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CORPORATE CONTROL OF INFORMATION:
BUSINESS AND THE FREEDOM OF
EXPRESSION

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THE CENTER FOR BUSINESS ETHICS AT BENTLEY UNIVERSITY is a nonprofit educational and consulting organization whose vision is a world in which all businesses contribute positively to society through their ethically sound and responsible operations. The center's mission is to provide leadership in the creation of organizational cultures that align effective business performance with ethical business conduct. It endeavors to do so by the application of expertise, research, education and a collaborative approach to disseminating best practices. With a vast network of practitioners and scholars and an extensive multimedia library, the center offers an international forum for benchmarking and research in business ethics.

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For over a decade now, through the generous support of Verizon, the Center for Business Ethics has been proud to hold the Verizon Visiting Professorship in Business Ethics and Information Technology. This program captures the essence of Bentley's commitment to advancing education and knowledge at the intersection of business and the liberal arts through a program that continues to engage students, faculty and

the corporate community in an important dialogue about the ethical dimension of business — especially at the cutting edge of technological advancement.

Dr. George Brenkert, the 11th Verizon Visiting Professor, is renowned as a respected scholar in the field of business ethics; he has published widely and been very active in the field as a professor of business ethics at the McDonough School of Business at Georgetown University, as the past editor-in-chief of *Business Ethics Quarterly*, as a member of the Executive Committee of the Association for Practical and Professional Ethics, and as an academic fellow of the Ethics Resource Center. In his Verizon lecture he drew on his considerable talents and experience to tackle a tough business ethics problem that is not adequately appreciated — the control of information by businesses. We are living in what is called the “Information Age,” and increasingly we see that “information is power.” When is the corporate control of information acceptable and when is it not? This is not an easy question to answer, and in reflecting on the complexities of this issue, Dr. Brenkert raises another nettlesome issue, the idea of “moral compromise.” He astutely observes that much in ethics involves having to navigate between what is relatively better or worse, rather than simply right or wrong.

There is much to consider and learn from Dr. Brenkert's thought-provoking lecture. We hope you value reading this monograph as much as we appreciated hearing his illuminating presentation.

W. Michael Hoffman, PhD

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(From left to right) Gregory K. Miles, Director of the Office of Ethics and Business Conduct at Verizon Communications; George G. Brenkert, PhD, Professor of Business Ethics at the McDonough School of Business at Georgetown University; and W. Michael Hoffman, PhD, founding Executive Director of the Center for Business Ethics, and Hieken Professor of Business and Professional Ethics at Bentley University.



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He received his doctorate from the University of Michigan. He has recently published *Marketing Ethics* (Blackwell), a book in the Foundations of Business Ethics series. He is co-editor of *The Oxford Handbook of Business Ethics* (forthcoming). He has also published *Political Freedom* (Routledge) and *Corporate Integrity and Accountability* (SAGE). He has published numerous articles pertaining to business ethics and corporate social responsibility.

Among the journals he has published in are *Business Ethics Quarterly*, *Journal of Business Ethics*, *Business and Professional Ethics Journal*, *Marketing and Public Policy*, *Journal of Business Venturing*, *Philosophy & Public Affairs*.

He is a co-founder of the Trans-Atlantic Business Ethics Conference, a group of business ethicists from both sides of the Atlantic that meets bi-yearly, and a co-organizer of the Capitol Area Business Ethics Network. He is the past director of the Connelly Program in Business Ethics and the Georgetown Business Ethics Institute. Prior to joining the business faculty at Georgetown University, he taught in the Philosophy Department of the University of Tennessee (Knoxville), where he was department head for seven years.

Corporate Control of Information: Business and the Freedom of Expression

Monday, February 9, 2009

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Thank you for your introduction, Dr. Hoffman. For many years, the Center for Business Ethics at Bentley University has been a guiding light in the business ethics movement and so it is a delight to be here and an honor to be invited as the Verizon Visiting Professor in Business Ethics and Information Technology. I would also like to thank Verizon very much for their partnership with Bentley that has made this lecture possible.

I would like to talk to you today about the corporate control of information. Business produces and controls a vast amount of information that is central to its operations and success. This information may involve computers, software and the technology by which it is produced and transmitted. It may speak to the competitive plans of businesses, how they market their products, or how they organize their operations. This control can help to make markets more efficient. It is defended by companies by virtue of their rights to property and privacy, as well as the social benefits it produces.

Information also defines, in part, who and what we are as individuals. It helps us to understand ourselves, our society, and the world about us. It is part of our jobs, important for what we want to do, and crucial to acting morally. Our access to and communication of information is defended by rights to freedom of speech and information, as well as the crucial importance of these rights for “a democratic society . . . and for the enjoyment of other human rights and fundamental freedoms.”¹

How these two realms — business and individual information — and their associated rights and benefits interact is a matter of considerable importance. Since their relation defines a very large topic, I wish to narrow it for this occasion by focusing on instances in which businesses have restricted the information they control in ways that have been said to violate people’s rights to freedom of speech and access to information. For simplicity, I will refer to both these rights as our right to freedom of expression. The following examples are the kind of situations

I have in mind:

- In order to do business in China, Google, Yahoo and other search engines must filter the Internet so as to block web sites that are deemed offensive or threats to state security by the Chinese government. In short, their business operations in China require denying to Chinese people information that is accessible outside China.
- Some broadband and Internet service providers have, on some occasions, restricted Internet access to certain web pages and have blocked portions of some materials that otherwise would have been available through their services.
- Wal-Mart and other retailers have decided not to sell or rent certain videos, CDs, and DVDs that involve lyrics or other material they deem offensive. Random House recently decided not to publish a book that might be offensive to some Muslims.
- Some firms have brought legal suits against various individuals and organizations that have made comments critical of their actions or products on television, the Internet, and through other media sources. Called SLAPP suits (Strategic Lawsuits Against Public Participation), these lawsuits have sought to stop these individuals or groups from distributing information the businesses have deemed harmful to their products and/or plans.

In each of these cases, different forms of information that might otherwise have been available to customers, clients, and ordinary citizens have been impeded or blocked. Consequently it has been charged that people's right to freedom of expression has been violated. Censorship has been imposed upon them. These are important charges that deserve our attention. They require us to think about the rights and responsibilities of business when it comes to the information that they control or can shape.²

The discussion I offer of these examples defends three broad points:

First, businesses have responsibilities to avoid violating individual rights to freedom of expression and information, as well as duties to protect from such violations, and to aid those who have been deprived.³ These responsibilities vary depending upon whether business alone impacts our freedom of expression, or whether government plays a prominent role in that impact.

Second, freedom of expression is something to which we as individuals have a right, but also something that we value, even when individual rights are not

involved. Our evaluation of the impact of business control of information differs depending upon whether it impacts our rights to freedom of expression or the value we place in it.

Finally, businesses cannot, simply by themselves as individual companies, meet all their responsibilities regarding freedom of expression. Instead, this requires the joint action of business, government and NGOs to ensure that proper legislation and regulations are put in place and enforced. In this sense, business ethics unavoidably has a social and political dimension.

