MP3 216
- Napster and the Recording Industry 217
- More Music Industry Woes 219
- A Looming Battle of Formats 220
- Movies, Copyright, and the Internet 221
- Cybersquatting on the Internet Frontier 223
- Anatomy of an Issue: Cybersquatting, Internet Protocol, and the Internet Police 223
- The Regulation of Cybersquatting 225
- Questions About the Right to Link in Cyberspace 227

Summary 229

- Copyright Options 230
- The Role of Government 232

Notes 233

9 Libel and Hate Speech Online 236

Libel and the Internet 237

The Evolution of the Law of Defamation 238

Defamation in the Modern Era 238

Elements of Libel 239

Libel, Public Figures, and Public Officials 239

Defenses Against Libel 240

Defamation in the Internet Age 241

Libel on the Internet 242

Internet Libel and Right-of-Reply 247

Cyberspace: Different Medium, Same Principles 248

Hate Speech and the Internet 249

Hate and Freedom of Expression 251

The Internet and the Problem of Hate Speech 251

The Courts and Hate Speech 252

Hate Speech Directed at Groups 254

Prosecuting Online Hate Speech 255

The "Nuremberg Files" Web Site 255

Hate on Campus 257

Hate, Attitudes, the Internet, and Columbine High 259

Internet Service Providers, Hate Speech, and Filtering 260

Summary 261

Notes 262

10 Indecency and Obscenity 265

Pornography and Technology 266

Legislating Morality in the Modern Era 267

Obscenity and the Courts 268

The Government and Indecency Regulation 271

The Beginnings of Indecency Regulation 271

Distinguishing Between Different Audiences 272

Protecting Children 274

Concerned Adults 274

Liberal Adults 275

Failed Attempts to Create a “Safe Harbor” for Indecency	276
The End of Scarcity	277
The Beginnings of Content Regulation on the Internet	278
CDA I: Anti-Indecency Legislation Becomes Law	279
The Issues Surrounding the CDA Case	281
The CDA Decision at the Appeals Court	282
The CDA at the Supreme Court	284
The Door to Internet Regulation Remains Ajar	285
The Child Online Protection Act	286
The Challenge to COPA	287
Mainstream Loudoun: Limiting Library Access to the Internet	289
Mainstream Loudoun v. Board of Trustees	290
Summary	291
Notes	292

II The Internet, Children, and Education 295

Children and the Two Faces of Internet Technology	297
A Child’s World of Computer Chips	297
Children and Lessons from Television	298
Children and the Media Business	299
The Commercialization of Childhood	301
Children, Electronic Toys, and the Internet Connection	303
Criticism of Electronic and Internet Toys	305
Children, Indecency, and Obscenity	306
Filtering Alternatives for Children	307
The Internet: A Child’s World of Mixed Blessings	308
Internet Technology Enters the Classroom	309
The Wiring of the Nation’s Schools	309
Rethinking the Emphasis on Computers	310
Literacy in the Internet Age	312
Teachers and the Internet	313
Tough Questions and Difficult Tasks	314
The Internet and Higher Education	315
Computers Across the Curriculum	316

The Internet and Online Research	317
The Boom in Distance Education	319
Effectiveness of Distance Education	321
Criticism of Distance Learning	322
Questions About Quality	323
An Unstoppable Trend?	325

Summary 325

Notes 326

12 Reflections in Cyberspace 329

Community and the Internet Frontier 330

Observations in Cyberspace 330

Internet Users and the Relevance of Politics	331
Litigating Democracy	332
The Internet, Free Speech, and Business	334
The Internet and the Reality of Regulation	335

Solutions in Cyberspace: Government Regulation of the Internet 336

The Internet and Industry Self-Regulation	338
The Filtering Alternative	340
Regulating the Internet Through Code	342

International Considerations in Internet Regulation 345

Values, Conflicts, and Disparate Governments	347
The Internet and Developmental Communications	347

Terms of Empowerment 348

Journalism and Cyberspace	350
Cyberspace and Citizen Empowerment	352
Empowerment and Terms of Good Health	353
Coming to Terms with the Potential of Cyberspace	355

Summary 356

Notes 358

Glossary 360

Bibliography 365

Index 378

1 Communication, Society, Regulation, and the Internet Frontier

Much of America is enchanted with cyberspace. In a peculiar way, people are falling in love with the online world and almost anything that can be connected to it.

As love affairs go, the relationship is still in its early stages. But the honeymoon has ended and the process of settling in has begun. As one phase of the affair winds down and another gets under way, issues are coming into focus. The trials and tribulations of America's—and everyone else's—infatuation with the technology of cyberspace is giving way to a host of social, cultural, legal, political, and economic concerns about the electronic future.

Most of the issues are not new. They have been around in different forms since, in some cases, the dawn of civilization. What is new is the form the issues are taking. Society is encountering a series of troubling questions about how communication technologies are going to shape the future and the communities that will inhabit it. Not since humans first started using language has a development in how people relate to each other brought with it so many implications. From computers to personal data assistants, cellular telephones, and wireless devices, the technology of cyberspace is connecting a lot of people and things in a lot of ways. This new relationship between computer users and the Internet is an affair heading down a sometimes rocky road toward an uncertain destiny. It is also a relationship in search of meaning.

For better or for worse, communication, or a lack thereof, plays a central role in any relationship. In the relationship between democracy and society, communication performs a vital function by providing citizens with the information they need to make informed decisions. Anything that influences the process in any way, particularly when it comes to control of communication systems, can have far-reaching consequences. For the first time since the invention of the printing press, a new technology is poised to change in fundamental ways existing paradigms when it comes to free speech, media access, privacy, surveillance, education, and copyright, to mention a few.