Rowan University

Rowan Digital Works

Theses and Dissertations

6-20-1995

A study of computer on-line regulation: advertising, copyright, free speech, libel and privacy

Frances Josephsen
Rowan College of New Jersey

Follow this and additional works at: https://rdw.rowan.edu/etd

Part of the Public Relations and Advertising Commons

Let us know how access to this document benefits you - share your thoughts on our feedback form.

Recommended Citation

A study of computer on-line regulation:

advertising, copyright, free speech,

libel and privacy

by
Frances Josephsen

A Thesis

Submitted in partial fulfillment of the requirements of the
Master of Arts Degree in the Graduate Division
of Rowan College of New Jersey.

May 25, 1995

Approved by _____
Professor

Date Approved ___*June 20, 1995*___

Abstract

Frances Josephsen

A study of computer on-line regulation:
advertising, copyright, free speech,
libel and privacy

1995

Professor Anthony Fulginiti

Master of Arts, School Public Relations

This research project concerned identifying and
detailing current and needed laws governing on-line
communication.

Through a representative literature review, the author
compiled a list of industry leaders for interview via
electronic mail.

The author surveyed 35 individuals to gather public
opinion on the following areas: advertising, copyright, free
speech, libel and privacy. The author looked for general
opinions and attitudes.

The author analyzed the content of each response using
simple frequencies and searched for commonalities within the
survey sample responses.

The study identifies public opinion regarding current on-line communication policy. However, answers and recommendations concerning on-line law were not found.

Respondents stressed the need to identify an enforcement mechanism before developing legal policy.

Mini Abstract

Frances Josephsen

A study of computer on-line regulation:
advertising, copyright, free speech,
libel and privacy

1995

Professor Anthony Fulginiti

Master of Arts, School Public Relations

This research project concerned identifying and
detailing current and needed laws governing on-line
communication. On-line advertising, copyright, free speech,
libel and privacy were researched.

The author found that before laws can be defined, an
enforcement mechanism must be developed. Until then,
netiquette, the unwritten guide of good manners on-line,
remains the standard policy on-line users still rely on.

Table of Contents

Acknowledgement and Appreciation

All are needed by each one:
Nothing is fair or good alone.
Ralph Waldo Emerson

This thesis is dedicated to Fred J. Josephsen, my husband.
His selflessness and support
makes my goals possible.

Thank you Fred.
You are a special man. I am lucky.

Thanks....

- to Dillon. The smartest newborn in the nursery with nine graduate credits under his belt. Thanks for your good timing.

- to my parents Carmen and Trudy Barone. I appreciate your support and faith in me.

- to Dr. Donald Bagin and Professor Anthony Fulginiti. Thank you for your guidance and assistance.

- to my friends in the real world and Cyberspace.

- be to God.

Chapter I

Introduction

In our technology-driven society, a new communication medium has evolved: on-line communication. "It is more than just having fun with computers and modems. It is the start of a social revolution, perhaps the most important structural advance in society in our lifetime."[1]

From their computer screens, people send electronic mail messages, read major newspapers, magazines and books, download new software, conduct business, and hold conversations in real time.

World wide, people are telecommunicating. Whether they're logging onto the Internet, or one of the popular on-line commercial computer networks, such as CompuServe, America On Line or Prodigy, millions of people are going on-line. "Twenty million strong and adding a million new users a month, the Internet is suddenly the place to be."[2]

Bill Gates, CEO of Microsoft, the world's largest computer software company, believes the computer industry "is all about communication."[3] However, on-line communication isn't for computer experts only.

Anyone with a computer, modem, telephone line and the appropriate software can log on and connect with other computer users anywhere in the world. A social tool and a business tool, "the Internet is the universal communications medium of the future."[4]

With the advent of on-line communication, a new community has developed: Cyberspace. Cyberspace, lacking a physical location, is an electronically induced community of people linked by their computers.

Cyberspace consists of commercial on-line services, such as America On Line, CompuServe and Prodigy, computer bulletin board systems, private systems, and computer networks.[5]

Like any community, Cyberspace has informal rules and laws. Unfortunately, many members don't know what they are.

Background

Government researchers started the on-line community more than twenty years ago. The Department of Defense started ARPANET in 1969. ARPA, an acronym for Advance Research Projects Agency, created ARPANET, the computer network for this division. The Advance Research Projects Agency was a division of the Department of Defense that awarded grant funds.

ARPA started its computer network as an experiment. It wanted to connect the Department of Defense with its military research contractors. ARPA also needed to establish a

networking arrangement with universities working on military-funded projects.[6]

Since 1969, thousands of computer networks have emerged. The most well-known computer network is the Internet. To clear a common misconception, the Internet is not a sole computer network. Rather, the Internet is a computer network which joins other existing computer networks. The Internet is commonly referred to as the network of all networks.[7]

Need for the study

Some legal experts believe current laws don't cover digital media. "The legal system is struggling to adapt traditional doctrines to new market structures and technologies of information production and distribution."[8]

Other legal experts think differently. "The law, especially as it relates to computer-mediated communication, is constantly changing."[9]

Are there consistent policies enforced to deal with individuals crossing the line of legal behavior? Many experts don't believe there are. "It's uncontrolled, unmonitored and anything but quiet. You can pull risqué or pornographic images of the "Net" just as easily as you can carry on a discussion of the Galileo Space Probe with someone in Australia or read the *San Francisco Examiner* on-line."[10]

Research suggests the Internet is unorganized and chaotic. There is no authority with the power to remove a

user for inappropriate, or illegal behavior. "It's the closest thing to anarchy that ever existed," says Clifford Stoll, a Berkeley astronomer famous for trapping a German spy attempting to break into United States military computers.[11]

Since no one is in charge, no one can take care of the wrongdoers. "What it lacks is much of a police force. The medium is too young, too immature to be frozen in place with rules."[12]

Problems have cropped up within the on-line community. On-line members receive unwanted junk e-mail; individuals have been stalked and harassed; children wander into unsuitable territory unsupervised; anyone can download textual information and software available on-line and send it elsewhere without the author receiving credit.

Even with a "police" presence, what is right or wrong remains unclear. Legal issues regarding on-line communication, such as advertising on-line, invasion of privacy, copyright, free speech and libel need to be documented and defined.

According to Anne Wells Branscomb in her book Who Owns Information: From Privacy to Public Access, "There is...no law of Cyberspace. [It is] a place or a universe of many places where users are making their own jurisdictional boundaries and developing their own standards of fair play."[13]

On-line standards are definitely needed. Without formal, well-known rules in Cyberspace, chaos and anarchy will remain

the norm. Brendan Kehoe, author of <u>Zen and the Art of</u>
<u>Internet</u>, writes, "The only way everyone can peacefully co-
exist in Cyberspace is by ensuring rapid recognition of any
existing problems."[14]

Documenting existing problems and compiling guidelines
of needed laws governing on-line communication are the
subject of this thesis project.

Statement of the problem

This research project concerned identifying and
detailing current and needed laws governing on-line
communication. The questions below were addressed and
researched:

- What do key on-line communicators think about the
  policies governing on-line communication? Are there
  policies? If so, can they be enforced?
- What guidelines need to be adopted in regard to
  advertising, copyright, free speech, libel and
  privacy?

Limitations

The author researched current policies governing on-line
behavior. Ethics, operational procedures, technical
information, differences among competing on-line
communication networks and companies will not be discussed.

The author will not discuss computer hacking incidents or computer crime, such as fraud and theft.

Reviewed literature was limited to a specific time frame. Due to the quickly advancing technological nature of this topic, the author limited the literature review to the years 1988 through May 1995.

Through the literature review, the author compiled a list of key on-line communicators who were interviewed via e-mail.

From these responses, information was gathered, analyzed and compiled.

Purpose

This project assumes that on-line users, sometimes guilty of illegal behavior, often don't realize they are misbehaving. Users need legal guidelines.

This research project intended to develop a resource documenting recommended laws governing on-line communication. The following legal areas are addressed: advertising, copyright, free speech, libel, privacy.

This study documents current practices and recommended standards according to three specific groups: industry leaders, attorneys and public interest on-line users.

Procedures

The author reviewed recently published articles on this topic. An abundant amount of information was available on the Internet. However, a smaller amount of research was available on legal behavior.

The author obtained electronic mail addresses for The Internet Society, The Interactive Services Association, Electronic Frontier Foundation and the Society for Electronic Access. These organizations were contacted to acquire information on the thesis topic. These organizations sent copies of their own on-line guides to the author.