Freedom of Expression: The Internet and Governments

The first situation in which the information that business controls can come into conflict with individual freedom of expression involves businesses being required by a government to block certain information over the Internet. Here I will focus on Google's role in China.⁴

In order for Google to operate within China, it must block certain web sites that the Chinese government finds offensive or threats to national security. There is a host of web sites that must be blocked, but some include material regarding the following topics: Tibetan freedom, human rights, Tiananmen Square, Falun Gong,⁵ and homosexuality. This requirement of the Chinese government to filter the Internet is, allegedly, in accordance with Chinese law.

Google's decision to block material the Chinese government deems objectionable was greeted with strong criticism both inside and outside the United States. Google was said to be supporting Chinese censorship and disregarding its own principles and ideals, such as "Don't be evil." In addition, it was said to be violating a human right identified in both the United Nations Declaration of Human Rights and in the United Nations International Covenant on Civil and Political Rights. In the former, Article 19 says:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.⁶

Given these criticisms of Google, ought it to be operating in China?

In testimony that its representative gave before Congress that was investigating such actions by U.S. companies, Google argued in its defense that a) it was being responsive to local conditions by following the law, b) that even though it filtered the Internet, it was still providing the Chinese people with information they could not otherwise get, and c) that it was satisfying the interests of the Chinese people by providing a faster, more reliable service.

These are important and relevant considerations. However, I do not think that they are sufficient. They are legalistic and consequentialist in nature; they focus on the beneficial effects of Google's action. They do not respond directly to a central objection made against Google, viz. that it is violating a right people have to freedom of expression.⁷ This human right should be taken very seriously. The ability to access information of interest to people and to speak with others about such information is a matter of fundamental importance both morally and politically. Because of its importance it is protected by rights. To speak of such rights is to refer to claims or entitlements that individuals have to be treated in certain specified ways that are not subject to simple calculations of the costs or benefits involved. As such, rights lay out the ground rules by which groups of people are to act. Though they are not absolute, they are of primary importance for moral agency and political democracy.

Is Google Doing Anything Ethically Wrong?

If one grants that individuals have such rights, is Google doing anything ethically wrong when it filters the Internet at the behest of the Chinese government? Certainly governments may block certain forms of expression and information. They may be justifiably restricted under certain circumstances; e.g. acts that threaten immediate harm or the national security.

But it does not follow that because some expressions and information may be curtailed that any curtailment a government chooses is justified. The Johannesburg Principles, formulated by a group of experts in international law, national security, and human rights, specify limits to censorship.⁸ I will assume that some limits can be identified and that, in light of the underlying principles, China is unjustifiably censoring certain materials that would otherwise be available to the Chinese people.

If Google agrees to abide by these censorship guidelines, it is providing material support to the Chinese government's aim that the Internet be censored. Google's actions significantly and knowingly further this aim. As such they are, I suggest, complicit in the violation of the right of freedom of expression. Not only is the

Chinese government wrong to filter these materials, but so too is Google. It is true that Google's hand was, as it were, forced. Still, this is a choice that Google made, knowing what it was doing. It could have chosen not to filter Internet offerings in China. Some suggest that this would have been the morally preferred course.

A different view arises if one notes that the situation Google faces is morally complex, non-deferrable, and one in which Google is vulnerable whichever way it chooses.⁹ To begin with, Google has many other responsibilities — both ethical and non-ethical — to its stockholders, employees, customers, and suppliers. These would have been negatively affected if it did not do business in China. In short, it confronted a situation of mixed and conflicting responsibilities. To fulfill some of these responsibilities it must violate other ones. It is not faced with a one-off decision regarding filtering or not filtering in China. Instead, it must make a decision about China as part of an ongoing commitment to its role there. Further, it cannot continue to defer this decision, while waiting for China to change course regarding censorship. Any such change, in the near future, is unlikely. Finally, if in defense of its policy not to filter the Internet, Google chose not to operate in China while other Internet companies did, the effects on Google's position as a search engines would most likely be seriously affected. After all, China presently has over 150 million Internet users, and this number is expected to grow by tens of millions in the years ahead until it is the largest Internet market in the world.¹⁰

In this special kind of situation, some might maintain that the conflicting moral principles, rights, and duties could all be sorted out so that there is a unitary moral position Google could take that would not violate or fail to fulfill any of the responsibilities it has to its various stakeholders, and would not involve imposing burdens on Google that are themselves ethically unacceptable. However, I doubt it. Moral life is messier than that. Rather, Google has had to choose between courses of action each of which involve actions that pose moral responsibilities that cannot all be fulfilled.

Moral Compromise and Justifying Considerations

Thus, Google's decision to stay in China may be seen as a form of moral compromise. This is, in fact, a view that Sergey Brin, one of Google's co-founders, has explicitly acknowledged.¹¹ However, we should ask whether the moral compromise that Google made, i.e. to do business in China, can be justified? What additional ethical criteria should Google consider? I suggest that they need to consider the fairness of their decision regarding those affected by their

decision, the harm that their decision may do, and whether there are mitigating measures they might adopt that would lessen the wrongness resulting from the compromise they make.

With regard to the fairness of their decision, it is important to note that all other search engines, both domestic and foreign, were filtering the Internet in China. In filtering the Internet in China, Google is only doing what others are doing. No other search engine is thereby treated unfairly, at least in the sense that Google is gaining some special undeserved advantage or benefit over the others. Further, if Google operates in China, the Internet will not be filtered any more than it presently is, so the Chinese are not receiving less information. In fact, Google claimed that it would filter less than other search engines so that its operation in China might actually help provide better access to information to the Chinese. Similarly, by filtering the Internet in China, Google is not imposing further harms on the people of China. And by deciding not to provide e-mail service and blogs, they were removing themselves from situations in which the Chinese government might demand personal information regarding e-mail use or blogs by Chinese citizens that might lead to their imprisonment.

Finally, Google decided to announce to its Chinese users whenever a web page they sought had been blocked due to government regulations. In this manner, it can mitigate the wrongfulness of its filtering by informing its users that their government is requiring that material they seek be censored. Such a step would not make sense if Google was not doing something wrong by filtering the Internet. Since they are doing something wrong, this kind of mitigation effort is commendable, even if Google's hands remain dirty through these dealings.

The one thing Google cannot do by itself is to alter the general situation it faces. If Google chose by itself to challenge the Chinese government or even to withdraw from China, then it would, most likely, suffer the effects of being a lone actor. It would be supplanted by other Internet search engines. Instead, the situation calls for some form of collective action on the part of Google, other search engines, and members of the international community. I will return to this at the end of this paper.

The upshot is that information companies such as Google, Yahoo and Microsoft have a responsibility not to violate individual rights of expression when doing so involves being complicit in their violation through the direction of a government. If it is unethical for a government to impose these restrictions, it is similarly unethical for an information company to provide direct material support to

the government in its pursuit of that policy. Without their participation a government could not, or could not so easily, block that information.

Accordingly, a business involved in this area has a responsibility to assess a government's directions when it comes to filtering or blocking information that Internet users might otherwise be able to obtain through its services. Internet companies cannot simply defend their actions as being in accord with the law, since the law itself may be ethically defective.

