



The

CYBER

ethics

READER

Nancy E. Willard

The **CYBER** *ethics* --- **READER**

Nancy E. Willard

The McGraw-Hill Companies, Inc.

New York St. Louis San Francisco Auckland Bogotá
Caracas Lisbon London Madrid Mexico City Milan
Montreal New Delhi San Juan Singapore Tokyo Toronto

McGraw-Hill

A Division of The McGraw-Hill Companies



The Cyberethics Reader

Copyright © 1997 by The McGraw-Hill Companies, Inc. All rights reserved. Printed in the United States of America. Except as permitted under the United States Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without the prior written permission of the publisher.

1 2 3 4 5 6 7 8 9 0 SEM SEM 9 0 9 8 7

ISBN 0-07-070318-3

Sponsoring editor: Rhonda Sands

Associate editor: Courtney Attwood

Editorial assistant: Kyle Thomes

Production supervisor: Natalie Durbin

Project manager/text designer: Cecelia G. Morales

Cover designer: Elizabeth Williamson

Copyeditor: Sylvia Townsend

Compositor: Cecelia G. Morales

Printer and binder: Quebecor Printing Semline, Inc.

Library of Congress Card Catalog No. 96-77645

Information has been obtained by The McGraw-Hill Companies, Inc., from sources believed to be reliable. However, because of the possibility of human or mechanical error by our sources, The McGraw-Hill Companies, Inc., or others, The McGraw-Hill Companies, Inc., does not guarantee the accuracy, adequacy, or completeness of any information and is not responsible for any errors or omissions or the results obtained from use of such information.

This book is printed on acid-free paper.

<http://www.mhcollege.com>

Preface

"We are doing a fine job at teaching our students to use the Internet. But we need to focus on educating them to be good cyberspace citizens."

*t*his was the comment recently made by a university professor. Her concern is shared by others:

- ◆ Employers and government agencies who are concerned about employee use of the Internet.
- ◆ Internet providers who are weary of hassles with users who abuse system privileges.
- ◆ Parents who want their children to use the Internet safely and effectively.
- ◆ And everyday Net users who just don't know what the standards are in this new and ever-changing environment.

Bookstores continue to clear space for the explosive growth of Internet "how to" books, some with brief sections on netiquette issues. Netiquette guides are available on the Internet itself. This book offers a succinct yet comprehensive guide to cyberethics.

Some Internet issues, such as copyright law and free speech, are complicated and worthy of full academic treatises, which this book does not claim to be. But, as complicated as these issues are, this book offers simple guidelines that individuals can follow to be good cyberspace citizens.

The Cyberethics Reader supports course work in all disciplines, ranging from education to business. A Web site has been established to provide links to more extensive materials that will facilitate a deeper analysis of current ethics issues. Visit the site at <http://mgh.willamette.edu/mgh/>. In addition, this book can be used to support company or government agency training sessions on using the Internet.

Obviously, it is not possible to write a book without the help of family and friends who are willing to provide input and suggestions and to review the work while it was in progress. The family, friends, and reviewers who have helped along the way are: Alice Schreiber, Miles Willard, David Willard,

Janice Willard Nilsson, John Williamson, Nicole Douglas, Paul O'Driscoll, Dorothy Rogers, David Klindt, Bob Block, Bill Hoyt, Tom Lindly, Henry Kaplan, Aaron Munter, Judy Hallman, Jerry Taylor, Stephanie Chenault (College of Charleston), Dr. Timothy Gottleber (North Lake College), Daris Howard (Ricks College), Barbara Johnson (University of Connecticut), and LoriLee Sadler (DePaul University).

Nancy E. Willard

July 27, 1996

Introduction

*I*f you understand the history and basic structure of the Internet you will also understand why it's so important that, as a society, we stress the need for ethics and personal responsibility.

The underlying technology of the Internet was developed by the United States military to facilitate communications between the computers and computer networks of the military, defense contractors, and university laboratories that were conducting defense-related research. The Findings of Fact set forth in the recent U.S. District Court decision in the case related to the Computer Decency Act described the key aspects of the organizational structure of the Internet:¹

“The network was designed to be a decentralized, self-maintaining series of redundant links, capable of rapidly transmitting communications without direct human involvement or control, and with the automatic ability to reroute communications if one or more individual links were damaged or otherwise unavailable. Among other goals, this redundant system of linked computers was designed to allow vital research and communications to continue even if portions of the network were damaged, say, in a war.” (Finding 6)

“No single entity—academic, corporate, governmental or non-profit—administers the Internet. It exists and functions as a result of the fact that hundreds of thousands of separate operators of computers and computer network independantly decided to use common data transfer protocols to exchange communications and information with other computers. . . . There is no centralized storage location, control point, or communications channel for the Internet, and it would not be technically feasible for a single entity to control all of the information conveyed on the Internet.” (Finding 11)

“The Internet is therefore a unique and wholly new medium of worldwide human communication.” (Finding 81)

¹ *ACLU v. Janet Reno*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 93-693. June 11, 1996.