The author compiled a list of industry leaders for interview via electronic mail. This list included executives from leading commercial on-line companies, media attorneys, and public interest on-line users who expressed an interest in on-line legal issues.

The author surveyed members of the three groups. The survey sample consisted of 35 people. These individuals were placed into five groups of seven people. The five groups represented the following sub-topics: advertising, copyright, free speech, libel and privacy. Each interviewee was assigned one category of survey questions.

To place the individuals in groups, the author reviewed the participants' on-line profiles. The author had access only to America On Line member profiles. These profiles list,

among other things, information such as job descriptions, hobbies and areas of interest.

The author categorized these individuals according to information within the on-line profile. For example, if an on-line member's profile were listed "copyright attorney," the member was sent the group of questions on copyright. Unfortunately, not every interviewee has an on-line profile.

Remaining participants were placed into categories in which the author judged they could best contribute.

The author sent the survey to the participants' e-mail mailboxes. The author asked each individual to respond and return the surveys through e-mail. The responses were downloaded, saved, printed and reviewed.

From these interviews, recommendations concerning on-line law were gathered, analyzed and compiled. Legal behaviors were categorized according to the different domains within on-line communication that were studied: advertising, copyright, free speech, libel and privacy.

Definition of terms

Flames. Harsh comments and insults exchanged between individuals on-line.

cyberspace. The medium users use to communicate via computer.

Cyberspace. The on-line community created by users linked via computer.

Newbies. Individuals new to on-line community.

Surfing. Exploring areas of the Internet in search of interesting items.

The following definitions were taken from <u>America On Line</u>

<u>Tour Guide</u>. [15]

Article. Articles are textual documents intended primarily, to be read on-line. Any article may be printed or saved, however, for later examination off-line.

BBS. A Bulletin Board System (BBS) is any central system accessed via modem and phone lines where data is posted for dissemination among the users.

Chat. Whenever a number of people are simultaneously connected to America On Line(or an other telecommunications service), they may chat, or type messages to one another in real time.

Database. A database is an organized collection of information, usually maintained by a computer.

Digital Media. Any method of transmitting and accessing information where the end user doesn't use traditional methods such as paper, radio waves, or television signals. It is generally marked by a high degree of interactivity between user and provider. [16]

Download. Downloading is the transfer of information from one computer to another. Download is used often as both a noun and a verb. For instance, you might *download* a graphic file to your hard drive, where you store the latest *downloads*.

Emoticons. Characters, mostly consisting of punctuation, which are meant to be viewed sideways, and which give information on the writer's emotional state.

E-mail. Electronic mail is private mail sent from one computer to another. It can be replied to and forwarded and even include attached files.

Internet. The Internet is a network of computer networks, which are interconnected at all times. The Internet is maintained by the National Science Foundation.

File. In this context, a file is a computer file (text, graphics, program, sound, animation) which is intended to be downloaded to a member's computer for review off-line. Files may be attached to e-mail or stored in libraries.

Message. Messages are posted on message boards by members for other members to read and as such are public.

Message board. Analogous to a cork bulletin board, message boards (or simply boards) are places where members post messages, typically to solicit a reply or to comment on a prior message.

Modem. This is a contraction of MOdulator/DEModulator, a device for conveying digital information into audio information and back again.

On-line. The condition of a computer when it is connected to another machine via modem.

Shareware. Shareware is software that's typically posted on services like AOL for distribution (via downloading) directly to the user. Since the producer (or programmer) usually posts shareware and the user downloads it, distribution is direct and nearly without cost. Users are generally encouraged to make copies and give them to friends-even post them on other services. This method of "pass around" distribution gives rise to the term "shareware." Payment is voluntary and relatively small ($5 to $50), sent directly to the producer. Shareware survives on the honor system. A number of permutations have developed, among them freeware (no payment) and postcardware (send a picture postcard to the producer).

Telecommunications. Two-way communications between computers via modems and telephone lines.

Chapter I Endnotes

[1] Lance Rose, <u>Netlaw: Your Rights in the Online World</u>, (Berkeley: Osborne McGraw Hill, 1995), xv.

[2] Philip Elmer-Dewitt, "The Wild World of the Internet," <u>Time Magazine Online</u>, 06 Dec. 1993, 1.

[3] James Kim, "Microsoft gives peek at Network," <u>USA Today</u>, 15 Nov. 1994, B1.

[4] John Markoff, "A New Information Mass Market," <u>New York Times</u>, 3 Sept. 1993, D3.

5 Edward A. Cavazos and Gavino Morin, <u>Cyberspace and the Law</u> (Cambridge, Massachusetts: The MIT Press, 1994), 2.

[6] John R. Levine and Carol Baroudi, <u>The Internet for Dummies</u> (San Mateo, CA: IDG Books, 1993), 11.

[7] Rosalind Resnick, <u>Exploring the World of Online Services</u> (San Francisco: Sybex, 1993), 207.

[8] Henry H. Perritt, Jr., "Tort Liability, the First Amendment, Equal Access, and Commercialization of Electronic Networks, " <u>Electronic Networking</u> 2, no. 3 (fall 1992): 29.

[9] Cavazos and Morin, p xii-xiii.

[10] Marcia Sampson, "Internet: lawless frontier or country backroad?" <u>Desktop Publishers</u> 9 (Nov. 1994):43.

[11] Philip Elmer-Dewitt, "Battle for the Soul of the Internet," <u>Time Magazine Online</u>, 25 July 1994, 2.

[12] Dan Charles, "Socialising(sic) in Cyberspace," <u>New Scientist</u>, 134 (May 16, 1992):12.

[13] Sampson, 42.

[14] Brendan P. Kehoe, <u>Zen and the Art of Internet</u> (Englewood Cliffs, NJ: Prentice Hall, 1992), p. 162.

[15] Tom Lichty, America Online Tour Guide (Chapel Hill, NC: Ventana Press, 1992), glossary.

[16] On-line conversation with LobbyBug, _America On Line_, February 27, 1995.

Chapter II

Literature review

This chapter presents highlights of available research material about on-line communication law.

Since this research project deals with the area of on-line communication, most of the research was conducted on-line. The author accessed the Atlantic County Library of On-line Services, Stockton State College on-line databases, Rowan College Savitz Library on-line databases and CARL/Uncover, the Colorado Alliance of Research Libraries.

The following keywords were entered into the computer databases the author accessed: on-line ethics, on-line etiquette, on-line law, on-line free speech, on-line advertising, on-line privacy, on-line copyright, Internet, computer networks, telecommunications, computer law, on-line systems, copyright, and electronic publishing.

The author accessed ERIC Journal citations, as well as many national newspapers, magazines and journals through the America On Line computer network. The full text of many of these publications was available, read and reviewed on-line.

During the research process, the on-line editions of these popular magazines were consulted: MacWorld, Time, New Republic, Wired, Compute, Scientific American, Connect Magazine and Newsbyte.

The author acquired four popular reference guides to on-line services: the Electronic Frontier Foundation's Guide to the Internet; The Internet Resource Guide compiled by the National Science Foundation Network Service Center; the Interactive Service Association's Guide to On-line Services; and Rosalind Resnick's Guide to Going On-line.

The above guides, with the exception of the Interactive Service Association's Guide to On-line Services, were sent directly to the author's on-line mailbox and downloaded.

The Electronic Frontier Foundation's Guide to the Internet does not contain much information concerning on-line law. A brief section in Chapter Four raises some interesting questions concerning First Amendment privileges. But, the guide does not provide answers to these questions.

The National Science Foundation's Internet Resource Guide is similar to the Electronic Frontier Foundation's guide. This guide serves as an index of the Internet's available resources. The guide supplies information on where to find interesting areas and how to connect with them.

The Interactive Service Association's Guide to On-line Services is a nine-page pamphlet. The pamphlet contains basic tips on how to get started with on-line services, payment

information, and a small section on symbols used while communicating on-line.

Rosalind Resnick's <u>Guide to Going On-line</u> provides information for individuals interested in electronic media. The guide is arranged in a question-and-answer format. Written for individuals interested in on-line publishing, this guide contains a section with information on electronic publishing rights.

Related studies

The author searched Dissertation Abstracts on CD-ROM to locate theses concerning on-line communication law. No research studies were found concerning this topic.