Finally, if a company is faced with having to morally compromise some of its responsibilities, it should take steps to aid those who are deprived and to protect them from further violations. Google helps to protect from violation when they do not support blogs and e-mail, since then the government cannot trace who sent messages disapproved of by the government. And, they take steps to aid the deprived when they announce that they are complying with government law to render some web sites unavailable.

Internet Companies Acting Alone

But now, let's approach the topic of corporate control of information and freedom of expression from another angle. What about an Internet Service Provider (ISP) that decides on its own to filter the Internet? The government has not directly, or indirectly, required them to do so. Instead, the ISP chooses itself to block certain kinds of information or instances of information sharing or acquisition.

These are the kinds of cases that have been reported in the media:

- Telus, which is one of Canada's largest Internet Service Providers (ISPs), with over one million customers, "temporarily blocked its subscribers from accessing a union-run web site during an escalating labor dispute with the telecommunications workers union. Subscribers attempting to access the site were not given a message informing them that their ISP was blocking the site, but rather found it simply inaccessible, as if the site itself had been taken down or a network error had prevented a connection."¹²
- During a live Lollapalooza webcast of a concert by the Seattle-based band Pearl Jam, AT&T muted the lyrics of lead singer, Eddie Vedder, just as he began to sing lines that railed against President Bush. Far from being obscene the deleted lines were simply "George Bush, leave this world alone" and "George Bush, find yourself another home." These were muted or somehow lost in the mix.¹³

- Verizon blocked NARAL Pro-Choice America from using its services to send out text-messages to potential supporters. Verizon was reported to have told NARAL that it does not accept programs from any group “that seeks to promote an agenda or distribute content that, in its discretion, may be seen as controversial or unsavory to any of our users.” However, once this story was reported in the media, Verizon retracted its decision.¹⁴
- Last fall, the FCC ruled that “Comcast had improperly interfered with users’ access to the Internet” by “blocking traffic of BitTorrent Inc.’s file-sharing service.”¹⁵ The FCC ordered Comcast to come up with a plan to stop such practices.¹⁶

These are all important, mainstream businesses. Are there any problems here regarding freedom of expression and information? Do they involve censorship? What principles should these companies be following in such instances?

It is sometimes argued that only the government can engage in censorship (or cause a business to engage in censorship). If a business decides itself to block certain materials, it is not censorship but an exercise of their judgment, perhaps, even, an exercise of their own freedom of expression.

However, I don’t think we should accept this view of censorship. Surely there are other widely acknowledged examples of censorship by non-governments. Consider the Catholic Church. For hundreds of years it had a list of proscribed materials that were censored for adherents of the Catholic faith.

Accordingly, I suggest that censorship occurs when some individual or organization that holds authority or power over other individuals or groups seeks, for reasons related to the content of certain materials or forms of expression, to prevent those individuals or groups from accessing those materials or expressing themselves in certain ways.¹⁷

On this view, the Catholic Church as well as AT&T, Comcast, Verizon and Telus might engage in forms of censorship. However, it does not follow, on this view, that because something is censored, that it is wrong to do so. We censor the materials that young children may view because we are responsible for their well-being, they are not fully moral agents, and we believe it is in their best interests. Of course, many other instances of blocking access to information or one’s self-expression are not justified.

ISP Defenses of Filtering

There are several defenses of the view that ISPs can monitor and decide what access people will have to the Internet through their servers. Hence, these are arguments that their censorship of the Internet is permissible (if not obligatory).

First, it is argued that it is the right of ISPs to filter the Internet because they are private businesses; they can do what they want with their product (at least within the law). They own the routers and cables through which the Internet flows. As private property owners of these routers and cables, they can make decisions that best respond to Internet demands as well as their own interests.¹⁸

Second, it is contended that to force ISPs to convey certain information that they don't wish to convey violates their own rights to freedom of expression and to the First Amendment.¹⁹ The Communications Decency Act of 1996 includes a provision that permits (but does not require) ISPs to block certain web pages or materials they deem to be offensive, etc.

Finally, it is maintained that the development of the Internet will be much more innovative if ISPs can make decisions regarding the management of traffic on the Internet without government regulation or intervention. Thus, it is held that ". . . the Internet is competitive and that there is no need for comprehensive regulation; such regulation, it is said, might even be harmful by stifling innovation, increasing costs, or distorting competition."²⁰ The argument, I take it, is that freedom of expression will best be provided through a competitive market place.

These are important considerations on behalf of ISPs that defend the view that they may do various things to the service on the Internet that includes filtering for materials they find objectionable. They limit the responsibility of ISPs with regard to individual rights to freedom of expression. They assume that the right of private property is of such importance it may override other social benefits and rights, such as that to freedom of expression.

Though these arguments are important, I believe that the situation is more complex than this line of argument suggests.

An Argument Against ISP Filtering

First, the situation is complex since, though these ISPs own the routers and cables through which the Internet flows, the Internet is not simply the routers and cables. Instead, the Internet is a multifaceted connection of data and relations between various end users that takes place through the routers and cables of

certain private companies, but is only possible because of the various “groups that oversee and standardize what happens on the Internet, assign IP addresses and domain names, such as the National Science Foundation, the Internet Engineering task force, ICANN, InterNIC, and the Internet Architecture Board.”²¹ Further, ISP lines have been installed in “public rights of way or in the corridors of other carriers (such as railroads or pipelines, and those other carriers had the power of eminent domain when they acquired the right of way.”²² Accordingly, though ISPs may own the gateway or door through which people must pass to get access to the Internet, they don’t own the Internet. They don’t control much of what is required for its existence and have depended upon access through public domains to run their cables.

Second, the Internet constitutes a public domain of considerable importance. Its public nature initially lay in the fact that it was developed and funded by the government, universities, as well as some businesses.²³ Beyond this, the Internet has created tremendous benefits to individuals, society, businesses, and the government.²⁴ Most importantly the Internet is a new space within which people and business communicate in ways they have not been previously able to do.

Increasing numbers of people read their newspaper online rather than reading a hard copy. They do not send letters; they send e-mails. They do not keep diaries; they write blogs. They do not leave notes or send postcards, they send “tweets.” If they want to talk with someone else, they can go to a chat room. If they want information, they do not go to a library, but they go online to search the Internet for answers to their personal, political, economic, religious, and business problems. They place some of their most personal details on Facebook and YouTube. They take part in social networks through the Internet; they develop networks of friends and stay in communication with them through the Internet. Deaf people can use instant messaging to communicate with others around the world in ways they cannot by telephone.²⁵ The Internet is a realm in which a person who has virtually no money (he or she can go to a library) can communicate with the rest of the world. It is the soapbox of all soapboxes, the mother of all megaphones. And it is one that is almost instantaneous. Through it corruption, misdeeds, tragedies, and crimes have been exposed. It is not surprising that the openness of the Internet is something that challenges and may offend (and perhaps for good reason) not only governments but also businesses, universities, not to mention politicians, religious leaders and even professors. Finally, people are increasingly being directed to the Internet to pay their bills, to apply for grants to go to college, to register their cars at the Department of

Motor Vehicles, and to file their income tax returns. And we have recently seen the important role that the Internet can play in supporting political campaigns even at the presidential level.