While national laws, international treaties and technological controls will continue play a role in governing activities on the Internet, it's clear that we've created a structure where traditional methods of government won't be wholly successful. We've created an electronic anarchy. Interestingly, there are two distinctly different definitions of anarchy:²

1. A utopian society governed through the cooperative and voluntary association of individuals and groups.
2. Political and social disorder, confusion, and chaos.

Either result could presumably occur in an environment that has no ruler, and whether we ultimately end up with Utopia or chaos depends on what we do now. Some will argue that we need a traditional "authority" to maintain an ethical and moral society, but the current structure of the Internet suggests that the power of authority and external control will continue to dissipate as we move further into the information age.

The question, then, is *how to avoid disintegration into disorder and instead achieve Utopia*. We can strive to foster a global society where people function with a high degree of internalized, individual control based on strong ethical and moral principals; a society that functions effectively through cooperative, voluntary action. This is not a new concept—it's a continuation of the teachings of the world's spiritual leaders throughout the ages. It's just becoming more important as the world population grows. As the power of external control dissipates, it's all that we have to rely on for the future of our planet.

² *Anarchy* n. 1. a state of society without government or law. 2. political and social disorder due to the absence of governmental control. 3. a theory that regards the absence of all direct or coercive government as a political ideal and that proposes the cooperative voluntary association of individuals and groups as the principal mode of organized society. 4. confusion; chaos; disorder. *Random House Webster's College Dictionary*. 1992.

Contents

Preface **vii**

Introduction **ix**

Just because you can, doesn't make it right **1**

Those are real people out there **3**

Speak responsibly **5**

Look your best **9**

Respect the privacy of others **13**

Remain cool under fire **15**

We all begin as clueless newbies **19**

Tread carefully **21**

Play by the rules of the house **25**

Don't make noise **29**

Respect resource limits **31**

Ensure the integrity of the system **33**

Don't go where you don't belong **35**

Don't pollute **37**

Watch where you are looking **39**

When someone tells you to stop, stop **41**

If it's not true, don't say it **43**

Don't take candy from strangers **45**

Read between the lines **49**

If it seems too good to be true, it probably is 51

Credit the source 53

Don't take without permission 55

Speak up for your rights 61

Get a life 65

Expand your mind 67

Read with your eyes open 69

Share your expertise 71

Lend a helping hand 73

Feel the funk, but do it anyway 75

We are one world 77

Glossary 79

Net Communication Conventions 97

Index 99

- *Just because you can,
doesn't make it right*

Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you and act accordingly.

Thomas Jefferson

*t*he Net is a new frontier that offers a kind of freedom not generally found in the "real world." It is an environment where there is not only greater freedom, but where the laws, rules, and social standards are not quite as clear, or perhaps not quite as enforceable, as we have come to expect in other areas of our lives. How will you choose to respond to this new level of freedom?

At one extreme, there are people who maintain that they should have the freedom and right to use the Net in whatever way they choose, without regard for the harm they may inflict upon others. These people place a high priority on their own individual freedom, often to the detriment of the rights of other individuals or the common good. What they fail to recognize is that individual freedom, unguided by social and ethical values, is nothing more than mob rule.

At the other extreme, some people in our society have significant misgivings about the freedom that the Net provides and would like to find ways to restrict that freedom through the imposition of external control—more rules and laws.

It would appear that neither of these approaches holds much promise. The successful operation of the Net will depend on those who hold a different philosophy:

People who value individual freedom, but recognize that individual freedom must be balanced by personal responsibility, respect for others, and concern for the common good.

In an environment where external control cannot be relied upon to restrict harmful behavior, the entire issue comes down to personal choice:

- ◆ Some people in our society have established an internal system of values that embraces a balance between individual freedom and responsibility to others and to the common good. These people act in accordance with their values, even when they are in an environment that allows them the freedom to do otherwise. They will do what is right, not what they can get away with.
- ◆ Other people have not internalized a set of values. They think primarily of themselves, not of others or of the common good. These people may behave appropriately when there is a good chance they will get into trouble if they don't. But when they enter an environment where there is less chance of getting caught, they tend to act without regard for others. They will do what they can get away with.