Significant previous work

<u>The Law of Cyberspace</u>, written by Edward A. Cavazos and Gavino Morin, is the first book the author found on this research topic. This book, in its second printing in 1994, is the first book to be published for the general public on the topic of cyberlaw. Cavazos and Morin's chapters on electronic privacy, Internet business, copyright and First Amendment, were valuable resources for this research project.

Another valuable research source was prepared remarks from the 1991 Conference on Computers, Freedom and Privacy. Laurence H. Tribe, Tyler Professor of Constitutional Law,

Harvard Law School, was the keynote speaker. Tribe's prepared remarks, The Constitution in Cyberspace: Law and Liberty Beyond the Electronic Frontier were located on the Internet and downloaded.

Professor Tribe believes the Constitution can be interpreted to cover this new medium. Some of Tribe's interpretations and beliefs, as they pertain to this thesis topic, are included in this literature review.

The most significant source was Netlaw authored by Lance Rose. Rose is an attorney and columnist specializing in on-line legal issues. Netlaw provides an introduction to on-line law. The text includes chapters on copyright, free speech and privacy.

Relationship to previous work

The author attempted to discover if the public is knowledgeable of existing laws discussed in Cavazos and Morin's book.

The author sought public opinion regarding existing laws. This thesis project will provide answers to some of the unanswered questions in The Law of Cyberspace.

Some of these questions are: Are all electronic records protected writing? Who owns the right to words saved and downloaded from a live conversation on-line? Should computer networks be held liable for libel when they know of damaging remarks posted to their service? These questions are

representative of the types of questions the author has sought public opinion about.

Rose believes legal on-line issues are similar to legal issues in the physical world. Rose says current law and common sense play a large role in the development of on-line law.

There is some agreement between Rose's text and the author's study: unanswered questions concerning on-line law still remain.

The author used these texts to build a framework for the study, draw out background information, and find questions to be answered through the author's survey.

Agreement and disagreement in the field

A review of related published works, including books, magazines, prepared remarks and journal articles, is listed below.

Do the rights and privileges guaranteed by the United States Constitution cover computer communication?

In the following literature review, not all legal experts, scholars, authors and users agree with Professor Tribe.

Advertising

Is advertising on-line acceptable? There is some debate.

In the past, when the Internet was only for academics, advertising was frowned upon. However, with the tremendous growth the Internet has experienced, commercialization was bound to happen. Advertising, naturally became part of that commercialization.[1]

Long-time Internet users think the introduction of advertising will usher in unwanted changes. "Some Internet denizens think ads will ruin the neighborhood."[2]

However, the Internet's segmented population, divided into discrete interest areas, is an advertiser's dream. Trend tracking individuals have jumped on the bandwagon. "The Internet's estimated 10 million to 20 million mostly well-heeled users are simply too desirable an audience to be passed up by marketers."[3]

According to Jeffrey Kagan, president, Tele Choice Consulting, Atlanta, in the May 2, 1994 edition of Advertising Age, "Advertising is effective and accepted in varying degrees depending on what part of the Internet you are using. Some areas are open for business today. Others require a much more subtle approach."[4]

In an article in the May 2, 1994 issue of Advertising Age, Robert Shapiro, senior vice president of commercial marketing for Prodigy, says, "Eventually, there have to be

standards for the Internet on a number of topics, advertising being one."[5]

Cyberspace and the Law authors, Cavazos and Morin issue a word of advice: "Individuals using the power of Cyberspace for commercial purposes should be wary of misleading the public or promising too much."[6]

David Plotnikoff, in an article in the San Jose Mercury News, believes it's not what you say, it's where you say it. "Choosing the right location and approach mean everything on-line."[7] Post your messages in relevant subject areas.

"Technology is one of the most important resources available in the market. Indeed, it can be said that the businessperson who does not take advantage of the newest technological innovations is not only failing to stay ahead of the competition, but is falling behind as well."[8]

Cyberspace and the Law authors Cavazos and Morin explain the finer points of doing business on-line but do not discuss advertising.

Advertising on-line needs to be clearly defined. However, just who will decide is not certain. Writer Angela Gunn, in her article, The Internet: The Importance of Neticuette, believes: "The final word on advertising will come from its users."[9]

Copyright

Do the copyright laws that currently cover traditional media, reach digital media? According to Lance Rose, an attorney and author of Netlaw, "there's a belief in the air that copyright law as we know it will die out on the computer networks."[10]

The Law of Cyberspace authors believe the guidelines of copyright law in Cyberspace will be defined as more issues develop.[11]

According to Rosalind Resnick, author of the Guide to Going On-line, publishers are to blame. These individuals still use old contracts with outdated language that does not apply to the electronic media. These publishers need to change the way their contracts are worded.[12]

Copyright problems have already cropped up on-line. Major magazines have been sued by freelance writers for copyright infringement. "These writers claim they never granted their publishers the right to reproduce their printed works on electronic databases or CD-ROM computer disks."[13]

Anne Wells Branscomb, writing in Scientific American, is unsure of on-line copyright. "Under the 1976 revision of the Copyright Law, one must assume that any original work is protected by an unpublished copyright until published. Consequently, when precisely a work is published and under what proviso it is released are matters of considerable legal interest. Is the electronic record a 'writing?'"[14]

Cavazos and Morin believe electronic records and bulletin board postings are protected. Individuals own their e-mail and their messages posted to bulletin boards and news groups. Once it's composed, the message writer owns it.[15]

However, no one has a definite answer on whether live chat room conversations are protected under copyright. It is possible for live conversations to be saved in a log and stored electronically. This means every speaker may own a copyright to the conversation. This could be considered a collective work copyright.[16]

Cavazos and Morin believe that in regard to copyright, computer software is also subject to copyright law.[17] Not everyone shares this opinion. "Although copyright law is an established means of protecting against piracy, courts are belatedly concluding that 'copyright law was not designed to accommodate computer software protection.'"[18]

Harvard Professor Laurence Tribe also feels that computer programs should be protected. "It violates copyright law to send commercial software to bulletin boards or on-line services. Sending shareware should abide by the authors' guidelines for distribution. Pay close attention to the disclaimers and restrictions that often come with the program. Some people believe that in Cyberspace, everything should be free--that information can't be owned."[19]

Rose believes shareware is actually a marketing technique, not software. However, the shareware copyright is not meaningless. Abide by the program author's wishes.[20]

Free Speech

For over 200 years we have celebrated our Constitutional right to free speech. Now as the electronic age has emerged, legal questions concerning free speech on computer networks have emerged.

However, according to the words within the First Amendment, "U.S. citizens and the press have broad legal powers to communicate with other citizens, without significant government interference."[21]

Cavazos and Morin confirm our right to electronic free speech. "Most of the messages that are conveyed in cyberspace qualify for protection under the First Amendment to the United States Constitution."[22]

Ironically, Cavazos and Morin believe it is the judicial system that has caused this debate over electronic free speech. "Unfortunately, our legal system is sometimes slow to recognize how the First Amendment applies to the new media that are the inevitable product of technological advances."[23]

Harvard Law Professor Laurence Tribe believes the Constitution can be interpreted to accommodate new media. In Tribe's prepared remarks from his keynote address at the First Conference on Computers, Freedom and Privacy, Tribe concluded that, "the Framers of the constitution were very wise indeed. They bequeathed us a framework for all seasons, a truly astonishing document whose principles are suitable for all times and all technological landscapes."[24]

Tribe agrees with individuals claiming their First Amendment rights have been violated by computer bulletin board system operators who edited or removed a posted message. First Amendment privileges only prevent the government from violating our right to free speech.[25]

Many of these on-line services have a large membership. It is unrealistic to expect a system operator to review every posted message and analyze it for libelous content. There is too much traffic on these individually owned services.[26]

Since First Amendment privilege only protects us from the government, private on-line companies should be allowed to issue their own policies. The judicial system needs to recognize these policies. "...To protect free speech and other rights of users in such private networks, judges must treat these networks not as associations that have rights of their own against the government, but as virtual governments in themselves--as entities against which individual rights must be defended in the Constitution's name."[27]

Anne Wells Branscomb, in Scientific American, does not believe that our right to electronic free speech should be without some limits. For example, there are cases of bulletin board services which post stolen long distance access codes and credit card numbers. "We know that electronic freedom of speech, whether in public or private systems, cannot be absolute."[28]

Libel

The question of libel comes up in computer communication. Defamation on-line will always be considered libel.[29]

Libel is incurred when an individual makes false statements about another person's character or injures their reputation. Rose believes an individual can suffer a damaged reputation from an on-line remark. "This is especially true if one's circle of business and friends is well connected to the on-line world."[30]

Crossing the line of free speech, issuing damaging remarks about another individual, places on-line users in the defamation arena. "Free speech does not mean one can damage a reputation or appropriate a copyrighted work without being called to account for it."[31]

According to Cavazos and Morin, legal experts and scholars have debated on-line libel more than any other computer communications and network legal issue.[32]

One subissue of libel is flames-- nasty, heated remarks between users on-line. Can flames be considered libel? According to Cavazos and Morin, probably not. "Some of the more obnoxious flames are not actionable libel because no one would every believe the disparaging claims they make."[33]

Another subissue is where the remarks are issued. Should on-line computer networks and bulletin board services be held

liable for the content of their messages? Cavazos and Morin say no.[34]

Cavazos and Morin compare the networks and bulletin board services to a bookstore. These companies cannot be held liable for not knowing the content of the books on the shelves.