In short, the Internet has become essential to the normal and efficient operation of business, government, and NGOs. It has also become indispensable for the many individual citizens who depend on its services and sources for their livelihood, knowledge of the world about them, as well as simple entertainment.²⁶

Third, in other cases, when there are matters of significant public importance that private property owners may block, we have seen fit to ensure that the private property owners give way. Thus, private property owners have been required to permit access to a public beach. In cases such as private restaurants and hotels, we have recognized that private property does not warrant them to exclude other races or ethnic groups. To do so is to engage in unjustified discriminatory practices. Similarly, private toll roads must allow all those who wish to drive along their roads to pass. Private grain elevators have been required to serve all customers;²⁷ private railroads were required to interconnect their lines.²⁸ In short, private property is a very important right, but it is not an absolute right. It must be balanced against other important rights and goods in a society.

Accordingly, the Internet is of such importance for people's well-being, for their jobs, for knowledge about the world, and for contact with their government, that it is reasonable to hold that the right to freedom of expression also extends to it. Consequently, private organizations such as ISPs have a responsibility not to block or filter that access except in cases of justified exceptions to freedom of expression (e.g. direct and immediate threats to others, child pornography). In short, they have a responsibility to respect individual's right to freedom of expression. Further, the determination of when that right may be abridged on the Internet ought to be made on the basis of criteria that justify other forms of the censorship of free expression, not simply on the basis of the reactions of individual ISPs.²⁹

Traditional Products, Freedom of Expression, and SLAPP Suits

Take one last step with me to another set of issues regarding corporate control of information and the freedom of expression. Consider a business that refuses to sell a product that would, in past centuries, be considered a form of information technology, e.g. books, DVDs, and CDs. For example, Wal-Mart has refused to sell certain CDs and DVDs unless they have been redesigned to eliminate material that Wal-Mart considers objectionable. So too Blockbuster has refused to rent

various videos unless the movie company provides them with edited versions that omit objectionable material. Random House refused to publish a book on one of Mohammad's wives so as not to offend some Muslims.³⁰ Years ago, CBS refused to allow certain politically controversial performers to appear on the Smothers Brothers television program. In such cases as well, these businesses have been charged with censorship. They have been said to violate people's right to expression. Hence, for example, it is said that "for Wal-Mart to designate itself the moral guardian of the music business by using its status as the largest single seller of CDs in the country as leverage to cleanse the industry, is a direct affront to free speech."³¹

The position that these businesses are engaged in censorship that violates our right to freedom of expression is much less plausible. It is difficult to see that any particular customer has a right against one of these businesses that they sell or publish some particular book, CD, or DVD. A musician does not have a right that Wal-Mart sell her CDs. An author does not have a right that Random House publish his book. Nor do I, as a customer, have a right that Wal-Mart stock a particular magazine or DVD I want. There are other places where authors and musicians can publish their materials and where people can get these materials. As such, they are not violating any one's right to free expression or access to information. However, this does not mean that the issue stops here.

Freedom of Expression as a Value

Freedom of expression may also be viewed as an important value for society as well as a right to which individuals are entitled. Just because I do not have a right to something, does not mean that it might not be the object of important value for myself or collectively for members of a society. I don't have a right to the life of my wife, but her life is of great value and importance to me. I also don't have a right to the national forests, but they are a matter of significant value for our society. It does not seem that an individual right is directly involved in the above cases, but that does not mean that there is not something of great value at issue here.

Freedom of expression is something of important value inasmuch as we esteem diverse forms of self expression, self discovery, and self development. We value the new knowledge and innovation to which freedom of expression can lead. Forces in society that, unnecessarily or unjustifiably, narrow these values are undesirable.

Of course this (or these) values must be balanced off against other values, such as decency and public decorum.³² There is no magic balancing point here, but those

who value freedom and its associated goods, will be inclined to accept far higher levels of offensive forms of expression than those whose pole star is decorum.³³

In any case, the issue here is not one that is all or nothing. A business such as Gulf Shipbuilding Corporation, that owned the town of Chickasaw, Alabama, not only was able to violate the rights of people to freedom of expression (*Marsh v. Alabama*), but also narrow the range of other choices and information that a pluralistic society would have. This is an extreme case. However, a business or organization may wittingly or unwittingly engage in practices that narrow the realms of free expression and still not be doing something that violates any rights, even if they are doing something that, all things considered, is not desirable. I think this is the real complaint that people are making against Wal-Mart.

In short, through their economic power they are able to influence both the distribution and content of magazines, DVDs and CDs that is undesirable because it limits the diversity of views and expressions to which people may have access. Further, this economic clout is used to support certain values that are not made explicit at the point of purchase.³⁴ In short, the objection is that the actions of such companies have restricted the breadth of materials from which people could choose, while at the same time the alteration or filtering of the material has not been noted.

If this is correct, the argument here rests, in part, on an empirical claim, viz., that measures by Wal-Mart, Blockbuster, Random House, etc. have reduced the variety of materials that are available and thereby diminished the different forms of expression that we value. But is there empirical evidence for this?

Certainly, there is some evidence. Wal-Mart controls an important percentage of the CD and DVD market — estimates range between 10 and 20 percent.³⁵ Its decisions have significant impact on the music market. Producers must make edited versions of their materials in order to sell them at Wal-Mart. And in some rural areas, Wal-Mart may be the only place to buy CDs, DVDs, etc. without additional effort or inconvenience. In addition, there are many other claims that private business in the media offer narrow and restricted information to the public.

On the other hand, the general availability of unaltered CDs, DVDs, magazines, both in hard versions and well as electronic versions has increased dramatically in recent years. Many argue that there remains a wide diversity of music, books, and videos that is available today, though their nature is changing, to be sure. For example, now people are able to produce their own music and put it on the Web. Through the Internet, one can read newspapers around the world, as well

as blogs from those on the right and left. Thus, the empirical argument here is complex and uncertain. To the extent that decisions to filter the materials they sell is not, in fact, having a significant impact on the diversity of CDs, DVDs, and information available, the ethical complaint against such actions is neutralized. If these decisions are having an effect on the diversity of forms of freedom of expression, the ethical objection is supported.³⁶

Accordingly, businesses such as Wal-Mart are not violating our right to freedom of expression when they sell filtered goods, though through the exercise of their economic power they may be diminishing the variety of materials available. If this is correct, then this undercuts an important ethical value. This conclusion rests, however, on an empirical argument that requires further confirmation.

Corporate Control to Prevent Expression of Views

There is another use of economic power that may affect our freedom of expression that deserves notice. In this case, a business does not refuse to provide customers with certain forms of information, but uses its economic power to discourage or prevent people from distributing their own forms of information. This is done through the use of law suits. This does not have to do with limiting information through the use of technology, but through the law. However, the law is used to inhibit others from using different forms of information technology to spread their views. This situation arises when individuals or NGOs make comments or statements spread by way of the Internet or the media and when those comments are perceived by the business to be critical or injurious regarding its products, services, or the company itself. Of course, a business not only may, but must, protect its reputation from slanderous and false charges. But consider these cases.