Your use of the Net will reflect who you are.

- ◆ Is individual freedom your guiding value?
- ◆ What value do you place on respect for the rights of others and on the common good?
- ◆ What happens when your individual rights are in conflict with someone else's rights? Should your individual freedom to flail your fist in the air end when your fist is in the proximity of another person's nose?
- ◆ How will you choose to act in an environment where there is more freedom, but less clarity about rules and social standards and when and how they will be enforced?

• *Those are real people out there*

It is a terrible, an inexorable law that one cannot deny the humanity of another without diminishing one's own; in the face of one's victim, one sees oneself.

James Baldwin

Therefore all things whatsoever ye would that men should do to you, do ye even so to them.

Matthew 7:12

When you communicate electronically all you see are the words on a screen. You cannot see facial expressions or gestures. You cannot hear a tone of voice. All you have are the typed words in front of you.

Social scientists tell us that we tend to adjust our actions based on the responses of people around us. When you communicate electronically, it is much harder to assess the responses of other people. It's easy to forget that you are communicating with a real person—a person who has feelings very much like your own, feelings that can be hurt. Thus, people tend to feel free to say things on the Net that they would never say to a person face to face.

For this reason, the Golden Rule is every bit as important in Cyberspace as it is in the real world:

Treat others the way you would like to be treated.

Before you push the Send button, ask yourself two questions:

- ◆ Would I say this if the person were sitting in front of me?
- ◆ How would I feel if I, or someone I cared for, received this message?

• | *Speak responsibly*

At the heart of the First Amendment lies the principle that each person should decide for himself and herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal. Government action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes this essential right. Laws of this sort pose inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion. These restrictions raise the specter that Government may effectively drive certain ideas or viewpoints from the marketplace.

Justice Anthony Kennedy

But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic.

Justice Oliver Wendell Holmes³

the business of the Net is speech—collecting and disseminating information. Therefore, issues relating to freedom of speech on the Net are of paramount importance to its users and providers.⁴

Traditionally, the U.S. courts have extended a much higher level of free speech protection to material disseminated in print than to material disseminated through the broadcast medium. There are two reasons for this:

1. People have a greater level of control regarding the material they choose to read as compared to the material that is broadcast into their homes.

³ *Turner Broadcasting System, Inc. v. FCC*, 114 S. Ct. 2445 (1994). *Schenck vs. U.S.*, 249 U.S. 47 (1919).

⁴ The following analysis of free speech is based on U.S. law, which is similar, but not identical, to the law of many of the industrialized nations. But the Net is a global system and standards for free speech differ throughout the world. It will be interesting to see how the global use of the Net will affect free speech standards throughout the world.

2. Fostering the broad dissemination of ideas is at the heart of the First Amendment and, ostensibly, more people have the ability to disseminate their ideas through print than through broadcast.

Unfortunately, the idealized expectation that the multitudes would be able to communicate freely through print media has been tempered by the economic reality that most marketplaces of mass speech are dominated by relatively few media sources. The Net has changed the picture. As Judge Dalzell eloquently states in the U.S District Court decision in the case related to the Computer Decency Act:⁵

It is no exaggeration to conclude that the Internet has achieved, and continues to achieve the most participatory marketplace of mass speech that this country—and indeed the world—has yet seen. . . . Indeed the Government's asserted "failure" of the Internet rests upon the implicit premise that too much speech occurs in this medium, and that speech is too available to the participants. This is exactly the benefit of Internet communication, however. The Government, therefore, implicitly asks this court to limit both the amount of speech on the Internet and the availability of that speech. This argument is profoundly repugnant to First Amendment principles. . . . As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from Government intrusion."

As clear as this statement of the importance of the protection of free speech on the Net is, it should also be equally clear that those who engage in irresponsible speech should not expect to be immune from the consequences of their speech just because they happen to be speaking through the Net. Much of the discussion in this book relates to speech that is irresponsible—speech that is either illegal or can cause damage to someone else.

The right of free speech is not absolute. Under the First Amendment, speech can be regulated if there is an overriding public interest involved, such as the need to prevent child pornography or transmission of obscene material. Speech that occurs in the course of a crime, such as transmitting information on how to break into computer systems, is likewise not protected.