Professor Tribe believes computer networks and bulletin board services are also like bookstores. These networks present information uploaded to them in computer format, rather than send out their own information. They should not be held responsible for the content contained within.[35]

However, Cavazos and Morin bring up one strong argument. Should computer networks and bulletin board services be held liable when they are aware of a defamatory posting?[36]

The author's study will attempt to answer these questions.

Privacy

Most people enter the on-line world using a pseudonym, or screen name. These on-line names, like CB handles, protect the anonymity of the individual.

Anonymity is one issue that has not been addressed a great deal. But that should change. "In the next few years, however, we can expect lawyers and policy makers to come to grips with the issue of whether anonymity on the Net is good or bad, and whether it should be tolerated or discouraged."[37]

writes Mike Godwin, a lawyer who specializes in on-line legal issues.

Individuals select these names to protect their privacy. Sometimes individuals use their true names. The Internet address of this author is FrancieJ@aol.com. Others select a name that has to do with their profession. For example, Anthony Fulginiti is a professor at Rowan College of New Jersey. His screen name is Tonyprof@aol.com.

However, if you commit an illegal act on-line, law enforcement is going to want to know your true identity. Cavazos and Morin want to know, "will law enforcement attempts to reveal the true identity of these users be judged to be a violation of the First Amendment?"[38] Some individuals may believe it an invasion of privacy to reveal this personal information.

According to Cavazos and Morin, disclosing personal facts to the public may be grounds for a lawsuit. This remains unclear. This includes posting the information to a public forum.[39]

This responsibility rests on the system operator. "The operator must actively strike the proper balance between letting users conduct their affairs in private, and dealing effectively and promptly with any illicit actvities that may come to light on the system."[40]

Most computer communications companies include free e-mail service in their membership packages. Naturally, e-mail is one of the most popular on-line features.

Many people rely on sending electronic mail. The idea of electronic mail, commonly called e-mail, brings up other issues of privacy.

The whole concept of electronic mail is similar to the traditional mail delivery system we use today. Electronic mail is quick; it only takes a few minutes to send a message. E-mail is also inexpensive. Most on-line companies include e-mail services with their membership packages.

The messages you send and receive via e-mail are intended to be private. Many individuals challenge this privacy issue. "Following a profusion of stories widely reported in the media, much fear, uncertainty and doubt has been expressed regarding the rights and obligations of e-mail providers and users with privacy rights being a matter of considerable interest."[41]

According to Anthony Owens in Library Journal, "Electronic mail is not private, no matter who tells you otherwise. Someone, somewhere, down the security line has access to messages that you send to others."[42]

Judith Turner, in The Chronicle of Higher Education, interviewed an individual who said, "Never send anything that might embarrass you or send you to jail."[43]

Accidents happen. Sometimes mail gets sent or rerouted to the wrong address. But unlike the traditional mail system, a network provider might be liable for sending a message to someone other than it was intended.[44] Sending mail to someone other than it was intended violates our Fourth Amendment

privilege. The Fourth Amendment guarantees "the right of the people to be secure in their persons, papers, and effects, against unreasonable searches and seizures."[45]

According to the Electronic Communications Privacy Act, it is illegal to intercept or disclose private communications. Victims can sue anyone who violates this law.[46]

Evaluation of existing research

There are both complementary and conflicting opinions on the above areas of on-line communications law. Professor Laurence Tribe says the United States Constitution already covers on-line communication. Other authors disagree with Tribe. These authors believe new laws are needed.

Valid and relevant information was found in the reviewed literature for this thesis project. The authors and writers covered a great deal of information.

According to the literature reviewed, the on-line computer communication medium is advancing quickly. The author predicts more and more businesses and individuals will rely upon this medium to conduct business and personal affairs in the near future.

The unclear laws and unanswered questions need to be defined and documented according to the opinions of the people that use this medium.

Through this literature review many questions were raised. These questions are listed below.

- Should advertising be limited to selected areas?

- What standards need to be developed?

- Do current copyright laws cover electronic computer media?

- Are all electronic records protected writing?

- Are words in a live chat room protected? If so, who owns the copyright?

- Does copyright apply to computer software?

- Are all messages protected free speech?

- Does editing a posting violate our right to free speech?

- Can flames be considered libelous remarks?

- Should computer networks and bulletin board services be held liable for damaging messages contained within? What about when they are aware of damaging remarks?

- Should screen name anonymity be protected?

- Can anyone read your e-mail?

Are these laws applicable? Are these laws enforceable? Are new laws needed?

This research project will make a new contribution to the field of on-line computer communication law. This thesispulls together the different areas and will provide answers and insights according to lawyers, industry leaders, scholars and users of on-line computer communication.

Chapter II Endnotes

[1] Scott Donaton, "Internet ads: the debate goes on," _Advertising Age_, 2 May 1994, 23.

[2] Rick Tetzeli, "The Internet and Your Business," _Fortune_, 7 March 1994, 96.

[3] Donaton, 23.

[4] Ibid.

[5] Ibid.

[6] Edward A. Cavazos and Gavino Morin, _Cyberspace and the Law_ (Cambridge, Massachusetts: The MIT Press, 1994), 85.

[7] David Plotnikoff, "This Way to the Internet," _San Jose Mercury News_, 1 Jan. 1995, E3.

[8] Cavazos and Morin, 33.

[9] Angela Gunn, "The Importance of Netiquette," _Byte_, March 1994, 32.

[10] Lance Rose, _Netlaw: Your Rights in the Online World_, (Berkeley: Osborne McGraw Hill, 1995), 87.

[11] Cavazos and Morin, 65.

[12] Rosalind Resnick. _Guide to Going Online_, Interactive Publishing Alert special supplement, 8.

[13] Resnick, 8.

[14] Anne W. Branscomb, "Common Law for the Electronic Frontier," _Scientific American_ 265 (Sept. 1991): 154.

[15] Cavazos and Morin, 56 - 57.

[16] Cavazos and Morin, 61.

[17] Cavazos and Morin, 52.

[18] Jonathan Rosenoer. Software Protection, December 1993, Cyberlex archives, America Online.

[19] Laurence Tribe, "The Constitution in Cyberspace," prepared remarks, keynote address at the First Conference on Computers, Freedom and Privacy, 26 March 1991.

[20] Rose, 100.

[21] Rose, 2.

[22] Cavazos and Morin, 67.

[23] Cavazos and Morin, 68.

[24] Tribe, 9.

[25] Cavazos and Morin, 69.

[26] Branscomb, 162.

[27] Tribe, 10.

[28] Branscomb, 162- 164.

[29] Cavazos and Morin, 78.

[30] Rose, 128.

[31] Branscomb, 164.

[32] Cavazos and Morin, 78.

[33] Cavazos and Morin, 79.

[34] Cavazos and Morin, 83.

[35] Tribe, 12.

[36] Cavazos and Morin, 84.

[37] Mike Godwin, "Who Was That Masked Man?" Internet World, January 1995, p 22.

[38] Cavazos and Morin), 15.

[39] Cavazos and Morin, 27.

[40] Rose, 166.

[41] Jonathan Rosenoer. E-mail and Privacy, February 1993, Cyberlex archives, America Online, 1.

[42] Anthony Owens, "Netiquette," Library Journal 119 (February 1, 1994): 48.

[43] Judith Turner, "E-mail Technology Has Boomed, but Manners of Its Users Fall Short of Perfection," The Chronicle of Higher Education 34 (April 13, 1988): a16.