- Oprah Winfrey was sued by Paul Engler and the company Cactus Feeders for saying on television that she had eaten her last hamburger after guests on her show described mad cow disease.
- The Washington State Apple growers sued CBS for a segment on *60 Minutes* on Alar and the cancer risks in children it might pose.
- Western Fuels Association sued a half dozen environmental groups for running an ad in the *New York Times* entitled “Global Warming — How Will It End?” “The advertisement highlighted the causes, potential impacts and possible solutions to global warming and mentioned ‘coal’ as a cause.”³⁷ “Western Fuels had contended that any statement in the media connecting ‘coal’ with global warming should be construed as an attack on the Wyoming coal industry.”³⁸

In short, bringing a lawsuit against an individual, an NGO, or even a newspaper or television station is one way to try to control the spread of information about one's business. Because the expression of the views of some may reach so many due to the Internet, radio, television, blogs, etc., some businesses have used legal suits to stop or prevent some of that information getting out to more people than initially received it.

What the appropriate legal standard is we don't need to consider here or whether (and the extent to which) it may differ due to jurisdictions and the kinds of product or information involved. Sometimes the legal standard for such cases is said to be "actual malice," while other times we are told that the standard is whether a person or a group has knowingly made any materially false statement.³⁹ I will simply assume that there is some such standard and that it does not prohibit true statements or even ones that involve innocent mistakes.

The point here is that there are instances, such as those above, where individuals and groups have been sued even though they are making true statements or statements that implausibly slander or libel a business or its products. In such instances, it should not be sufficient to say that the law permits bringing a legal suit, even if the chance of winning is remote. Nor is it sufficient to say that such information hurts one's product(s) or business, since the information may be correct. Truth may be painful. Importantly, at issue in these cases is a question of freedom of expression. The right to freedom of expression, I have repeatedly acknowledged, is not unlimited. When it is libelous or slanderous, it may be and should be stopped. Also when speech unjustifiably reveals confidential, private, or secret material, it should be blocked.

However, there have been repeated instances in which some businesses have brought legal suits against individuals and organizations for speech that does not meet any of these criteria for being restricted. Their intention is to tie up such individuals and organizations in legal proceedings, to impose significant costs on them, and thereby to detour them from making such comments in the future. Accordingly, such suits have come to be called SLAPP suits, i.e. Strategic Lawsuits Against Public Participation. This is a form of legal coercion that should be discouraged and stopped. It is an abuse of their legal power and a violation of people's rights to freedom of expression.

The upshot then is that there are cases in which a business may unjustifiably use its economic power, either by itself, or through the law, to restrain people's freedom of expression. However, charges to this effect in the case of retailers who

filter the products they sell are often greatly exaggerated. The right of individuals to freedom of expression is not being violated when a business decides not to sell some particular product such as a CD or DVD. Still, the value that society places in the freedom of expression may be impacted by such activities. The nature and extent of this impact requires empirical study. As in most other cases, our ethical conclusions depend, in part, on what the facts are.

On the other hand, in the case of SLAPP suits the impact on freedom of expression may be direct and immediate. In such cases, a company's responsibility is not to seek to prevent others from freely expressing themselves, even though the content of that speech may be critical (or even harmful) to the company. Instead, such speech should be met either with other speech that points out its weaknesses and shortcomings or action that corrects the problems others are pointing out. In any case, instances of freedom of expression should not be met with legal (or other) measures that seek to silence it.

Implications and Solutions

Let me summarize the overall thrust of this discussion of business control of information and freedom of expression. Since the situations involved vary considerably, different kinds of responses are appropriate. There is no silver bullet for an answer.

The first point that emerges is that business is both directly and indirectly bound up with responsibilities regarding our freedom of speech and access to information. In the case of companies like Google that are confronted with government requirements that they block certain kinds of information, the responsibility is much more direct. They are doing the filtering. And though there may be justification for Google to be in China in spite of its filtering, it is still doing something wrong. To Google's credit, it has tried, on its own, as I have indicated, to mitigate some of the impacts of its filtering and violation of Chinese rights to freedom of expression.

Of particular additional importance is that Google, Yahoo, some NGOs, and academics have worked together to form the Global Network Initiative (GNI) to formulate some basic principles according to which they will all seek to operate and to get others (e.g., governments) to cooperate. One of the principles they have identified is that "Participating companies will respect and protect the freedom of expression of their users by seeking to avoid or minimize the impact of government restrictions on freedom of expression, including restrictions on the information

available to users and the opportunities for users to create and communicate ideas and information, regardless of frontiers or media of communication” (Principles, 2). The GNI also makes recommendations regarding what companies should do to integrate these principles into their own companies and how they might engage governments and other international institutions to promote “the rule of law and the adoption of laws, policies and practices that protect, respect and fulfill freedom of expression and privacy” (Principles, 3). The success of this collective effort will require, however, a commitment from governments and international organizations to foster conditions whereby these principles may be realized.

The case of ISPs is another complicated case that has been addressed (together with other concerns) under what is called net neutrality. In this kind of situation, I maintained that there are ethical reasons why ISPs ought not to interfere with the content of materials sent over the Internet. For this, however, they should (continue to) be protected from legal liability. Just as Verizon is not liable for what a person says over the telephone, so too it should not be liable for what others transmit by means of the Internet service they provide.

To the extent that one broadband provider might achieve a competitive advantage over others by filtering or manipulating the Internet in various ways, e.g. redirecting searches to their own businesses and/or advertisers rather than those sought out by the Internet user, there is a need for an outside party (or parties) to help create conditions under which Internet users may be assured that they can enjoy freedom of expression on the Internet.

The FCC has a role to play here as well as legislation. In 2008, for example, an Internet Freedom Preservation Bill was proposed in Congress that addressed some of these issues. It sought to ensure that ISPs refrained from “blocking, thwarting, or unreasonably interfering with the ability of consumers to — (i) access, use, send, receive, or offer lawful content, applications, or services over broadband networks, including the Internet.” Again, what we see here is that ethical concerns require both individual and collective action.⁴⁰

Finally, regarding the case of filtered or altered products in retail stores and SLAPP suits, yet other actions are required. Businesses selling such products need to be open about edited versions of books, CDs, DVDs that they sell to the public. The broader social impact of their actions on freedom of expression is not a question of the violation of individual rights but one of the effect it has on the embodiment of this value in society. Because individual rights are not violated does not mean that there may not be other undesirable impacts.

SLAPP suits have been addressed by some state legislatures that have passed laws to discourage such legal actions by empowering judges to dismiss them at the outset and to affix the costs for such suits on the plaintiffs. Business associations should speak out to discourage such activities. Part of the motivation to bring such suits may also be a combative mentality of no-holds-barred competition in which “anything you can do and get away with” is worth trying. It is a vision in which those who disagree are opponents in a Darwinian struggle if not outright war. This image and mindset needs to be replaced by one in which, though differences may exist, business sees itself engaged in competition that does not exclude cooperation, the development of win-win solutions to mutual concerns, as well as respect for rights and values such as the freedom of expression. With such a mindset one might hope that self-restraint would also play a role in businesses considering SLAPP suits.

In short, I have discussed here how the freedom of expression forms a thread that is interwoven through a number of important current discussions regarding business and the information it controls. In an era of increasingly rapid technological development and altering borderlines between public and private spheres, we need to be continually vigilant in how our actions in business affect the rights and values of all people when it comes to questions of freedom of expression. This is both a responsibility of individual businesses as well as a responsibility that requires action on the part of others outside of these businesses.

