

Ethics and Policy Issues in Computing

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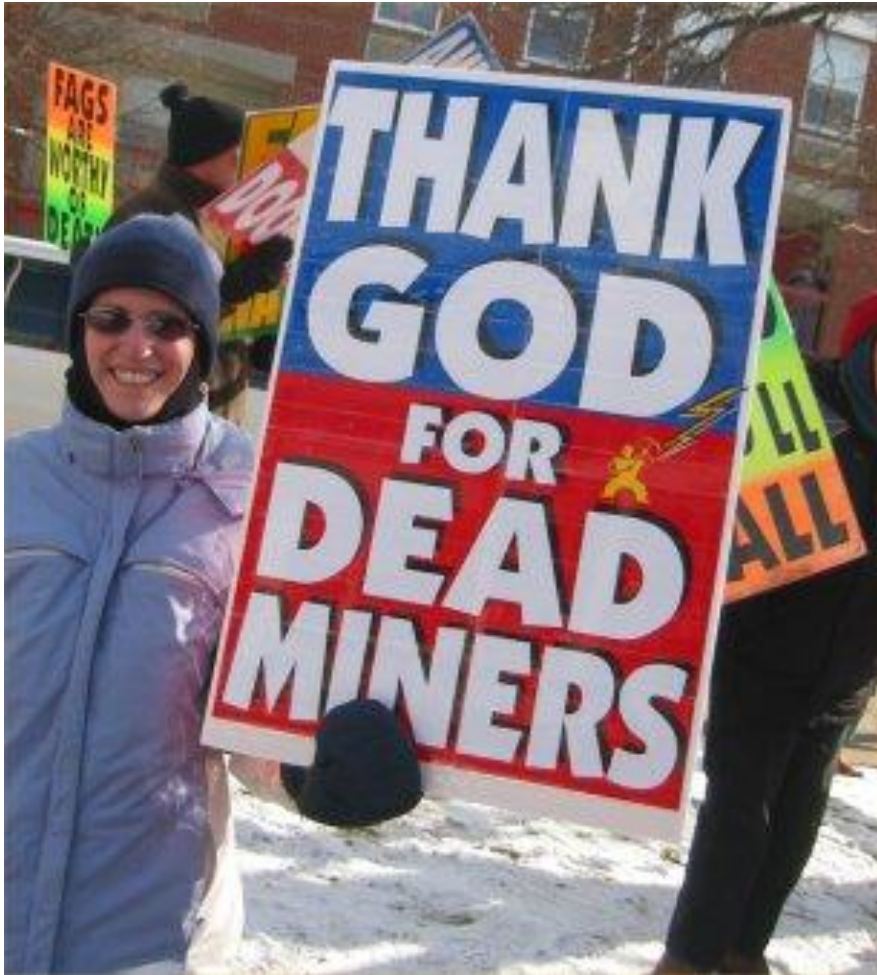
Today

- Examples of the interplay of First Amendment, legislation, and the courts
 - Zeran: Online defamation and freedom
 - McIntyre: anonymity and political speech
 - Reno: Communications Decency Act and the First Amendment
- Do these issues change because speech takes place in cyberspace?

U.S. Constitution

- Fundamental, most basic law
- Very difficult to change (just 27 amendments)
- Terse, mostly a statement of principles
 - E.g., First Amendment
 - “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- Why is freedom of speech a big deal?

Should We Protect This?



- Members of Westboro Baptist Church protesting memorial for Sago Mine disaster
- Believe the mine accident was God's revenge on US for tolerating homosexuality

Ken Zeran

- America online customer advertised "Naughty Oklahoma T-Shirts"
- Various tasteless slogans about bombing of Alfred P. Murrah Federal Building, e.g.,
 - "McVeigh for president 1996"
 - "Finally, a day care center that keeps kids quiet -- Oklahoma 1995"
- Gave Zeran's phone number
 - "please call back if busy" because high demand
- Zeran had nothing to do with it, not even AOL subscriber
- AOL record keeping inadequate to identify poster

Zeran v. AOL, Inc. , 129 F.3d 327 (4th Cir. 1997).

Defamation

- Zeran sued AOL for defamation
- In written form, defamation is called libel
 - False statement
 - Published
 - Intentionally or recklessly disregards truth
 - Causes damage to reputation
- “Publishers” versus “distributors”
 - Edit or regulate the material

Federal Statute

- Communications Decency Act CDA §230(c)(1)
 - “[no] provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. “
- In response to previous case where Prodigy held liable for defamation, held to be “publisher,” not “distributor”
- Court held statute pre-empts state defamation law
- Zeran left with no remedy

Legal lessons

- Freedom of speech has limits
- Federal laws can preempt state laws
 - Intentional
 - If state laws conflict with federal
- Question: Is defamation on the internet importantly different from defamation, e.g., in newspaper?

Margaret McIntyre

- Distributing anonymous leaflets opposing school tax levy
- Ohio election law required all leaflets to have responsible person's name and address
 - Purpose to prevent pre-election fraud
 - To make it easier to track down wrong-doers
- McIntyre was fined \$100
- Appealed to US Supreme Court

McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995).

Protecting Political Speech

- Anonymity is just another decision about content
- Political speech is at the “core” of the 1st amendment
- Prohibitions will receive “exacting scrutiny”
 - Serve an overriding state interest
 - Preventing election fraud is an overriding interest
 - Must be narrowly tailored to serve that interest

Narrowly Tailored

- Applies to truthful as well as misleading speech
- Applies not just to candidates and organized supporters, but individuals using own resources
- Applies not only to election of officers, but ballot initiatives where libel unlikely
- Applies not only on eve of election, but months before
- Statute held to be unconstitutional

Legal Lessons

- Anonymity is part of content
- Political speech receives “exacting scrutiny”
- Restrictions on speech must be very narrowly and precisely drawn

Communications Decency Act*

- Attempt to keep inappropriate material from minors
- Send or display anything obscene or indecent to someone under 18
 - “any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards”

* 47 U. S. C. A. §223 (a)-(e)

CDA meets First Amendment*

- Previous laws prohibiting sale of obscene materials to minors upheld
 - State interest in well-being of youth and protecting parents' rights
 - Can discriminate on basis of age
- FCC can administratively punish radio station for “Seven dirty words” monologue
 - First Amendment does not fully apply to broadcast media

* Reno v. ACLU, 521 U.S. 844, 1997.

Reno

- First amendment **does** apply to internet (unlike broadcast media)
- Miller standard for obscenity:
 - "(a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."

DCA Fails the Test

- Does not specifically define the proscribed material, just says “patently offensive”
- Only sexual activities can be obscene, DCA includes others
- Unlike DCA, the Miller standard is made less vague by
 - Appeal to prurient interest
 - Lacks serious literary, artistic, political, or scientific value
- Very difficult, expensive for “sender” to determine if receiver is underage, but there are reasonable effective software packages parents can use to block offensive material

Lessons of Reno

- First Amendment applies with full force to internet communication
- As with other types of speech, regulation will receive high degree of scrutiny, must be narrowly drawn
- Applied Miller obscenity test
 - Unclear what “community standards” apply

Discussion / Q&A