[44] Henry H. Perritt Jr., "Tort Liability, the First Amendment, Equal Access, and Commercialization of Electronic Networks," Electronic Networking 2 (Fall 1992): 34.

[45] Cavazos and Morin, 29.

[46] Cavazos and Morin, 17.

Chapter III

Study design

Does the Constitution and its Amendments stretch to electronic communication? Can the words within these historic documents answer questions concerning on-line communication and civil liberties?

Data needed

The author located existing laws governing on-line communication. Current legislation covering advertising, copyright, free speech, libel and privacy was collected and documented.

The author located four popular guides to on-line services: The Electronic Frontier Foundation's _Guide to the Internet_; _The Internet Resource Guide_ compiled by the National Science Foundation Network Service Center; The Interactive Service Association's _Guide to On-line Services_; and Rosalind Resnick's _Guide to Going On-line_.

The author completed a representative literature review to find opinions and attitudes concerning on-line legal behavior.

The author searched for information and opinions regarding on-line law within the on-line community. The author posted messages to bulletin boards, conducted an on-line search of interactive media attorneys, and sent e-mail to two of these attorneys asking for their opinions of on-line law.

In addition to the various resource guides pertaining to on-line communication, related literature was collected. Not one piece of literature mirrored the precise nature of this thesis.

Data sources

The members of the on-line community were the greatest source of information for this research project.

On-line members were generous with their assistance. Members directed the author to specific articles to download, other contact people, organizations to contact, and specific areas to find information.

The author posted messages on *America On Line's* Cyberlaw and Legal bulletin boards. The author asked the message readers for their assistance regarding this thesis project.

There are several areas within the America On Line computer network designated for individuals interested in

law. These legal areas contain archives, where the author was able to access and download relevant information.

Through searching and networking on-line, the author located two attorneys extremely knowledgeable on this topic.

William Burr was a practicing attorney in Washington, DC. During the course of this research project, Burr joined America On Line's legal department. Burr is also the representing counsel for the Interactive Services Association.

Burr provided the author with the e-mail address of the members of the Interactive Services Association. The membership is made up of executives and leaders within the on-line communication industry. These individuals were surveyed for this research project.

Steven Barber is another attorney active within the on-line community. Barber directed the author to download Harvard Law Professor Laurence Tribe's keynote address at the First Conference on Computers, Freedom and Privacy.

Burr and Barber were significant contact people. They provided the author with a great deal of information. They also directed the author to different areas to search and download information.

Research method

This project identified current needed and recommended laws governing on-line communication, specifically, advertising, copyright, freedom of speech, libel and privacy.

Procedures

The author reviewed recently published articles on this topic. An abundant amount of information was available on the Internet. However, there was a smaller amount of research available on legal behavior.

The author obtained electronic mail addresses for The Internet Society, The Interactive Services Association, Electronic Frontier Foundation and the Society for Electronic Access. These organizations were contacted to acquire information on this thesis topic. These organizations sent copies of their on-line guides to the author.

The author posted messages on *America On Line* legal bulletin boards asking the on-line community for their assistance. The author asked bulletin board readers for key contact people and recommended files to access.

The author compiled a list of industry leaders for interview via electronic mail. This list included executives from leading commercial on-line companies, media attorneys, university and college professors, authors, Internet mailing list moderators and public interest on-line users who expressed an interest in on-line legal issues.

Using electronic mail, the author surveyed specific areas of on-line communication. The author sent 35 on-line surveys to gather public opinion on the areas listed below.

- Advertising

- Copyright

- Free Speech

- Libel

- Privacy

The 35 individuals were divided into five groups of seven. Twenty eight surveys were returned to the author's on-line electronic mailbox.

Sample selection and size

The survey sample consisted of 35 individuals. Survey participants were located through the author's research and searching Internet mailing lists. Some particpants were self-selects who responded to bulletin board mesages seeking participants.

The survey sample was divided into five groups of seven individuals. To place the individuals into groups, the author reviewed many of the participants on-line profiles. The author only had access to America On Line member profiles. These profiles list, among other things, information such as job description, hobbies and areas of interest.

The author categorized these individuals according to information within the on-line profiles. Where matches were

made within topic areas, questions were assigned. For example, if an on-line member's profile listed "copyright attorney," the person was sent the group of questions on copyright. Unfortunately, not every member had an on-line profile.

Remaining participants were placed into categories according to the author's judgement about the potential contribution.

The five groups represented the following sub-topics: advertising, copyright, free speech, libel, privacy. Each interviewee was assigned questions to answer from one category.

This was not a scientific study. The author was looking for general opinions and attitudes.

Data collection method

All communication took place on-line using the Internet electronic mail system. The author sent the survey to the participants' e-mail mailboxes.

The author asked the individuals to save the survey to a text file to read and respond to off-line. The surveys were returned to the author through e-mail. The responses were saved to disk, downloaded, saved to disk, printed and reviewed.

Data analysis method

All of the survey opinions were collected and grouped into the following categories: advertising, copyright, free speech, libel and privacy.

The author, by herself, analyzed the content of each response using simple frequencies. From reading the respondent's remarks, the author categorized the respondent's answers. The author also searched for commonalities and common themes within the survey sample responses.

The author grouped the study results according to the topic. Tables including the topic, question number, universe and responses are included in Chapter Four.

Chapter IV

Data analysis

Findings

The author conducted five separate studies concerning on-line communication. The findings are listed below under separate categories.

Twenty eight individuals responded to this survey.

Advertising

Four individuals responded to the advertising survey.

The author asked if on-line advertising should be limited to selected areas. Three individuals agreed that advertising should be limited to appropriate areas. One respondent did not answer the question.

Three respondents believe on-line ads should only be sent to individuals who want the ads. These three respondents felt that on-line ads should be posted solely in relevant topic areas. One individual did not answer this question.

Three respondents believe on-line advertising should be permitted on forums and bulletin boards. Two respondents stated that advertising is encouraged on some forums.

However, the advertisement must be relevant to the forum subject or news group discussion.

The author asked the respondents whether junk e-mail is permitted. The answers were split. Two respondents said no. Two respondents said yes.

One of the individuals indicated that some on-line companies charge for e-mail received. Unwanted e-mail costs individuals money. Two respondents felt that if junk e-mail did not coincide with an individual's interests then it should not be allowed.

On the contrary, two respondents felt junk e-mail should be allowed. One individual compared junk e-mail to traditional junk mail: throw it away if you are not interested.

The author asked the respondents what type of standards are needed regarding advertising on-line. Two individuals said that before standards can be defined, an enforcement mechanism must be developed. One particular problem respondents addressed: standards differ from country to country. What is legal and acceptable behavior in one country may not be legal or acceptable in another.

Two individuals mentioned existing standards: "netiquette." Although netiquette is not legal policy, it is a guide to good manners on-line.

Should on-line ads have the same legal restrictions as ads in other media? All of the respondents said yes. One respondent said on-line ads are already subject to the same

regulation as ads in other media. However, two individuals said the global nature of the medium prohibits these restrictions from enforcement.

Copyright

Seven individuals responded to the copyright survey.

Six respondents do not feel that current copyright laws adequately cover electronic computer media. One respondent believes that current copyright laws "probably" cover this area.

Respondents feel that traditional copyright is difficult to enforce because of the quickly advancing nature of the field. One respondent summarized the situation as follows: laws governing computer media are reactive rather than proactive.

The author disqualified the second question on the copyright survey. The question was: Should electronic records be considered "protected writing?" Five out of seven respondents did not understand the question. The question was not worded clearly.

The author asked if words in a live chat room are considered copyright protected. If so, who owns the copyright? Four respondents said that chat room conversations are copyright protected. Two respondents felt they were not protected. One respondent did not answer the question.

Although there was some agreement among respondents who believe that chat room conversations are protected, different reasons were offered.

Three respondents believe individuals own their own words. Chat room conversations are personal and private. Individuals forfeit their "rights" only when asked as they enter a particular room. The fourth respondent said the service provider, such as America On Line or Compuserve, owns the transcript of the conversation.

Two respondents who said chat room words are not protected offered the same reason as the individuals who said these conversations were protected. A chat room is a public place.

All seven respondents believe copyright does apply to computer software, freeware and shareware.

Survey respondents believe there is little authors can do to protect their work product in Cyberspace. When asked if authors can protect their work product in Cyberspace, two respondents said no and the other five said somewhat or probably.

Authors cannot protect their work product because there is no way to control what happens to it once it is published on-line. One respondent did not know if there should or ever will be anything authors can do to protect their work.