Thank you.

Below are the highlights of George Brenkert's question-and-answer session with Bentley students, faculty and guests.

Dr. Brenkert, I found the information you shared about Google in China fascinating. I wonder how this material would have been received if you had presented it in China?

GEORGE BRENKERT: This is an interesting question that I think should be part of a deeper and longer conversation. Apparently, there is a significant number of people in China, upwards of 80 percent, who believe that the government should be monitoring and controlling the Internet. It is questionable how reliable these figures are. That's a concern I have. Secondly, if these figures are reliable, it is possible that people are saying this because they haven't experienced anything else. But the problem that you raise might be a question of cultural imperialism. One might say, "Here's Google going into China saying 'You should permit people here to have whatever information that we have in United States.'"

On the other hand, as mentioned, China signed the United Nations Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights even though they haven't ratified it. [Access to information] is said to be an international human right. It seems to me that as moral agents we need to have access to information to make decisions about the situations in which we find ourselves. I understand that China may have a different set of beliefs than we have, such as those pertaining to the role of harmony in society, for example. But if you think back 50 years or 100 years ago, we had censorship of different kinds in United States. I think what we have to ask ourselves is not only what values do we think are important, but what values are important to other people and what are the reasons that makes them important?

As some of you know, in Germany and France, Google filters the Internet as well. There, pro-Nazi web sites are supposed to be filtered. What about this? Certainly Germany and France have a history very different from us. What if the United States government said you cannot have access to web sites with regard to pro-Nazi or pro-Ku Klux Klan sites. As much as I despise those groups, I think one should not be denied access to their sites. That's why we've had situation in the past when neo-Nazis wanted to hold marches in various part of the country. Despite protests, the Supreme Court affirmed their right to march. We think that the First Amendment, freedom of expression is a tremendously important right that people have. I think that it is a right that other countries and other people hold as well and it is not simply my own personal preferences but is an important right that people have.

Given the governmental situation in China, do you expect that Google will ever find a way to stop filtering the Internet?

GEORGE BRENKERT: Google clearly cannot unilaterally make that decision. If they did, based on the reports that I have read, they would be fined and people in China would be arrested. I think what Google might do is quietly to work with the government in China and at other levels to try to move China away from the present situation. When you come into China with a search engine, the government doesn't say "Here's the list; filter this." Rather, they make it known that if you don't filter, then you'll be in trouble. The search provider has to figure out the terms they will filter. We are told that when people are encouraged to self-censor, they do it at a much greater level because if one self-censors, then one is never quite sure whether you're getting it right or wrong. And so what the search engines do is to initiate themselves numerous kinds of searches and if they see that a particular term is not getting through, they think, "Oops, we shouldn't be letting that go through. I think China will be in a very interesting situation in the coming years because the changes in China are dramatic. The information that people throughout China can get through cell phones, text messaging, and the like is remarkable. I'm sure some of you have heard about the various demonstrations and riots that have occurred in the provinces. I think that the government in China will be quite concerned about this going forward. How are they going to keep things peaceful? This will be a very interesting area to monitor over the coming decade.

What are your thoughts regarding the ethics of censoring things that might provoke riots such as the cartoons of Muhammad which incited riots in Europe?

GEORGE BRENKERT: I think one of the things that we all need to do, both as people concerned with business ethics as well as businesses such as Google, Yahoo and the like, is to formulate our own view about when censorship is justified. And as I said, during my talk, freedom of speech is not absolute. You all know the example that it is impermissible to yell "Fire!" in a crowded theater because it can lead to harm. Analogously, I think there are instances in which governments may justifiably censor or restrict freedom of expression, and one [such circumstance] might be that a particular form of freedom of expression might incite riot or directly contribute to some kind of harm. That's plausible, but the types of things that are being filtered in China are not of that type. They are censoring, for example, blog pages about the spiritual discipline Falun Gong and any number

of topics including stories carried by reputable news organization because they don't like the particular news accounts that are being given. I don't have a problem if the government of the United State takes down web pages that provide information on the construction of nuclear bombs. However, it would not be acceptable if, for example, the government limited pro-views of the governments of Arabia, North Korea, etc. So, as a general principle, I would accept limited filtering for those things that directly have some kind of immediate connection with harm. Do you want to follow up?

Yes, specifically do you feel that the derogatory cartoons of the prophet Muhammad published in Europe should have been censored?

GEORGE BRENKERT: I think they ought not to be censored. I agree with Salman Rushdie, who said that is freedom of expression includes freedom to offend. As a personal example, in attending the recent presidential inauguration I went down to the mall where there were people protesting on behalf of a particular view. I found their view very unpleasant, but I thought they had a right to be there. Similarly, I would say even with something as offensive as those Danish cartoons, although that's pushing it a great deal, I do think people should have freedom of expression.

Dr. Brenkert, if we are going to hold businesses to a standard of respecting human rights, to what extent does that affect how the business should respect the rights of the people within the business itself including their rights to certain kinds of information the restriction to which some might feel violate their rights to freedom of expression and the pursuit of happiness?

GEORGE BRENKERT: I think the fact that you're an employee of a business does mean that the rights that you have in the business are not exactly the same as those you have outside of the business. You have access potentially to information that you wouldn't otherwise have. So I don't think our rights to express ourselves as an employee of a business are the same as those that take place outside the business context. Similarly, I think business have certain rights to freely express their own views in public. In the case of Internet Service Providers, I don't think it is an infringement upon their rights if they allow other people with views to which they might not agree to broadcast those views through their services. Nor do I think they should be liable for it. For example, I'm a Verizon customer. I don't think Verizon should be held liable if I say things on the telephone

or engage in activities on the telephone [that are deemed offensive]. Similarly, I don't think Internet service providers should view their rights of freedom of expression as impinged upon if other people can express their views through their services. Let's look at this from another angle: there is a case in which an auto insurance company had an employee who wrote an article on gay marriage. He was a fundamentalist Christian and he was opposed to it. His article was published online. He did not identify his employer, but the editor of the online service that published it, did identify his employer. Now some other group saw that, and they went to his employer and said "We don't think you should have employees saying these types of things," and his employer fired him. I have a problem with that. Where employees are off their job and expressing their own particular views, I think it is an infringement of their freedom of expression. But within the business, with regards to businesses related matters, I don't think they have the same freedom of expression because they have made a commitment to that business to operate within certain parameters of the business itself.

I'm thinking more about the withholding of information from employees — censoring information — so that certain information on management and finances is kept from the employees. If this leads to a situation such as that with Enron, where employees were left with their economic well-being and their rights to the pursuit of happiness affected.

GEORGE BRENKERT: I think the question is how much and what kind of information does a business have a responsibility to share with its employees, to what extent does it have a responsibility to share its financial data with them, and so forth. I'm not sure if I have a good answer to that in light of types of things that I have been discussing here. It is clearly an important question because the welfare, the well-being, and the commitments of the employees are obviously affected by the company and the situation that it is in. I do think businesses clearly do have the responsibility not to misrepresent their situation to their employees, for example, by saying "It's a great time to buy stock" [when it isn't]. I think that this is clearly a problem, but it is hard for me to provide more detail than that.