In addition to possible criminal liability, irresponsible speech can lead to civil liability. Just because speech may be protected does not mean that you cannot be held liable for harm caused by irresponsible speech. Civil liability for irresponsible speech can arise in cases such as defamation, harassment, intentional infliction of emotional distress, violation of privacy, and violation of trade secrets. In civil litigation, the courts generally try to balance society's interest in free speech against the harm caused by the speech and the ability of the particular defendant to have prevented such harm.

⁵ *ACLU v. Janet Reno*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 93-693. June 11, 1996.

It is important to recognize that First Amendment restrictions are only against government action. Private Net providers have the right to run their service as they choose. Providers have no First Amendment obligation to provide access to all newsgroups. In fact, they most likely have an affirmative obligation to remove newsgroups from the system if they know that these newsgroups carry illegal material, such as child pornography. Providers have no obligation to allow users to post any material they want on their Web pages. They likely have an affirmative obligation to remove illegal or damaging material if they know of its existence. And they have no obligation to provide an account to anyone who uses that account in a way that the provider considers to be inappropriate, such as sending harassing or junk e-mail.

Companies that have established Internet access to serve a company purpose have the right to determine what speech is, and is not, in furtherance of the company purpose. Government employees, including employees of educational institutions, do not have the right to use their system to communicate in whatever way they choose. Free speech rights of government employees are limited when they are acting in that capacity. Communicating through a government system would be considered acting in the capacity of a government employee. Students who are using a system established by an educational institution also have limited free speech rights. While institutions may not engage in viewpoint discrimination, they are within their rights to impose restrictions on speech for educationally-related purposes.⁶ Any user of a restricted system can gain more expansive free speech rights by establishing a personal account through a private provider.

While individuals can always be held criminally or civilly responsible for irresponsible speech, the potential liability of system providers for speech that is transmitted through or presented on their system is not entirely clear. Under certain circumstances, entities that disseminate the speech of others can be held responsible for damage caused by that speech. Traditional legal analysis in cases related to defamation has focused on whether the entity distributing the speech is a publisher or a distributor.⁷

A publisher, such as a newspaper, is in a position to exercise editorial control and can be held liable for the damaging speech within a publication, not only if the publisher has knowledge of its presence but also if it has acted with "reckless disregard." The same standard is likely to be applied to system providers, Web publishers, and discussion group moderators if they exercise a similar level of editorial control. By contrast, distributors, such as bookstores, do not generally exercise editorial control and can only be held liable if they have actual knowledge or a reason to know of the damaging speech. The extent to which a provider, publisher, or moderator actually exercises editorial

⁶ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

⁷ These cases are decided under state law, which can vary from state to state.

control will vary, and therefore the potential liability will vary. But the potential for liability will always be present. Providers, publishers, and moderators must act responsibly if questions arise about the presence of damaging speech.

The Computer Decency Act attempted to impose criminal responsibility on system providers for indecent materials transmitted through or presented on their system. The court found that this was unacceptable because the term "indecent" is unconstitutionally vague and it is impossible for the system provider to review all such material. However, questions remain about the extent of potential liability of a system provider, Web publisher, and moderator for defamatory material, material that infringes upon the rights of the owner of a copyright, or other illegal material such as child pornography or obscene materials.

Why should the user be concerned about the potential liability of the system provider, publisher, or moderator? Because the higher the potential for liability, the more restrictive the provider, publisher, or moderator will likely be. The greater the lack of clarity, the more incentive there is to err on the side of restriction. In all likelihood, a balanced approach to the imposition of liability on providers, publishers, and moderators will emerge that will consider both the extent of editorial control and the actual knowledge of the defamatory, infringing, or illegal material.

We can also anticipate expanded interest in enhancing individual control over the material that is accessed through the Net or that comes to us through the Net. As important as the right to free speech is, we must also ensure our rights to be free *from* speech. We must have the ability to exercise control over the speech that we choose to be exposed to and to have our children exposed to through the Net. This includes not only material that we may find to be "indecent" according to our personal or family values, but also junk e-mail, and sites that pander to our children in the guise of online games.

It will take some time and more than a number of court cases to fully sort out free speech issues on the Net. While we should rejoice in the recent decision of the court on the Computer Decency Act, the decision does not provide license for those who would use the Net for irresponsible speech.

A college student posted a message to numerous newsgroups sharing confidential information about the alleged mistreatment of a young woman by her family and suggesting that the recipients place a telephone call to the family to complain about the mistreatment. The student's response to the objections to his action was: "You should be able to write what you want on the Internet, whether it's true or not."

In considering such a case, how would you balance the rights of free speech against the injury that can be caused by a person's exercise of free speech?