Five respondents said authors can somewhat control what happens. These respondents indicated that although the work

can be copyrighted, the work cannot actually be protected from someone with dishonest intentions.

When asked whether it should be legal to download shareware and send them to others, four respondents said yes. If an individual downloads a freeware or shareware program and likes it, they pay for it.

One individual said it should not be legal to download these programs and send them to others. This individual owns and operates a software company.

The last two individuals indicated that the legal issue concerning software rights centers on the particular program. The author's intent must be stipulated on the program and observed.

Free Speech

Six individuals responded to the on-line free speech survey.

Four individuals believe that posted messages are not protected free speech. These individuals agree that there are limits to electronic "speech." When logged on to an on-line service, members must agree to abide by policies concerning obscene or offensive language and personal attacks.

Two respondents said posted messages are protected speech. The speech is protected like newspapers, books and so on.

Four respondents feel that editing a bulletin board or news group posting does not violate the right to free speech.

If offensive remarks are found on an on-line service, the service provider has the right to remove them.

Two respondents said free speech is only violated if the editing is done by the government. Free speech is not violated if the editing is conducted by a private company or a private citizen. These owners have free speech rights too. These rights include not carrying inappropriate or offensive speech of individuals who use the service.

Two respondents feel that editing a bulletin board or news group posting does violate the right to free speech. However, one respondent acknowledged that sysops must sometimes delete messages that are illegal or inappropriate.

Four respondents feel computer networks are like bookstores. They cannot be held responsible for the content of the messages they carry. Two other respondents agreed with this comparison, but only to an extent.

One respondent felt these services are like bookstores if one is considering libel. However, if one is considering copyright issues, the answer would be no. The other respondent said computer networks are sometimes like authors, publishers, editors and common carriers.

All six respondents said Congress should not legislate what is "appropriate language" on-line.

Respondents were asked if there should be limits to electronic free speech. Three respondents said yes and three respondents said no.

The individuals who replied yes said that limits should remain as they are now. Two of these respondents provided the example of copyright, fraud, and defamation. The government should not be able to impose any additional limits on this medium.

Three respondents said there should not be limits to electronic free speech. The limits, some said, should be the same as they are: no different than non-electronic forms of speech.

Libel

Seven individuals responded to the on-line libel survey.

The author asked the respondents if flames could be considered libelous.

Four respondents said these remarks could be considered libelous. Two respondents feel that the same guidelines that regulate print communication should apply to on-line e-mail and messages. Although not every flame can be considered libelous, if the remarks are intended to cause harm, they can be considered libelous.

Three respondents believe flames cannot be considered libel. Each respondent offered a different reason with their response.

Two respondents said it would be difficult to prove damage was done to someone's reputation on-line. The third respondent said it would be difficult to prove who actually posted the flame. Passwords can be stolen. Armed with a

stolen password, anyone can post flames using someone else's name or screen name.

The author asked if computer networks and on-line providers should be held responsible for the damaging remarks contained within their systems. Six respondents said these providers cannot be held responsible for the libelous messages contained within.

One respondent felt that networks and bulletin board systems should be held accountable for libel in extremely limited circumstances. No example was offered.

Six respondents said system operators should not be held liable for damaging remarks posted to their systems. They said systems and BBS are public arenas. Individuals are free to express their opinions. Public communication is protected by the First Amendment. To edit content and hold the system operator responsible would be prohibiting free speech.

Two respondents said society does not hold the phone company, United States Postal Service or other common carrier responsible for damaging messages delivered via their service. The same should hold true for on-line systems.

BBS/System operators should not have to supervise what is said. However, if the service does edit content, it should be held accountable as a newspaper publisher would be held accountable for offensive, criminal or damaging content.

The author asked survey respondents if on-line members become public figures when responding to or posting comments. Five respondents said no. Three of these respondents supplied

the author with the same comparison: an individual does not become a public figure when they write a letter to the editor.

Two respondents said an individual does become a public figure when posting a message to a bulletin board. However, this respondent said it depends on the forum or bulletin board's size.

Privacy

Four individuals responded to the on-line privacy survey.

The author asked whether screen name anonymity should be protected. Three respondents said it should be protected. The fourth respondent did not know what a screen name was.

Every respondent said no one other than the intended recipient should be able to access private e-mail. However, two respondents said e-mail could be searched if there were criminal evidence. Another respondent said e-mail should be protected like first class mail delivered by the United States Postal Service.

Should companies be required to reveal the true identities of users who use screen names? One respondent said yes provided the companies have the information. Two respondents said companies should only be forced to reveal on-line user's true identity if the individual committed a crime. In that case, the service provider should be allowed to turn the information over to the proper authorities.

Response summary tables

Advertising

Question 1: Should advertising be limited to selected areas?

n=4

Answer	Number
Yes	3
No	0
Did not answer	1

Question 2: Should you send ads to those who want them and post only where it is appropriate?

n=4

Answer	Number
Yes	3
No	0
Did not answer	1

Question 3: Should advertising on a forum or bulletin board be permitted?

n=4

Answer	Yes	No
Yes	2	
No	0	
Special Circumstances	1	
Did not answer	1	

Question 4: Should you be able to take user names and send out junk electronic mail?

n=4

Answer	Number
Yes	1
No	2
Uncertain	1

Question 5: What standards should be developed regarding advertising alone?

n=4

Respondent	Answer
1	Cannot have standards until an enforcement mechanism is defined. Due to the global nature of the medium, standards would be difficult to enforce. How could you apply United States standards to a web site based in Finland.
2	Did not answer this question
3	Standards will be difficult to define according to the global nature of on-line services. Standards have no meaning when there is no enforcement mechanism to ensure these standards are met. Some standards already exist: netiquette. The unwritten policy of do's and don'ts governing on-line behavior.
4	Depends on the nature of the forum. Unsolicited, off topic advertising is not appropriate. Junk e-mail is inappropriate but should not be illegal.

Question 6: Should on-line ads have legal restrictions as ads in other media?

n=4

Answer	Number
Yes	2
No	0
Uncertain	1
No answer	1

Copyright

Question 1: Do current copyright laws adequately cover electronic computer media?

n=7

Answer	Number
Yes	0
No	6
Probably	1

Question 2: Should electronic records be considered "protected writing?"

n=7

This question was disqualified by the author.

Answer	Number
Yes	2
No	0
Did not understand the question	5

Question 3: Are words in a live chat room copyright protected? If so, who owns the copyright?

n=7

Answer	Number
Yes	4
No	2
Did not answer	1

Question 4: Does copyright apply to computer software (shareware, freeware)?

n=7

Answer	Number
Yes	7
No	0

Question 5: Can authors protect their work product in Cyberspace?

n=7

Answer	Number
Yes	0
No	2
Somewhat	5

Question 6: Should it be legal to download shareware and send it to others?

n=7

Answer	Number
Yes	4
No	1
Somewhat	2

Free Speech

Question 1: Are all posted messages protected free speech?

n=6

Answer	Number
Yes	2
No	4

Question 2: Does editing a bulletin board or news group posting violate our right to free speech?

n=6

Answer	Number
Yes	1
No	4
Depends	1

Question 3: Are computer networks like bookstores which cannot be held responsible for the content of the messages?

n=6

Answer	Number
Yes	4
No	0
Other	2

Question 4: Should Congress legislate what is "appropriate language?"

n=6

Answer	Number
Yes	0
No	6

Question 5: Should there be limits to electronic free speech?

n=6

Answer	Number
Yes	4
No	2

Libel

Question 1: Can flames be considered libelous?

n=7

Answer	Number
Yes	4
No	3

Question 2: Should networks and bulletin board services be held liable for damaging messages contained within?

n=7

Answer	Number
Yes	0
No	5
Depends	2

Question 3: Should system operators be held liable for damaging remarks that have been posted to their system?

n=7

Answer	Number
Yes	0
No	6
Depends	1

Question 4: Does an on-line member become a public figure when responding or posting to comments?

n=7

Answer	Number
Yes	2
No	4
Depends	1

Privacy

Question 1: Should screen name anonymity be protected?

n=4

Answer	Number
Yes	3
No	0
Do not know	1

Question 2: Should anyone have access to your e-mail?

n=4

Answer	Number
Yes	0
No	4

Question 3: Should companies be required to reveal the true identities of users who use screen names?

n=4

Answer	Number
Yes	1
No	0
Special Circumstances	3

Cover letter

I am conducting a thesis project to fulfill requirements for a master's degree at Rowan College of New Jersey. My thesis topic is law governing on-line communication.