Are you aware of any instances when a company took a stand on principle and ended up deciding that they were pleased in the long run with their decision?

GEORGE BRENKERT: You hear stories, of course, where businesses will not do certain kinds of deals because they don't believe that the conditions for a deal or

the people behind a deal are the people they want to do business with or kinds of conditions that are reputable — concerns that, as people like to say, don't pass the smell test. Certainly there are stories in the United States with which I am familiar. For example, when Philip Marineau was CEO of Levi Strauss & Co., he came to Georgetown [where I teach] to give a talk on corporate social responsibility and business ethics. He talked about how about a half century ago his company was operating a factory in the South. Before the factory opened, the head of Levi Strauss went to the particular city where this factory was going to operate and spoke with the mayor, who inquired as to whether the businesses would be segregated. The people heading Levi Strauss replied “No, it would not be.” And then the mayor asked “If you are not going to segregate it, we want you to put a wall down the middle of the factory so you keep the races on different sides.” The company leader said, “We are not going to do that either!” Then the mayor insisted that a line be drawn down the center, so as to keep the races separate. The company leader stood strong with the statement that “We are not going to do that either. Or else, we'll move the company.” The mayor caved in and they had an integrated facility. It's a great tale. It may not be exactly the kind of answer you were looking for, but I think it is a case where Levi Strauss was faced with potential negative impacts and yet because of certain values and principles they had they took a stand and ultimately were successful.

If you were the CEO of Google, what would you have done?

GEORGE BRENKERT: I started out thinking Google should not filter the Internet in China, and if I focused just on that one question, that would be my answer. Then I asked myself, “What are other relevant aspects of this business?” such as its social responsibilities and its commitment to sustainability. At that point, I found myself thinking that there should be some way that Google would be justified in doing [business in China] — that if we approach the problem in a certain way, maybe it could be acceptable. I found myself in a tough situation. Obviously, I wouldn't want to see a headline in the *Boston Globe* that read, “Brenkert Advocates Moral Compromise.” On the other hand, I think there's something to the whole notion of moral compromise that we need to talk about and think through. Those of you in this room who have studied ethics and utilitarianism will understand this. According to utilitarianism, we are told that you can come up with a unique moral solution to produce the greatest goods for the greatest number. So long as you fulfill that, whatever else you do that is OK. Even if it involves violent acts, it is okay if you are producing the greatest

amount of good. That view is too simplistic. I think moral life is much messier, much more complicated. People do in fact end up with dirty hands at times and I think Google has ended up with dirty hands. That is why mitigation is required. In fact, Sergey Brin, co-founder of Google, said “We are compromising.” In that sense, I admire what they have done. I think they have really tried to [respond to the China problem] in a responsible way. I would be disappointed only if they do not keep pushing on this and try to develop the Global Network Initiative. They should work with governments, the World Trade Organization, and with others who can help to move things along. However, the extent that companies continue to bring external pressure on China, it may push back. That is why I think it is terribly important to work with forces within China that advocate much greater freedom of expression. Those are the kinds of forces that you want to encourage. However, you have to do it quietly. You cannot do it in the headline news. Ultimately though, these are the kinds of forces with which Google can work to make their hands a little less dirty.

Do you have peace of mind with Google’s current strategy?

GEORGE BRENKERT: I have a conflicted peace of mind. It is similar to doing something you think you should not do, but you have to do it. Do I have peace of mind? I do not think so.

What if you were CEO, where would you put a stake in the ground?

GEORGE BRENKERT: I think Google’s leadership has taken the situation seriously and acknowledged that they are making a compromise by being in China. They have weighed their options of pulling out and considered the competition. I don’t think that [the position I’m proposing is] either simply academic or business. I think it’s both. Others may disagree. You may think “Oh no, they should never have gone in there,” or you may think “quit worrying about this, and just do it.” Yahoo and other search engines are doing it. In fact, there is an argument that Google makes that they provide better information and more of it than Yahoo. So that is to their credit. If they can filter to the minimal extent and if they can keep pushing these boundaries, then I think there is a great deal that is positive about Google’s actions. That is why I am more pleased with their actions than Yahoo’s.

Thank you.

Endnotes

- ¹ Johannesburg Principles, p. 6 <http://www.article19.org/pdfs/standards/joburgprinciples.pdf> Accessed January 19, 2009. The Johannesburg Principles were formulated by a group of experts in international law, national security, and human rights to clarify and define our rights to freedom of expression.
- ² I want to do this, not from the standpoint of an engineer or lawyer, but from the standpoint of business ethics. This is not to say that engineering, legal, or economic considerations are not important. They are very important. But I also think the standpoint of business ethics is important in drawing any final (moral) conclusions. When I speak of business ethics, I assume that this encompasses questions of what some call, “corporate social responsibility.”
- ³ See Thomas Donaldson, *The Ethics of International Business* (New York: Oxford University Press, 1989), pp. 85-6. Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1980), p. 57. I would add that last year (2008) was the 60th anniversary of the UN Universal Declaration of Human Rights.
- ⁴ Yahoo and Microsoft are in similar situations.
- ⁵ The Falun Gong is a religious or spiritual movement founded by Li Hongzhi in China in 1992.
- ⁶ International Covenant on Civil and Political Rights. http://www.unhcr.ch/html/menu3/b/a_ccpr.htm Accessed: February 1, 2009. It should be noted that the UN Declaration is a declaration, not a treaty or formal international law. The International Covenant is a treaty with binding force, though the U.S. has appended a number of “understandings,” “reservations,” and “declarations” that weaken its binding force on the U.S. China has signed the International Covenant, but not completed the ratification process as of January 2009. In both documents, Article 19 enjoins that individuals be free to express themselves and to obtain information they seek regardless of the medium.
- ⁷ In addition, of course, it was going against its own standard of “Don’t be evil.”
- ⁸ Principles 6 and 7 of the Johannesburg Principles appear to limit restriction of freedom of expression to cases “intended to incite imminent violence . . . , likely to incite such violence . . . [and where] there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.” These limits are much too narrow. There might be other justifiable reasons for censorship: slander, child pornography, etc. However, my point here is itself a narrow one, viz., that there are limits to the blockage of information a government may justifiably impose.
- ⁹ I am suggesting here that these constitute conditions under which moral compromise may be permitted. For further development of these conditions, see my paper “Google, Human Rights, and Moral Compromise,” *Journal of Business Ethics*, vol. 85, no. 4 (2009).
- ¹⁰ In January 2007 the Pew Internet and American Life Project estimated the number of Internet users in China at 137 million. This number was said to be growing at double digit increases for the past several years. Given its growth rate, the number of Internet users in China was projected to outpace that of the U.S. in 2009.

See <http://yaleglobal.yale.edu/about/pdfs/chinaInternet2007.pdf> Accessed January 19, 2009.
- ¹¹ Sergey Brin admits that they had to compromise Google’s principles. See “Sergey Brin Goes To Washington.” <http://www.webproneews.com/insiderreports/2006/06/07/sergey-brin-goes-to-washington>. Accessed: February 7, 2009.

