Ethics in Information Technology, Fourth Edition

Chapter 5

Freedom of Expression

Objectives

- As you read this chapter, consider the following questions:
  - What is the basis for the protection of freedom of expression in the United States, and what types of expression are not protected under the law?
  - What are some key federal laws that affect online freedom of expression, and how do they impact organizations?
  - What important freedom of expression 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 (cont'd.)

- Not protected by the First Amendment
  - Perjury
  - Fraud
  - Defamation
  - Obscene speech
  - Incitement of panic
  - Incitement to crime
  - "Fighting words"
  - Sedition

Obscene Speech

- Based on *Miller v. California*, 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

- Oral or written 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 on the Internet
- Defamation and hate speech
- Corporate blogging
- Pornography

Controlling Access to Information on the Internet

- Freedom of speech on the Internet is complicated by ease by which children can access Internet
- Communications Decency Act (CDA)
  - Aimed at protecting children from pornography
  - Broad language and vague definition of indecency
  - Found unconstitutional in 1997

Controlling Access to Information on the Internet (cont'd.)

- 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 filtering
  - Software installed with a Web browser
  - Blocks access to certain Web sites deemed to contain inappropriate or offensive material

FIGURE 5-3 Screenshot of Safe Eyes® from Internet Safety

Source Line: Used with permission from InternetSafety.com, part of McAfee Inc.

Controlling Access to Information on the Internet (cont'd.)

- URL filtering
  - Blocks objectionable URLs or domain names
- Keyword filtering
  - Blocks keywords 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 (cont'd.)

- Top-rated Internet filters for home users
  - NetNanny Parental Controls
  - PureSight PC
  - CYBERsitter
  - SafeEyes
  - CyberPatrol

Controlling Access to Information on the Internet (cont'd.)

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

Controlling Access to Information on the Internet (cont'd.)

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

Children's Internet Protection Act (CIPA)

- Federally financed schools and libraries must block computer access to:
  - Obscene material
  - Pornography
  - Anything considered harmful to minors

Children's Internet Protection Act (CIPA)

- Schools and libraries subject to CIPA do not receive Internet access discounts unless they:
  - Put in place measures to filter pictures that are obscene, contain child pornography, or are harmful to minors
  - Adopt a policy to monitor the online activities of minors
  - Adopt a policy restricting minors' access to materials harmful to them

Children's Internet Protection Act (CIPA) (cont'd.)

- 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

Children's Internet Protection Act (CIPA) (cont'd.)

- Difficulty implementing CIPA in libraries because their services are open to people of all ages
  - Including adults with First Amendment rights
- CIPA has been upheld as constitutional by U.S. Supreme Court (*U.S. v American Library Association*)

Anonymity on the Internet

- Anonymous expression is expression of opinions by people who do not reveal their identity
- Freedom to express an opinion without fear of reprisal is an important right in democratic society
- Anonymity is even more important in countries that do not allow free speech
- Played important role in early formation of U.S.
- In the wrong hands, it can be a tool to commit illegal or unethical activities

Anonymity on the Internet (cont'd.)

- Anonymous remailer service
  - Computer program that strips the originating address from the email message
  - Forwards the message to the intended recipient
  - Ensures no header information can identify the author
  - Keeps what is communicated anonymous
  - What is communicated and whether it is ethical or unethical, legal or illegal, is up to the sender

Anonymity on the Internet (cont'd.)

- John Doe lawsuit
  - Defendant communicates using a pseudonym or anonymously so identity of defendant is temporarily unknown
  - Common in Internet libel cases
  - Once John Doe lawsuit is filed, the company may request court permission to issue subpoenas
  - ISPs frequently subpoenaed to provide the identity of anonymous "John Does"
  - Anonymity on the Internet cannot be guaranteed

Defamation and Hate Speech

- Hate speech that can be prosecuted includes:
  - Clear threats and intimidation against specific citizens
  - 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 against specific individuals
  - Libel directed at a particular person

Defamation and Hate Speech (cont'd.)

- Many ISPs reserve right to remove content that does not meet their standards
- Such actions do not violate the subscriber's First Amendment rights because these prohibitions are in the terms of service
  - ISPs must monitor the use of their service
  - Take action when terms are violated

Defamation and Hate Speech (cont'd.)

- Public schools and universities are legally considered agents of the government and must follow the First Amendment prohibition against speech restrictions
- Corporations, private schools, and private universities not part of state or federal government
  - May prohibit students, instructors, and employees from engaging in offensive speech

Corporate Blogging

- Some organizations allow employees to create their own personal blogs to:
  - Reach out to partners, customers, and employees
  - Improve their corporate image
- Blogs can provide uncensored commentary and interaction
  - Criticism of corporate policies and decisions
- Could involve risk that employees might:
  - Reveal company secrets
  - Breach federal security disclosure laws

Pornography

- The Internet has been a boon to the pornography industry
  - More than 4.2 million porn Web sites are accessible
  - The sites generate an estimated $1 to $7 billion a year in revenue
  - 72 million estimated visitors to porn Web sites monthly
- Individuals free to produce and publish what they want; however, if what they distribute is judged obscene, they are subject to prosecute
  - *California v Miller* set precedent for what is obscene

Pornography (cont'd.)

- Many organizations take steps to stop access in the workplace
  - Establishing a computer usage policy that prohibits access to pornography sites
  - Identifying those who violate the policy
  - Taking action against those users
  - Failure to take action against pornography could result in sexual harassment lawsuit

Pornography (cont'd.)

- Numerous federal laws address child pornography
  - Federal offense to produce or distribute
  - Most states outlaw possession as well
- At least seven states require computer technicians to report child pornography on clients' computers
- Sexting is sending of sexual messages, nude or seminude photos, or sexually explicit videos over a cell phone
  - Fast-growing trend

Pornography (cont'd.)

- CAN-SPAM Act
  - Specifies requirements that commercial retailers must follow when sending messages
  - Each violation can result in $250 - $750 fine
  - Federal Trade Commission charged with enforcing the act, but has not done so effectively
  - Deterrent in fighting the dissemination of pornography

TABLE 5-2 Manager's checklist for handling freedom of expression issues in the workplace

Question	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 non-business use of information resources?		
Did the developers of your policy consider the need to limit employee access to non-business-related Web sites (for example, Internet filters, firewall configurations, or the 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?		
Does your policy communicate if employee e-mail is 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 and expression
- Does not protect obscene speech, defamation
- Key issues
  - Controlling access to Internet information, especially for children
  - Anonymous communication
  - Spread of defamation and hate speech
  - Access to pornography
  - CAN-SPAM Act limitations on email messages