I am contacting you because I am interested in your opinion on this specific area below. According to my professor, this is the first thesis of it's kind at Rowan College.

Please take a moment to fill out this survey. I don't want you to spend more than 15- 20 minutes. I am looking for your personal feelings on this area. Please do not do any research or ask anyone else for their opinion, just give me your thoughts.

I would like to include you in my thesis. Please let me know if I can include your name and screen name or if you would like this information withheld.

Thank you for your time. You are helping me to make a significant contribution to this field

Sincerely,

Francie Josephsen

Franciel@aol.com

P.S: If you don't respond, I won't graduate May 19.

Your questions are on the topic below:

Advertising

- Should advertising be limited to selected areas? Should you send ads to those who want it and post only where it's appropriate?
- Is it acceptable to advertise on a forum or bulletin board?
- Should you be able to take user names and send out junk electronic mail?
- Do on-line ads have the same attraction as other media?
- What standards need to be developed regarding advertising o on-line?

Copyright

- Electronic publishing rights. Do current copyright laws cover electronic computer media? Are all electronic records a protected writing?

- Are words in a live chat room copyright protected? If so, who owns the copyright?

- Does copyright apply to computer software (shareware, freeware)?

- How can an author protect their work?

- Is it legal to download shareware and send it to others?

Free Speech

- Are all posted messages protected free speech?

- Does editing a bulletin board or news group posting violate our right to free speech?

- Are computer networks common carriers like book stores which cannot be held responsible for the content of the messages?

- What defines inappropriate language?

- Should there be limits to electronic free speech

Libel

- Can flames be considered libelous remarks?

- Should networks and bulletin board services be held liable for damaging messages contained within? What about when system operators are aware of the damaging remarks that have been posted?

Privacy

- Should screen name anonymity be protected?

- Can anyone read your e-mail?

- Do you believe anyone can access your private mail?

- Can companies reveal their true identities of users who use

  screen names?

Chapter V

Evaluation

In Chapter One of this thesis, the author stated the following two problems:

* What do key on-line communicators think about the policies governing on-line communication? Are there policies? If so, can they be enforced?
* What guidelines need to be adopted in regard to advertising, copyright, free speech, libel and privacy?

The author did discover what key on-line communicators think about policies governing on-line communication. However, few respondents offered recommendations or suggestions to law and guidelines governing on-line communication: advertising, copyright, free speech, libel and privacy.

Overall, the author was not pleased with the information received with the survey responses.

Respondents answered the survey section questions, but few individuals offered recommendations concerning needed on-line laws. Documenting recommended on-line laws according to

industry leaders, lawyers and users was a major goal of this
thesis.

Instead, this thesis will raise additional questions in
need of answers.

Interpretation

Some people responded to each question individually.
Others summed the questions with a brief summary. Although
most respondents answered the question with a yes, no, or
depends, few respondents completed the question by offering
advice or making recommendations about needed laws.

The author determined answers and recommendations
concerning on-line law were not found because they do not
exist. No one knows what type of law is needed or can be
developed in cyberspace. Study results indicate no one will
suggest laws because there is no enforcement mechanism. Laws
that cannot be enforced are useless.

Unfortunately, many respondents do not have background
in on-line law and policy. For example, only 9 of the 28
respondents are currently practicing attorneys. The author
also determined, from some responses, that the respondents
were not even aware of law concerning the topic.

Many respondents provided the author with strong
examples to accompany their answers. Interestingly, many
respondents offered the same examples as other respondents
with their answers.

The author believes that individuals did not recommend laws, guidelines or policies because current users have no idea what those laws should be. The medium is still too new. Policy and law makers cannot possibly keep up with this rapid growth.

Insufficient response and few suggestions from the survey population prevented the author from compiling a resource of recommended on-line law. Instead, this study raised other questions that need to be addressed before guidelines are set.

Study conclusions

Advertising

Conclusions

Many of the advertising questions were questions of practicality, not legality.

On-line advertising is inevitable However, the author agrees with respondents that think advertising should be limited to appropriate subject areas.

Ads on-line already adhere to the same restrictions as ads in other media. For example, you cannot use deceptive practices to lure customers or advertise child pornography.

Television advertisers don't place aftershave ads during children's television programming. Likewise, an on-line ad for a venison cookbook should not be placed on a news group forum discussing archaeology. It's just not appropriate.

The author concludes junk e-mail should not be illegal because it is unwelcome. On-line advertisements should be subject to the same legal restrictions as advertisements placed in other media channels. Research results corroborate this finding.

Internet advertising will not get one arrested. Inappropriate ads may elicit flames from angry recipients forced to read the ad.

Advertising on some on-line services conflicts with the company's terms of service. Unethical marketing practices may result in losing account privileges.

The author received insufficient response to Question Five on the advertising survey. Standards cannot be developed when there is no enforcement policy.

Recommendations

On-line advertising should be permitted. Users can click thorough or ignore ads they do not want to see. Like publication readers, on-line users do not have to view uninteresting ads.

There is no way to avoid on-line advertising. Sharp marketers find the medium too attractive. However, when advertising on-line, advertisers should stick to the topic and post only where appropriate. Users must find out if advertising is permitted before posting messages.

Like postal junk mail, junk e-mail annoys on-line users. Again, no one is forced to read the advertising message. The

receiver can ignore it. Let the receiver know the purpose of your message. Include the word "ad" in the subject field.

On an on-line service, the user must abide by the provider's terms of service. If users break a rule, they lose their privilege. Users should check with the on-line service before sending or posting an ad.

Internet advertisers beware: angry recipients can talk back. It takes one click of a button to respond. E-mail boxes have overflowed and crashed from flames and angry responses sent by individuals subjected to on-line advertising.

Copyright

Conclusions

The author agrees with most respondents that believe current copyright laws do not adequately address computer media.

Individuals own their own words. If someone thought of and typed words, they own them.

Copyrighting a document is simple. However, the main concern among respondents was how to enforce copyright protection. No respondents knew how authors could protect their work product from individuals with corrupt intentions.

The author agrees with respondents who believe users own their words in public chat rooms. However, on-line companies often stipulate in their terms of service that they own the

rights to on-line conversations. Some service providers copyright transcripts from their chat rooms.

Private companies can retain ownership of posted messages and chat room logs. However, on the Internet, where there is no owner, individuals own their words.

The author agrees with respondents in regard to computer software, freeware and software copyright: copyright does apply. The copyright should be observed and enforced.

The author agrees with respondents that downloading shareware and sending it to others is legal. Shareware program writers want people to send the program to their friends. When users frequently like and purchase the shareware, the program writer earns more money.

Copyrighting shareware, software and freeware should remain as it is spelled out in the package or on the program itself.

On-line copyright issues need regulation. An enforcement mechanism is needed before laws are defined. Neither the individuals surveyed, nor the author, know how an author can protect intellectual property in cyberspace.

Recommendations

Users who worry about copyright infringement have options. Those options include registering with the Copyright Office before uploading or publishing in other media.

Users need to realize that copyrighting intellectual property does not necessarily protect it. However, to prove infringement, the infringer must be caught.

It is illegal to acquire or use pirated software. Software copyrights must be observed. Users are expected to abide by the author's conditions.

Honesty is the best policy concerning shareware. If users like a shareware program, they should send the requested amount of money to the program writer. Users should copy and pass the product on. At the same time, they should abide by the program writer's wishes.

Terms of service contracts will address whether an on-line company retains copyright to on-line conversations and transcripts of logs. On-line users need to download a copy of the terms of service contract when joining an on-line company.

Free speech

Conclusions

Every respondent gave an emphatic "no" to Congress legislating what is appropriate language. United States Government's current policies regarding free speech should remain as they are: the same as non-electronic forms of speech.

Individuals cannot threaten, blackmail or libel people. It is illegal to disseminate or distribute obscenity and

child pornography. It is illegal to plot to overthrow the government or contract to hire for murder. These actions are as illegal on-line as they are in any other medium.

Internet usenet groups, newsgroups and mailing lists are public forums. Individuals can freely voice their opinion on topical issues. Other users will warn when colleagues have crossed the line of acceptable language.

Interestingly, users determine what is acceptable. However, private companies and BBS reserve the right to delete inappropriate or offensive remarks. If a user is offended by posted remarks, the company could lose the client.