¹² Telus confirmed that it blocked access to the Voices for Change website (www.voices-for-change.com), on the basis that the "web site ha[d] posted illegal information. Telus blocked access to the site on July 25, 2005 and restored access on July 28, 2005." See "Telus Blocks Consumer Access to Labour Union Web Site and Filters an Additional 766 Unrelated Sites." *Open Net Initiative*. <http://opennet.net/bulletins/010> Accessed: Dec. 4, 2008.

¹³ Tkarr, "AT&T Plays Gatekeeper: Censors Pearl Jam." SavetheInternet.com August 9, 2007. See: <http://www.savetheinternet.com/blog/2007/08/09/att-plays-gatekeeper-censors-pearl-jam/> Accessed: Dec. 4, 2008.

¹⁴ Adam Liptak, "Verizon Blocks Messages of Abortion Rights Group." *The New York Times*, see <http://www.nytimes.com/2007/09/27/us/27verizon.html>. Accessed January 8, 2009.

NARAL was originally a group called the *National Association for the Repeal of Abortion Laws*. However, after the *Roe v. Wade*, decision in 1973, it changed its name to the *National Abortion Rights Action League*. Later it became the *National Abortion & Reproductive Rights Action League*. Most recently (2003) it became simply *NARAL Pro-Choice America*

¹⁵ Robert Poe, "FCC's Comcast Ruling No Great Victory for Network Neutrality," VOIP-News, August 4, 2008. See <http://www.voip-news.com/feature/fcc-comcast-ruling-080408/> Accessed: January 19, 2009

¹⁶ Poe, "FCC's Comcast Ruling . . ."

¹⁷ Some may not agree with this account of who or what can engage in censorship. Though I think my defense of this interpretation of censorship is the correct one, I don't have to rely on use of this word. The important question is whether such behaviors are justifiable; whether they are right or wrong, desirable or undesirable.

¹⁸ Tim Swanson notes that ISPs argue they do own the network and charge any price they deem appropriate ("Who Owns the Internet?" Ludwig von Mises Institute, <http://mises.org/story/2139> Accessed: January 21, 2009.

¹⁹ Lawrence Soley, *Censorship, Inc.* (New York: Monthly Review Press, 2002), see pp. 253-262.

²⁰ James B. Speta, "A Common Carrier Approach to Internet Interconnection." *Federal Communications Law Journal*, Vol. 54, No. 2, p. 226.

²¹ "Who Owns the Internet?" at <http://www.webopedia.com/DidYouKnow/Internet/2002/WhoOwnstheInternet.asp> Accessed: January 21, 2009.

²² Speta, "A Common Carrier Approach . . ." pp. 270-1. Even though Speta does not hold that Internet carriers are telecommunications carriers, he maintains that they can and should still be subject to some common carrier duties (Speta, "A Common Carrier Approach . . ." p. 271).

²³ See Speta on the early involvement of ARPA and the NSF as providing a direct government subsidy for development of the Internet (Speta, "A Common Carrier Approach . . ." p. 271).

²⁴ The use of the Internet by its users does not deny it to others and their common use of it may make it more valuable. See Yochai Benkler, "Freedom in the Commons: Towards a Political Economy of Information." *Duke Law Journal*, vol. 52 (2003) pp. 1245-1276. It is this that the users of ISPs seek. The gateway they use is important only to the extent it provides them better, faster, and cheaper access. It is only during the last two or three decades that access to the Internet was privatized or commercialized.

- ²⁵ See N.D. Batra, *Digital Freedom: How Much Can You Handle?* (Lanham, Maryland: Rowman & Littlefield Publishers, 2008), p. 4.
- ²⁶ Speta, "A Common Carrier Approach . . .", p. 270 The value of the Internet depends on the number of those connected. If two people are connected it is good, but if twenty are connected it is much better.
- ²⁷ Speta, "A Common Carrier Approach . . .", p. 256.
- ²⁸ Speta, "A Common Carrier Approach . . .", p. 260
- ²⁹ In the case of the Internet, as in other circumstances, this right is not a simple right. It is true that "the Internet encourages people to behave in ways that they would not in real life." (Batra, 5; see 7). The point I would make here is that neither the right to private property nor the right to freedom of expression is absolute. Hence, those who spread defamation and libel by way of the Internet should be punished for doing so (Batra, 181-3). On the other hand, the burden of proof should be on the ISPs to show that their filtering or blocking of access to the Internet is justified.
- ³⁰ The book to which I refer is *The Jewel of Medina*, a historical novel whose publication was strongly endorsed by Salman Rushdie, but that Random House chose not to publish out of concern for the reaction of some conservative Muslims.
- ³¹ Dariel Weaver. "Wal-Mart's CD Censorship violates Free Speech." Orbis (March 27, 2002). <http://media.www.vanderbiltorbis.com/media/storage/paper983/news/2002/03/27/UndefinedSection/WalMarts.Cd.Censorship.Violates.Free.Speech-2471337.shtml> Accessed: January 5, 2009. I will focus on Wal-Mart in this section as representative of the issues of free expression, just as I focused on Google in the second section above as representative of the filtering issues that businesses face in dealing with China (or other governments).
- ³² A point regarding which Robert McNulty reminded me.
- ³³ This stance was taken in the U.S. Constitution with the First Amendment guaranteeing freedom of speech.
- ³⁴ In response to the point that these decisions were simply economic ones, it might be noted that some of the DVDs and other materials Wal-Mart has refused or required to be altered were selling quite well in their unaltered forms.
- ³⁵ "By one estimate . . . [Wal-Mart] stores account for 15 to 20 percent of all CD, DVD and Video sales, as well as 15 percent of all single copy magazine sales" (Hart, 2005). <http://www.fair.org/index.php?page=2771> Accessed: January 21, 2009.
- ³⁶ Another important criticism is that if such alterations are not identified as such, then customers and the public are being treated deceptively. These changes should be clearly indicated. If businesses are not prepared to do this, or even to erect signs informing their customers in relevant departments about the criteria by which changes to CDs, DVDs, magazines, etc. had been made, then the lack of notice itself undercuts the information available to the public.
- ³⁷ "Environmental Organizations Defeat Coal Industry Global Warming SLAPP Suit; Federal Judge Dismisses Coal Industry Suit Attempt to Prevent Debate Over Global Warming." Business Wire (April 5, 2001), <http://proquest.umi.com/pqdweb?did=70553604&sid=10&Fmt=3&clientID=5604&RQT=309&VName=PQD> Accessed: July 29, 2008.

³⁸ “Environmental Organizations Defeat . . .” Business Wire, (2001). See also Paul D. Kretkowski, “Food Fights,” Mother Jones (February 24, 1998), <http://www.motherjones.com/news/feature/1998/02/kretkowski.html> Accessed: September 18, 2008

³⁹ See Food Speak: <http://www.cspinet.org/foodspeak/laws/existlaw.htm> Accessed: January 21, 2009.

⁴⁰ Though the FCC may contribute to such external support for freedom of expression in the U.S., it cannot play the same role with regard to these questions in other countries. For that, similar efforts must be taken in those countries, or international agencies must undertake some comparable role. A comment to me by Robert McNulty suggested the importance of this point.



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