Editing and deleting posted bulletin board messages violates free speech only when done by the government or its employees. Privately owned companies can and do edit without consequence. On-line providers outline acceptable behavior in their terms of service. Breaking these rules can cost users their access privilege.

The author agrees with respondents that felt on-line services and BBS are like bookstores. These services cannot be held responsible for the words contained within the documents on their "shelves."

Recommendations

On the Internet, users reprimand other users guilty of typing offensive or inappropriate messages.

On the Internet, if users say something inappropriate or in an inappropriate area, they can expect flames. Past incidents exist of on-line users mailboxes crashing from an abundance of flames. However, individuals cannot be kicked off the Internet.

Users must watch what they "say" on privately owned BBS and on-line services. Unsuitable behavior may cost users their on-line privilege.

At this time, the author concludes that free speech limits should not be any different from non-electronic free speech.

Libel

Conclusions

In regard to libel, the same regulations that apply to print media should apply to the on-line medium.

If users deliberately attempt to damage another's reputation, they should be held accountable. However, on-line libel is hard to prove. Users can claim their passwords were stolen and someone else posted the offensive remarks.

Like print libel, the message must include false statements made about an individual's character, not just an opinion.

The author agrees with respondents that system operators are not responsible for the content of their BBS. Analogously, the mailperson and telephone company are not

Most respondents felt that responding to comments doe
not make an individual a public figure. The author has mad
two conclusions on this subject.

First, posting comments on a *controversial* subject do
make an individual a public figure. The author agrees with
the following comparison; individuals that write letters t
newspaper editors do become public figures.

However, if an individual posts comment on a topic th
is not controversial, it does not make them a public figur
In this case, posting comments to an on-line bulletin boar
is no different than putting up a flyer or announcement at
local supermarket bulletin board.

Recommendations

Most respondents don't believe that on-line members
become public figures when responding to or posting commen
However, if on-line users post comments on a controversial
subject--they do become a public figure.

Libelous remarks will be difficult to prove. However,
remarks are determined by the court to be libelous,
individuals should be held responsible, not system
administrators.

If a network or BBS operates without content manageme
then the service should be treated as a common carrier and
not liable for damaging remarks. If the network or BBS doe

edit, hide or delete content, they should be held liable to the same degree as newspaper publishers.

It is impossible for system operators to monitor every message posted to their system. Especially if it is a popular service that enjoys high traffic.

System operators should place a disclaimer on their opening board or within the terms of service. This disclaimer should release them from responsibility of remarks posted by users.

Privacy

Conclusions

No one other than the intended receiver should be able to access e-mail. However, respondents have hinted that it can be seen.

True identities should be protected unless there are special circumstances. For example, if there is evidence that a user has committed a crime, screen name anonymity should be protected. The information should be turned over to the proper authorities.

Recommendations

To protect themselves, on-line users should not say, type or send anything that they wouldn't mind anyone else seeing.

If users want to remain truly anonymous, they should stay out of trouble. Only in cases of criminal activity, such as sending child pornography, issuing terroristic threats, etc., will true identities be revealed. And then, only to the proper authorities.

Practical influence on the field

Cyberspace is a microcosm of our community. There are bad guys and good guys in cyberspace. The on-line community is inhabited by the same people who live in the real world.

In regard to copyright, libel, free speech, and privacy, most respondents favorably compared on-line media to print media. The author believes the respondents made this comparison because this medium is read most often.

Many respondents feel that the same standards that apply to current media, such as newspapers, should apply to this new medium too.

On-line services have their own policies. These private companies outline their policies in their terms of service. Members agree to abide by these terms as a condition of membership. If you break a rule, your access can be revoked.

The Internet is a different story. No one is in charge; there is no central command. Laws can be broken without penalty. Until some kind of enforcement mechanism is enacted, rights and privileges should remain as they are in

traditional media concerning the topics addressed in this thesis.

Enforcement mechanisms will be difficult to define and more difficult to enact. The global nature of on-line communication will prevent any policy from being set in stone. In addition, standards differ among countries. What is acceptable in one corner of the world may not be acceptable in another. Real hurdles must be overcome.

Until enforcement mechanisms and policies are found, users will continue to let individuals know when they have breached ethical behavior. The author feels that industry leaders should develop enforcement mechanisms. On-line media is certainly unique. Because of the unique and global nature of the Internet, it's going to be difficult to develop a set of policies that each country could adopt and enforce.

Surprisingly, netiquette, the unwritten guide of good manners on-line, remains the standard on-line users still rely on. Most surveyed individuals believe these unwritten policies supply the answers to many of the questions studied in this thesis.

Associations interested in developing on-line policy may be interested in these results.

Further research

Often, questions are not always answered with straight answers. Instead, questions sometimes prompt more questions. That is what the author discovered at the conclusion of this study.

This study raised more questions.

- Can cyberspace be considered a public place?

- What type of enforcement mechanism needs to be developed?

- Should political and commercial speech be viewed the same on-line?

- Should on-line services restrict the speech of its users?

- Do any of the following factors contribute to a forum being recognized as a public place?

  - Size

  - Topic

  - Access

  - Length of the forum's existence

  - Number of users signed on at any given time

Individuals interested in further studying on-line advertising, copyright, free speech, libel and privacy can use this thesis as a springboard.

The author originally intended to develop a handbook that defined legal and acceptable behavior on-line in each of the five areas. However, the areas seem vague.

The author should have further limited her study to just one of the five topics.

The author recommends other researchers select one of the five studies to research in depth.

Bibiliography

Branscomb, Anne W. "Common Law for the Electronic Frontier." Scientific American 265 (Sept. 1991): 154-58.

Cavazos, Edward A., and Gavino Morin. Cyberspace and the Law. Cambridge: MIT Press, 1994.

Charles, Dan. "Socialising(sic) in Cyberspace." New Scientist 134 (16 May 1992): 12-13.

Donaton, Scott. "Internet ads: the debate goes on." Advertising Age, 2 May 1994, 3, 23.

Elmer-Dewitt, Philip. "Battle for the Soul of the Internet." Time Magazine Online, 25 July 1994, 1-3.

Elmer-Dewitt, Philip. "The Wild World of the Internet." Time Magazine Online, 06 Dec. 1993, 1-3.

Godwin, Mike. "Who Was That Masked Man?" Internet World, January 1995, 22-25.

Gunn, Angela. "The Importance of Netiquette." Byte, March 1994, 32.

Kehoe, Brendan P. Zen and the Art of Internet. Englewood Cliffs: Prentice Hall, 1992.

Kim, James. "Microsoft gives peek at Network." USA Today, 15 Nov. 1994, B1.

Levine, John R., and Carol Baroudi. The Internet for Dummies. San Mateo: IDG Books, 1993.

Lichty, Tom. America Online Tour Guide. Chapel Hill: Ventana Press, 1992.

Markoff, John. "A New Information Mass Market." New York Times, 3 Sept. 1993, D3.

Owens, Anthony. "Netiquette." Library Journal 119 (1 Feb. 1994): 48.

Perritt, Henry H., Jr. "Tort Liability, the First Amendment, Equal Access, and Commercialization of Electronic Networks." Electronic Networking 2, no. 3 (fall 1992): 29-44.

Plotnikoff, David. "This Way to the Internet." San Jose
    Mercury News, 1 Jan. 1995, E3.

Resnick, Rosalind. Exploring the World of Online Services.
    San Francisco: Sybex, 1993.

Resnick, Rosalind. Guide to Going Online. Interactive
    Publishing Alert special supplement, 1-8.

Rose, Lance. Netlaw: Your Rights in the Online World.
    Berkeley: Osborne McGraw Hill, 1995.

Rosenoer, Jonathan. E-mail and Privacy. Cyberlex Archives:
    America Online, February 1993, 1.

Rosenoer, Jonathan. Software Protection. Cyberlex Archives:
    America Online, December 1993, 1.

Sampson, Marcia. "Internet: lawless frontier or country
    backroad?" Desktop Publishers 9 (Nov. 1994): 43.

Tetzeli, Rick. "The Internet and Your Business." Fortune, 7
    March 1994, 86-98.

Tribe, Laurence. "The Constitution in Cyberspace." Prepared
    remarks, key note address at the First Conference on
    Computers, Freedom and Privacy, 26 March 1991.

Turner, Judith. "E-mail Technology Has Boomed, but Manners of
    Its Users Fall SHort of Perfection." The Chronicle of
    Higher Education 34 (13 April 1988): a1, a16.